MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

October 21, 2021

The meeting began at 2:16 P.M.

Attendees: Elliott Barowitz, Public Member; Charles DeLaney, Tenants' Representative; Christian Hylton, Owners' Representative; Heather Roslund, Public Member; Nicole Oddo, Public Member; Renaldo Hylton, Chairperson Designee; Kevin Schultz, Executive Director

INTRODUCTION:

Chairperson Hylton welcomed those present to the October 21, 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 legislation S.50001/A.40001 signed by Governor Hochul. 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.

VOTE ON MEETING MINUTES:

September 23, 2021 Meeting Minutes

Chairperson Hylton asked if there were any comments on or corrections to the September 23, 2021 minutes. As there were none, he called for a motion to accept the minutes.

Mr. DeLaney moved to accept the October 23, 2021 meeting minutes, and Mr. Hylton seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche, Ms. Rajan, Ms. Hayashi

Members recused: 0

EXECUTIVE DIRECTOR'S REPORT

Mr. Schultz reiterated Chairperson Hylton's announcement that in-person meetings were being suspended once again, through January of 2022. He then continued:

New Staff Accountant

I'd like to introduce David Silverstein, our new accountant, who will assist with some of the complex rent calculations in the rules. David has municipal experience, having worked for the comptroller for many years. As a Reservist, we only have him for fifteen hours a week, but he is eager to get things done and a pleasure to work with, so we are very pleased and excited to have him, if only for that time. So welcome, David.

SoHo-NoHo Rezoning

The City Planning Commission voted to approve it, which will move it along to City Council.

Revenue

The unofficial Loft Board revenue for September was $79,945.

Enforcement

I want to first repeat what I said last month. As fall and winter approach, owners should recall the heat requirements under our rules and be sure the heat in their IMDs is working before it's too late, as it will soon be difficult to schedule contractors for maintenance work. So, now is the time, and to that end, we sent a message out to our Listserv about the 2021-2022 heat season, the requirements under our rules, and the enforcement mechanisms related to them. If you did not receive it on the Listserv, please sign

up for it on our website. And while you're there, you can click on our news and check out that information.

Mr. Schultz credited Deputy Director Lin for her efforts in organizing this notification/warning effort and continued:

And thanks to the efforts of our inspector, there were thirty-four inspections in September, that resulted in six violations. One for a broken elevator, one for no gas, and four for a lack of Loft Board signage in the lobby/vestibule as required. Two of the four for signage issues have been corrected and two we're working to seek compliance or enforcement if necessary. The no-gas issue remains unresolved, and the broken elevator has been corrected.

There's one more small stat I want to share with respect to enforcement, and it's that in September, seven times we resolved an issue without an inspection. In other words, our inspector and our attorney were able to address the issue via phone calls, by connecting the owner and the tenant, and/or via a referral to the appropriate party. When we don't have jurisdiction, we try to get the issue into the hands of someone who does. So, if we think it's something that doesn't require our inspector's precious time, whenever possible, we'll try to get compliance and resolution by other means.

Litigation

New Case: *16 Cypress Avenue Realty, LLC versus the New York City Loft Board*, index number 158634/2021. Here, the petitioner, the owners of 476 Jefferson Street in Brooklyn, filed an Article 78 petition to challenge Loft Board Order 5053, which is from May of 2021. And in that Order, the Board granted protected occupancy status to the tenants of Unit 306 -- named Haley Desjardins and Samuel Richer. Order 5053 was a reconsideration of a prior Order, number 4995 from July 16th of 2020. Both Orders found that Unit 306 was not deregulated through a sale of Loft Law rights by prior tenants, and in its reconsideration, the Loft Board found that the owner was not denied due process. The Loft Board rejected the owner's argument that a sale of rights does not require analysis of whether a tenant knowingly waived their rights. In the reconsideration, the Board found there was no error in the underlying Order. In that Order, the prior tenant failed to effectuate a knowing waiver of Loft Law rights.

In this Article 78, the owners now argue that those prior Orders should be annulled because OATH testimony and documents, they say, evidenced that one of the prior tenants knew that he was a protected occupant when he agreed to the sale of rights. And the owners also argue that adequate consideration was exchanged for that sale. And so that's a new, ongoing case.

The other litigation update is a decision in a case called *Teixeira and Sullivan versus the New York City Loft Board,* index number 511233/2020. This Article 78, filed by sixth-floor occupants at 216 Plymouth Street in Brooklyn, challenges Loft Board Order 4945 from February 20th of 2020. That Order granted Loft Law coverage to the second, third, and fourth floors, but not to the sixth-floor unit. Evidence showed that the sixth-floor unit was used for a construction business during the Window Period. Occupants of the sixth floor filed the Article 78, claiming that the part of the Order that denied coverage for the sixth floor was an error. The court denied this petition, stating that the petitioners failed to identify an applicable section of the CPLR to challenge the Loft Board's determination and that they also failed to cite pertinent legal authority. The court stated that the Loft Board's determination was rational and not arbitrary or capricious, and that the Article 78 court may not weigh evidence or reject the credibility of determinations made by OATH and the Loft Board.

A brief update. Last month, we had some discussion of our failure-to-register Orders, and I just want to confirm for our Board members that there are no other Orders to be issued. We had reviewed a few but found them not warranting an Order.

Mr. Barowitz: As some of you know, I've been active in artist housing since the early 1960s. After going to see that building at 482 Broadway, I thought I'd walk all around SoHo and take a look. There's no doubt that SoHo is a very glamorous place. And why is it glamorous? Because the artists moved in there, and then the galleries came in, and then Macy's and Bergdorf Goodman, and so on and so forth, came into play. Walking around SoHo, you would have the impression that this is an area where wealthy people live, and that is true, to a certain extent. However, I started looking at the buildings and seeing buzzers – one, two, three, four, five, six -- with names. How many artists are still in SoHo, I have no idea. But the idea that now it's a high-end, expensive place -- it may be for these nice stores that are there, but it's not necessarily for the artists.

The first meeting I attended was about four or five years ago, and there were maybe sixty or seventy artists, all somewhat older. I'm outraged by the fact that the city was going to do whatever it decided to do. And there is no doubt that a lot of the people arguing for the redistricting of the two areas -- by the way, I live in NoHo -- were good-hearted people wanting to make the city more diverse, and I'm absolutely for that. But once again, walking around, I found maybe two empty lots, and I thought, what are they going to do? What buildings are they going to tear down? There are a couple of new buildings in SoHo, to be sure. There's a nice hotel there. There's one other very nice building. So, I don't know. Even though this was passed and will now go to the City Council, where it will be passed – will they be able to do what they say they're planning to do? So, I just want to put that into the record, even though it has nothing to do with the Loft Law, except for those that are protected there by the Loft Law, that are in SoHo and NoHo.

Chairperson Hylton: Thank you, Mr. Barowitz. Are there any other comments or questions for Mr. Schultz?

Mr. DeLaney. At the end of the last meeting, I had asked that, at some point in the future, we have a discussion on last-minute communication with the Board on cases. And I'm asking for an update on that.

Mr. Schultz: I've reviewed the rules and laws concerning this, and I think that there are some areas where the Board can probably make some determinations. We did not put it on this agenda because we want to prioritize rulemaking. If the Chair wishes, we can put it on the agenda for the regular November meeting.

Chairperson Hylton asked that Mr. DeLaney coordinate with Mr. Schultz to set the date for that discussion.

Mr. DeLaney thanked the Chair, then asked if the staff knew how many subscribers there are to the Listserv.

Chairperson Hylton: One hundred and seventy-six. Obviously, we would love for that list to grow, and we're working on it.

Mr. Schultz: It is on the website, but we're going to work on making it more visible/accessible.

Chairperson Hylton: I'm filling in for our Fire Department representative here, Mr. Roche. Normally, at this time, he would remind tenants of safety issues for the heating season and owners of their obligation to provide carbon monoxide detectors. It is the law that each unit be outfitted with at least a carbon monoxide detector. And it also depends on how big the unit is. Owners must know this, but I want to make sure tenants are aware that they must have a working carbon monoxide detector in their units. For your own safety, reach out to your landlords and make sure that those are provided and in proper working condition.

THE CASES:

Appeal and Reconsideration Calendar

	Applicant(s)	Address	Docket No.
1	Certain Tenants of 400 S. 2nd Street	394 -400 2nd Street, Brooklyn	AD-0109

The Chair tabled this case at this time.

	Applicant(s)	Address	Docket No.
2	On Starr Inc.	207 Starr Street, Brooklyn, NY	Docket No: AD-0112

The owner of the building appealed an administrative determination dated September 28, 2020. In the administrative determination, the then-Acting Executive Director of the Loft Board, among other things, rejected sales filings which the owner had submitted for Units 2-2 and 3-3 on July 20, 2020 because the owner had failed to prove that the tenant of those units intentionally relinquished known Loft Law rights. On appeal, the owner contends that the sales agreements and the sales record forms, which were submitted on July 20, 2020, sufficiently demonstrate an intentional relinquishment of known Loft Law rights.

A sales record form neither adequately proves a tenant's intent to relinquish his or her rights under the Loft Law nor establishes a sale of rights under the Loft Law. Additional evidence must be offered in support of an alleged sale under MDL § 286(12). Pursuant to 29 RCNY § 2-10(b), either a sales agreement or other documentation substantiating the alleged sale must be provided. Here, the owner provided sales agreements for Units 2-2 and 3-3. However, the sales agreements made no references to the Loft Law or to the relevant sections thereof. The Loft Board may consider additional evidence concerning the

circumstances of the alleged sales in order to determine whether deregulating events have occurred. However, here, the record contains insufficient evidence as to the circumstances of the alleged sales..

The facts found in the administrative determination are supported by substantial evidence in the record, and the then-Acting Executive Director correctly applied the law. The owner's appeal is denied.

Ms. Lee presented this case.

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

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

Chairperson Hylton asked for any comments on the case.

Ms. Roslund: I'll make a comment for the public's information. There were a good ten or so questions and issues raised by this case and this Proposed Order that actually have nothing to do with the Proposed Order, itself, but with a commercial tenant being the protected occupant, among other things. So, for anyone following along who wants to read through this thoroughly, it's much more complicated than it appears on the surface, and a number of interesting questions were raised.

Mr. Hylton: I would second Ms. Roslund's comment. A number of questions were raised, but I would say all matters were considered fairly thoroughly.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche, Ms. Rajan, Ms. Hayashi

Members recused: 0

The Summary Calendar

	Applicant(s)	Address	Docket No.
3	Tenants of 475 Kent Avenue	473 - 493 Kent Ave., Brooklyn	TM-0102
Various residential tenants filed with the Loft Board an application seeking a finding of diminution of services. The parties ultimately executed stipulations of settlement whereby the residential tenants withdrew their diminution of services application with prejudice. The residential tenants' diminution of services application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulations of settlement.			
4	473 - 493 Kent Avenue	473 - 493 Kent Ave., Brooklyn	BP-0057
Because Owner filed an amended narrative statement and revised legalization plans, the plans at issue in this Loft Board-initiated alternate plan dispute are no longer valid as a subject for review or adjudication. Therefore, this application was dismissed as moot.			

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

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

Chairperson Hylton asked for any comments on the case (None).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche, Ms. Rajan, Ms. Hayashi

Members recused: 0

The Master Calendar

Chairperson Hylton: There are five cases on the Master Calendar. The first two are removal cases, so there is no staff presentation on these two cases.

	Applicant(s)	Address	Docket No.
5	ZB Pearl LLC and 3D Pearl LLC	53 Pearl St., BK, NY	LE-0728
Owner's application seeking to remove the building from the Loft Board's jurisdiction was granted. The proposed order notes that sales were executed pursuant to MDL §§ 286(6) and/or 286 (12) and owner converted the building's three IMD units to non-residential use.			
6	10 West 18th Owner, LLC	10 West 18 St., NY, NY	LE-0656; LE-0701
The Loft Board grants the removal application of the Building because five of the six registered IMD units were subject to sales pursuant to § 286(6) or § 286(12) of the MDL and converted back to commercial use. The last unit was converted back to commercial use after an eviction in 1987 pursuant to 29 RCNY § 2-08.1(b). Owner was not required to file an irrevocable recorded covenant enforceable by the City of New York for fifteen (15) years from the date of recording because Owner sufficiently proved the unit was being used exclusively as a commercial space or has been vacant since 1987, in excess of the fifteen (15) year requirement under the rule and thus fulfilling the purposes of the rule.			

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

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

Chairperson Hylton asked for any comments on the case (None).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche, Ms. Rajan, Ms. Hayashi

Members recused: 0

	Applicant(s)	Address	Docket No.
7	Cynthia Chapin	482 Broadway, NY, NY	TH-0209; TM-0097; TN-0277

The tenant of Unit 5N, also known as Unit 5B and Unit 501, filed with the Loft Board a harassment application, a diminution of services application, and a legalization timetable violation application.

With respect to the harassment application, the tenant failed to satisfy her burden of proof. There is insufficient evidence in the record to support the tenant's harassment allegations. With respect to the diminution of services application, the tenant established a diminution of services claim only as to gaps in her skylight. With respect to the legalization timetable violation application, the tenant failed to provide adequate proof of non-compliance with Article 7-B. The owner is not in violation of the legalization timetable as it relates to achieving Article 7-B compliance. However, the owner is in violation of the legalization timetable under MDL § 284(1)(v) and 29 RCNY § 2-01(a)(8)(iv), specifically for failing to obtain a residential certificate of occupancy by July 2, 2012.

The tenant's harassment application is denied, and the tenant's diminution of services application is granted solely to the extent that the gaps in her skylight constitute a diminution of services. The owner is directed to restore the tenant's skylight so that the gaps are filled. In addition, the tenant's legalization timetable violation application is granted. The owner is directed to maintain a valid TCO for the residential portions of the building and to diligently take all reasonable and necessary action to obtain a final certificate of occupancy for the building.

Ms. Lee presented this case.

Chairperson Hylton: Thank you, Ms. Lee. Just for the record. How many pages is this Order?

Ms. Lee: I think there were eleven.

Chairperson Hylton: Good job. Thank you. **Chairperson Hylton** then asked for a motion to accept this case, and for a second.

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

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

Ms. Roslund: I will make a comment similar to the one I made earlier. In these eleven pages, it's fair to say there were a number of questions and issues that were brought up and discussed in detail; in

particular, there was some delving into some of the minutiae of the code compliance deadlines. So, thank you, Ms. Lee, for such a thorough outline of an incredibly complicated case.

Mr. DeLaney: First, I want to disclose to my colleagues on the Board that I did have one or two telephone conversations with the applicant, back, probably around the time that this application was filed. I made clear to the applicant at the time that I was happy to hear about the conditions in the building, but I did not want to talk about anything regarding any pending or potential Loft Board case. It focused more on looking for support from elected officials to try to move this along. Clearly there are some problems with this building. I would also note, in addition to an eleven-page Proposed Order, the backup material for this case is in excess of thirty-six hundred pages. The tenant documented a lot here, so I wonder, Ms. Lee, if you could summarize the staff's recommendation in agreeing with the no-harassment finding made by the ALJ at OATH.

Ms. Lee: Yes. Basically, the Administrative Law Judge found that there was insufficient evidence to show that the owner had harassed the tenant. The tenant did not meet her burden of proof. The tenant did not show, with respect to the commercial tenant in the building and her harassment claims, that the owner or the commercial tenant had acted on behalf of the owner to force her to waive her rights or to make her leave her unit.

With respect to the other conditions on the premises, the Administrative Law Judge had opined that there was insufficient evidence and that there were various reasons why her harassment allegations did not prevail, some of which include the fact that the statute of limitations for harassment claims had barred some of her claims; there was equivocal testimony and lack of corroboration; the nature of the alleged damage or disturbance did not rise to the level of harassment; and the duration of the alleged act of harassment as well as the owner's good faith efforts in accommodating the tenant in responding to the tenant's complaints and in performing repairs had all factored into the Administrative Law Judge's recommendation. And for those reasons, this Proposed Order agreed and found that the ALJ was correct in her analysis.

As far as the diminution of services claims, aside from the gaps in the flaps of the skylight, the ALJ had found, again, that there was insufficient evidence to support the tenant's other diminution of services

claims. Some of the reasons were that the nature and the duration of the alleged diminution of services did not rise to the level of a diminution of services; that there was equivocal testimony and lack of corroboration; and that some of the claims or some of the conditions that the tenant had alleged were resolved by the time the ALJ had issued her report and recommendation. So again, those were some of the factors that were considered by the ALJ, and those are the same reasons that this Proposed Order agrees with ALJ.

Mr. DeLaney: Thank you.

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

The vote

Members concurring: Mr. Barowitz, Mr. Hylton, Ms. Oddo, Ms. Roslund, Chairperson Hylton

Members dissenting: Mr. DeLaney

Members abstaining: 0

Members absent: Mr. Roche, Ms. Rajan, Ms. Hayashi

Members recused: 0

	Applicant(s)	Address	Docket No.
8	Courtenay Nearburg	19-27 Jay St., Brooklyn, NY	PO-0111; TA-0263
Applicant, the alleged occupant of 19-27 Jay St., Brooklyn, New York, unit 201 a/k/a/ unit 2B, filed a protected occupancy application and a rent overcharge application. The matter was transferred to OATH. Applicant failed to appear for conferences and trial, which OATH had marked as final. Applicant also did not contact OATH or submit a written request for reinstatement of the applications within 30 calendar days of trial pursuant to 29 RCNY § 1-06(k)(4). Therefore, the applications are dismissed with prejudice for failure to prosecute.			

Ms. Lin presented this case.

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

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

Chairperson Hylton asked for any comments on this case (None).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche, Ms. Rajan, Ms. Hayashi

Members recused: 0

	Applicant(s)	Address	Docket No.
9	American Package Co. Inc.	226 Franklin St., Brooklyn, NY	LS-0264
Owner's access application is denied for failure to adhere to Loft Board's requirements for access notices. Loft Board rules require owners to serve access notices upon all occupants but here, Owner only served the tenant and not his roommate, whose occupancy was known to the Owner. Further, a $1,000 civil penalty is imposed upon the Owner for its failure to comply with access notice provisions.			

Ms. Lin presented this case.

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 this case.

Mr. Hylton: Yes, I would just reiterate that I'm not comfortable with the results of this case and with reversing the ALJ's decision. I'm not even comfortable even the interpretations of the terms occupants and notice. I think they're troubling and expansive definitions that could lead to unintended consequences, and it's something that needs to be cleared up.

Chairperson Hylton: Thank you Mr. Hylton. Are there any other comments?

There were none from the Board, but Chairperson Hylton asked Ms. Lin if she would clarify the nature of the $1,000 fine.

Ms. Lin: We have precedent in two areas. The case we reference for stating that the owner does not have the opportunity to cure defective access notices also resulted in the imposition of a $1,000 civil penalty against the owner. And we have another case where the owner was fined $1,000 for the tenant having to defend against a second access application.

The vote

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

Members dissenting: Mr. Hylton

Members abstaining: 0

Members absent: Mr. Roche, Ms. Rajan, Ms. Hayashi

Members recused: 0

Chairperson Hylton: Thank you, Board members. I really appreciate the level of scrutiny, detail, and preparation you put into these Orders. And I especially want to thank the staff for the hard work they put into preparing them. Having been privy to their review, I can attest to the tremendous amount of work involved. So, thank you all very much.

At this point, we're going to take a two-minute break before we go into rulemaking.

AFTER THE BREAK:

RULEMAKING:

As not enough Board members had returned from the break to constitute a quorum, there was a discussion about what might or might not be discussed in their absence.

Mr. Schultz felt it would be acceptable to talk about his system for reviewing the rules. He had spoken with some of the Board members about the process and was open to any comments or suggestions about how to proceed, now or at any time during the proceedings.

With Ms. Roslund's return, a quorum was achieved.

Chairperson Hylton: We're now back on the record. The next item on the agenda is rulemaking updates, and Mr. Schultz will lead the discussion with the assistance of Ms. Lin and Mr. Clarke.

Mr. Schultz: Thank you, Chairperson. The document I sent you this time has the comments right there on the page, so I hope that's easier. There are more words in the comments, and that's because some of it is more complicated. I also leave little to the imagination, but that doesn't mean we have to cover every piece of those notes. If there is a section or a page that is of particular note or urgency for one or more of our members, I'm happy to start there. Otherwise, I'll just go page-by-page and be as efficient and thorough as I can. But if I'm too much of either, please speak up. Is there anywhere in particular anyone would like to start?

Mr. DeLaney: I had raised the question with Kevin yesterday in terms of how we were going to proceed with this discussion today because for the last few months, to my recollection, we've worked off a set of talking points generated by Mr. Clarke or Mr. Argov on certain topics, and we've been going through the Law Department's comments. And I think, particularly since we're going to have an extra meeting in November to try to move things along, maybe part of what we should spend some time on this afternoon is trying to figure out how to close this process down. Do we have everything now from the Law Department? Are there still things that we don't have? And if so, is there any sense of the timing for that?

Mr. Schultz: So just to give a better definition, what you have in front of you is not word-for-word what the Law Department's comments were. They are notes I made after having reviewed them and, wherever I could, given context to them. Their comments weren't put on this piece of paper that you passed, so I was taking their comments; speaking with Law Department to make sure I understood them; and then trying to include them in a way that landed on a recommendation where I could;

particularly where, after having filtered back and forth with whatever Law Department said, there was something I felt was worth bringing to this Board.

There are items that have not yet been shared with you because I am still working out my own understanding of them and what Law Department wants or thinks. So, this represents what I think is ready for discussion, ready for me to make easy for you. So, there is more, but I would say, not a lot more. And I would love to get everything processed and put in front of you, so you have a better sense of the universe. That is what I'll try to do for November 4th. To be able to say, look, it's all here; now we've just got to get through it.

So, suffice to say, this is more than most of it, more than half of it, between last meeting and this meeting. Some of the items you haven't seen yet are, frankly, I think, some of the more complicated ones that I need to get my head around. So, I did not put them in front of you, because I want to be able to provide helpful context. Any other thoughts or comments on what Mr. DeLaney brought up?

I'm going to start on page 7. Again, the goal is to be both efficient and thorough, and if I head in either direction too much, I am genuinely open to feedback. I agree, we want to close this off. I don't want to belabor anything unnecessarily. So, on page 7, the definition of family, as Law Department saw it and based on what I learned by trying to learn the history of this, is that this was a creative definition crafted as a hybrid to serve two purposes. And Law Department has suggested that it doesn't serve any purpose very well, because what the rules end up doing is defining the same word multiple times throughout without sufficient clarity. I'll leave it at that.

In most cases in our rules, the word family has a meaning that really would be the same as the MDL. And Law Department asked, well, if that's true, why not just say that? And part of the answer was because in one part of our rules the MDL is not apt. It requires a different definition of family. So, as I understand it, the solution was to try to create a multipurpose definition. But Law Department is suggesting that we just say it like it is and say family will be defined the same as set forth in MDL 4(5), unless otherwise indicated. And then in the place where we need to otherwise indicate it, we do, and it's defined the way it needs to be there. I tried to make that as simple as possible. And so instead of continuing to talk about

it, I'll open it up to questions or comments. I see the suggestion Law Department made here; I think it's proper and appropriate; and it doesn't hurt anything.

Chairperson Hylton: Where's that proposed language?

Mr. Schultz: In the sidebar. Fifth paragraph down. "Law Department suggests hybrid definition is ill advised and instead stating nearly that *Family means the same as set forth in MDL 4(5) unless otherwise indicated."* And for this part, that would be the definition of family.

Chairperson Hylton: So, just where the word family begins? Just that piece?

Mr. Schultz: It would be striking everything you see there except what the word family means. It would be striking most of this definition in favor of one that just explicitly says, family means what the MDL means, unless otherwise indicated. And there is a place where it is otherwise indicated, for the unique purposes of that section.

Ms. Roslund: Doesn't that make sense, if the purpose is for a building to go from an IMD to an MD? We don't want something that counts as one thing during the process, but then, is not the same thing once the building leaves our jurisdiction, correct?

Mr. Schultz: The definition matching the MDL throughout most of our rules works well, except when a section discusses succession. And then family -- in order to match other areas of law -- is more apt to have a different meaning. And we're not editing that section of succession in this rule process, but I included it at the end for reference, if anyone wants to review it.

Chairperson Hylton: So to clarify, in the definitions where we have (i), "a person or persons, regardless of whether such persons are related by marriage or..." – that entire piece will be stricken and replaced *"Family means the same as set forth in MDL 4(5) unless otherwise indicated"*?

Mr. Schultz: That would be the change, yes.

Chairperson Hylton: Okay, is there anywhere in this rule where the MDL 4(5) definition of family is indicated?

Mr. Schultz: No, it's not repeated. But in the sidebar, I have that language directly below. MDL 4(5) states, a family is... And then it has language that looks a lot like what's there.

Chairperson Hylton: Do you know if there's any significant difference between that and what we had?

Mr. Schultz: The differences that I came to understand by reading it and also speaking with some staff who, as best as they could, were trying to bridge the gap between prior years and myself, is that the language differences were an attempt to service dual needs and to try to make family work for this.

Chairperson Hylton: For both pieces. Okay.

Mr. Schultz: And the Law Department's reaction is, you probably don't need to do that, if you're already defining it. Let me give you Law Department's basic position, because this will come up again: If you're going to make a definition, make it so that it works everywhere, except where you say it doesn't work; and then you've got to define it again for that special section. If we wanted to match the MDL, then we should say it. This creation departs from the MDL in ways that we might not be able to anticipate; and in the records we saw, for the most part, this should be matching the MDL.

Chairperson Hylton: Okay. So, in the other places where it doesn't match the MDL, it will be spelled out.

Mr. Schultz: And it is, yes.

Chairperson Hylton: Thank you.

Mr. Schultz: And it's not part of this edit, but again, that language is at the end of your PDF, if anyone cares to see it.

Mr. DeLaney: So, if I understand correctly, what we currently have in our draft is, basically, a mash-up of MDL 4(5) with some of the language that's in 2-05. And if I recall correctly, we inserted that into our rules some time ago to try to dovetail with the *Braschi* decision in a rent-stabilized building regarding succession between people who live together but weren't married. And at the moment, in 2-05(b), the language is, "Family should have the meaning.....and may..." So basically, in 2-05, we currently have the MDL 4(5) definition plus the mash-up. Is that right?

Mr. Schultz: Yes. The MDL with a little bit extra.

Mr. DeLaney: So, the only thing I would suggest in that case is here in the definition section, rather than just say family means what it means in MDL 4(5), why not reiterate MDL 4(5) here and just say, family as defined in MDL 4(5) means, dot, dot, dot, dot; so that they have the definition here?

Mr. Schultz: I will predict the answer Law Department will give, and it's that less words will be better, more precise, and less risky for the future. Because if you say both, if you say it will match, and then the language changes in the MDL, you run the risk of being internally inconsistent.

Ms. Roslund: Also, further down the page under IMD, it says, "as defined in MDL 281." And the same with IBZ, "as defined in chapter 6-D, of Title 22 of the New York City Administrative Code." So, there's precedent for just referring to a different regulation. And as Kevin said, then that takes precedent because, if the rules change somewhere else, or the definition changes somewhere else, then there's not a discrepancy between the two.

Mr. DeLaney: Point well-taken.

Mr. Schultz: I'll say for these and others, again, it's a matter of process. I very much wanted the Board to see the version they passed, the same version they saw, juxtaposed with the comments. So, I did not go about inserting edits into anything. I felt that might be unnecessarily confusing. There will be, I believe, a time when any changes will be incorporated and voted on again. And I don't want to suggest we want to talk about things forever, but this conversation needn't be the end-all-and-be-all on any given item.

So, I'm going to take away that I can incorporate that change into a future version. If this conversation led someone to take pause with that, and they want to share that with me between now and any time, I can take that offline, and then we can discuss it publicly. So, I'm going to move on to page 9.

On Page 9, the Law Department's suggested language is in the sidebar comments in the fifth section. And the language added is, "Special Permit means an approval granted pursuant to a..." This is a language issue. Essentially, the language as it is says special permit means a Grandfathering procedure.

And the Law Department would say a permit is not a procedure. The permit is the result of the procedure. And I did not see any harm in considering adopting that change.

Ms. Roslund: This is saying in our rules a special permit is an approval pursuant to a Grandfathering procedure. So, it's only a Grandfathering procedure? You can't get a special permit for something else?

Mr. Schultz: I'll be honest, that question goes afield of my experience, so far. I haven't dealt with this yet beyond looking at this rule change. I will say, reading the language that existed prior to this, or I should say, as it was written when I inherited it, it seems to be that's what was intended. Special permits are for Grandfathering procedures.

Ms. Roslund: "...specified in the zoning resolution, which involves a discretionary determination and approval by the City Planning Commission,..." So, a special permit per the Zoning Resolution is anything that doesn't comply. So, you can get a special permit to have a larger dormer than would necessarily be allowed, right?

Mr. Schultz: Special permits for our rule. Special permit is a phrase that can be used in a lot of places, but when it's referenced in our rules, it'll mean this.

Ms. Roslund: Okay. That's the answer. Thank you.

Mr. Schultz: There's another suggestion change by Law Department late in that sentence that changes the words "and any" to "or." The language reads, "...approval by the City Planning Commission or other entity..." I'd have to go back to the notes to see why Law Department pointed this out, but I think they felt the language as it existed was unnecessarily limiting, as if it was indicating something particular, as opposed to keeping it open to whatever organization ends up doing this in the future.

Chairperson Hylton: That's right. That language is there so that if the City Planning Commission is no longer the entity, then it is the successor entity.

Mr. Schultz: So, my instinct was that that change achieves the intended goal even better than the existing language. Any questions or comments on that? Alright. Moving on to page 12, Law Department flagged this section (b) under 1-17. And I got a note or insight that the language that was passed, that

you see on the left side of the page, was provided to the Board by the Mayor's Office Chief Privacy Officer. So, this is something the Mayor's Office wanted included for reasons that make sense if you read it looking out for confidentiality. Law Department felt that language unnecessarily mixed the Mayor's Office confidentiality concerns with FOIL. And they are distinct. FOIL has its own confidentiality provisions and measures. So, whether it's equating, or conflating, or whatever, the recommendation was to break it out in a way that, again, to put it simply, I think says the same thing, but prevents that conflation of FOIL and what the Mayor's Office is trying to do.

Chairperson Hylton: Do you know how that came about? Was it us crafting this language based on the Mayor's office concerns, or did they give us that language to put in?

Mr. Schultz: I'll invite Mr. Clarke to answer if he recalls. But as I understand it, it was given to us wholesale by the Mayor's Office. If it changed in the interim, I'm not sure.

Mr. Clarke: Yes, I believe it was wholesale.

Chairperson Hylton: All right. Mr. Schultz, you believe the Law Department's point to be valid?

Mr. Schultz: Yes. I like it better. I think the Mayor's Office's purposes are achieved, and I think that any potential confusion with what FOIL law would allow or not allow is now properly separated.

Chairperson Hylton: Just out of curiosity, 1-17 talks about public access to records. Isn't that FOIL?

Mr. Schultz: It is. Which begs a question I was able to avoid, which is, why is this even in this section? I tried to keep what I brought to this group as simple as possible by suggesting to the Law Department that this is as good a place as any for it. Because they had asked, what is this doing here?

Chairperson Hylton: All right. Thank you. So, the language we're looking at is what?

Mr. Schultz: It would be the (b) (1), (2), (3). Essentially, parts of the paragraph are broken up into individual sentences, with the third one being the newest addition, speaking to FOIL on its own.

Chairperson Hylton: I think it's important for the record just to read what the Law Department suggested.

Mr. Schultz: What the Law Department suggests is that section (b) be drafted to say:

"Confidentiality of lease information. (1) The Loft Board will keep confidential all personal information in leases submitted with registration Applications. (2) The Loft Board may release personal information about a unit to the current owner of a building and/or to the current occupant of a unit or other responsible party to the extent the Loft Board believes such releases necessary to decide an Application filed with the Loft Board or a case filed in court." And again, that language is not newly created by Law Department. That's just what City Hall had given. "(3) Personal information will not be disclosed pursuant to a Freedom of Information Law request except in accordance with or as required by such laws."

So again, trying to make it clear, this isn't trying to overrule FOIL law, or go against it, or conflict with it. We would have to write a law or rule that's consistent with FOIL. And that's what this is achieving.

Chairperson Hylton and Mr. Schultz had an exchange about whether shall or will should be used. Mr. Schultz said he would research and confirm.

Mr. Schultz: Any questions or comments on that section? This one-page pace is not what we see for 478 pages, I promise. Now I'm going to get into some minutiae, but I don't want to leave anything to chance. On page 14, there's some bracketed words that should be deleted. Bracketing is not necessary when we are creating new language. It's all underlined. So, we can just delete it. It doesn't have to be there, because it's not being deleted from anything, because it's within language that's being added wholesale. That's a rule-crafting form issue. I won't belabor them unless you want me to, but I will point them out. And as we get to understand them, they'll go very quickly. Any questions about that, on page 14? The meaning does not change by taking out those brackets.

Moving on to page 15, at the bottom, one is something we talked about already, so I'll skip it. Number (6), this is a consistency-of-language matter. What's in the version that was passed reads, a date, which would be the date that these rules are passed, followed by "...which is (9) Months from the effective date of the rules necessary to implement the provisions of..." Those words mean the same thing as what we've said in other parts of the rule five other times. And so, to make it consistent, it could and should read instead, "...by, insert date, which is (9) Months after the effective date of this amended rule." That

language, “after the effective date of this amended rule,” are the words that have been used multiple times to express that date. And this language reaches the same conclusion with different words, so it is recommended that we be consistent. Any questions?

Chairperson Hylton: Why is it necessary to put the date in there and the nine months? Is it just to make it clear?

Mr. Schultz: I see it a lot in our rules. Both in what we're changing and elsewhere, there's a lot of date, which is one year after the effective date of this rule. It seems to be both precision as well as some education for the reader. Perhaps so it just doesn't come off as a random date. The effective date of a rule is a starting timeline in many cases, and so, it's being referenced and then somewhat defined for perspective. I see it in our rules a lot and in a lot of laws. Any questions on page 15?

Page 16, under *Affected Parties.* This is one more where, I'll confess, I’m more in the weeds than normal. So, we could skip it, or we could discuss it. I'll need some historical insight that I have yet to find. So, I'm speaking hopefully to the Board members who were here at the time. There's a question as to what the purpose of the (iv) is under *Affected Parties*. This is the section that talks about Affected Parties for applications, meaning who must be included in the various notices and such. Starting from the top, it includes the Owner; any Responsible Party, which is usually parties associated with the Owner; Prime Lessees and Sublessees in the building, including residential and commercial and manufacturing tenants, which is pretty broad; and then there's a fourth that says, “all units of the Building, if different from the Prime Lessees and Sublessees.” So, I gather the effort is to be broad.

Chairperson Hylton: All occupants.

Mr. Schultz: Yes. So, that's the question. Why the word units? The Law Department says units is not a person, so we need to put a person in there. And it's tempting to jump in and put occupants or tenants in there -- and this is where I kind of fall off a cliff. I think, from what I can gather, there was conversation about whether or not to put a tenant or occupants in there, and perhaps it was avoided for some reason. But that is conjecture at this point. I don't want to replace it without understanding why units was pursued. I don't think we can keep it, but I don't have the context, personally, at this point, to

fully understand why occupant or tenant won't work there. And so, it comes down to, what did the Board mean or want when it added this? What was it trying to include when it added (iv)?

Ms. Roslund: Wouldn't an occupant or some other person perhaps be someone who's there but doesn't have skin in the game? So, (iii) is you're a tenant, which means you have a lease or an agreement. And then number (iv), as it reads to me, would be anyone else. So, it could be your sister who comes and stays once a month with you or something, right? Which is actually something that came up earlier in the discussion on one of the cases about who everybody is.

Mr. Schultz: The words Occupant and Tenant are both defined and, to put it simply, Occupant is a pretty broad term, meaning a lot of people. I'll leave it at that. Protected or not. And then Tenant is, unsurprisingly, not as broad. And so, I think there is the potential suggestion of language to achieve what we thought the Board wanted to do by using the word anyone. *"Anyone residing within or commercially utilizing any unit of the building, if different from the Prime Lessees and Sublessees."* That was the Board's staff putting together language, not Law Department, recognizing what Law Department was saying, but trying to solve it in a way that best-guesses what the Board was working with.

Other options do include putting the word Occupant or Tenant in there, but as you said, that goes back to our prior conversation on the breadth or narrowness of those words. As it stands, the Loft Board staff thinks that this language at the end, *"Anyone residing within or commercially utilizing any unit of the building, if different from the Prime Lessees and Sublessees,"* -- we crafted it because we think it works, in our experience. But I wouldn't say I'm not open to hearing what the Board thinks about this or its history.

Mr. DeLaney: I don't have anything to add in terms of the history. If there was some reason we came up with this whenever this was put in, and this may go back to the beginning of the Board rules, I can't come up with a historical nugget on this.

Chairperson Hylton: I was thinking all Occupants and Occupants of all units of the building are different.

Mr. Schultz: Using the word Occupant would lend that broadness to what's meant and intended here.

Chairperson Hylton: I know. I'm just saying the Law Department's suggested language, anyone residing....

Mr. Schultz: It's not the Law Department's suggested language. They flagged this, saying it's improper to refer to a unit as a person. And so, trying to solve it without using the word Occupant or Tenant, which per the record, and memories, and notes we saw might have been the problem, we crafted that as a consideration. I'm not endorsing it with vigor here, obviously. I'm just trying to get to the bottom of it.

Ms. Roslund: I think we're thinking about this from a Loft Law side of things, but if it's anybody who's occupying a building, and you had a business that had fifty employees, those fifty employees occupy that building. It gets really broad. Thought one. And then thought two, is there a reason that (iv) needs to be in there at all?

Mr. Schultz: Yes. And that may be a tighter version of what did the Board intend by putting it here? Does it need to be there? Would the first three get the job done for the purposes of the Board? My sense is that it was intending to make it as broad as possible, which I didn't want to throw away by suggesting throwing away (iv). It would eliminate Occupants, essentially. It's funny, we're avoiding the word Occupants, but if you took away four (iv), it would speak to Tenants. Tenants would be Affected Parties -- for these. For coverage, harassment and hardship applications. Just to make it clear that that's the universe.

If you look below, there are other types of applications that define Affected Parties in different ways. And I confess, I haven't fully examined those, but it looks to me like these Affected Party groups were tailored for the types of applications.

Ms. Roslund: That was actually going to be my next comment. Certainly, Affected Parties shows up more than just under harassment.

Mr. Schultz: Let me start by saying I'm happy to hear anything else. But perhaps rather than belabor this any further, I will try to go through some minutes and see if I can find anything enlightening in the

past on this one. And if I can't, then I'll come back with my best suggestion November 4th. If I can, then I'll share that enlightening history. Would that be okay?

All right. Page 17 is full of comments. Again, the pace does not keep up like this page-by-page. The first comment Law Department made is under (c) in the middle of the page, Service of the Application. They point to the language that says, "The applicant may serve personally or by..." Law Department's concerns are that, whereas for all the other types below there's all this discussion on what proof of service would be, for personal service, it doesn't say anything about what would evidence personal service. Which I thought was a helpful point.

Secondly, Law Department felt people wouldn't know what "serve personally" meant. Personal service is probably the legal term of art that would resonate or is at least Google-able, so I think using personal service makes enough sense instead as a threshold. And then what was crafted by Loft Board staff in response to Law Department's comments is to say, "The applicant may effectuate personal service, providing proof of service by sworn affidavit,..." and then continue it. Sworn affidavit being to me the most common, realistic version of evidence for personal service.

Chairperson Hylton: Is personal service defined in the CPLR?

Mr. Schultz: Yes, it's defined, though I don't know if it's actually in the CPLR. I should look. I did what I thought a human being would do, and I Googled it. And I found something that made sense that was on a New York State court website. It didn't have a citation; it was more of a user- friendly, FAQ type thing. So, I'm not swearing legal citation to it so much as common usage of the word that anyone would endorse and understand.

Ms. Roslund: Are you suggesting that we pull it out of the first paragraph and make it part of the list of options? Would it be a number (5)?

Mr. Schultz: No. And I wouldn't say that's a bad idea, trying to do as little change as possible to get the job done.

Ms. Roslund: I understand that, but also, by having it as part of the first paragraph, it prioritizes it a little bit. So, it's kind of saying, you can do it this way, which is the way it's usually done, and then there are these other options. As to an option of equal weight.

Mr. Schultz: I think putting it on the list would be either fine or better. Truly. Does anyone have any concern about that? Yes, I think it would fit just fine, as part of the list.

I'm going to move down the page a little bit to (1), which talks about service by email. And this I remember hearing before I worked here, while listening to the meetings as a member of the public. Service by email was something that the Board, at the time, wanted to try to allow as much as possible. And it came down to saying, well, we can allow it, but there's got to be consent from the Affected Party. You don't just get to email someone and effectuate service, unless they've agreed to that, because it's such a different, modern version of service.

The Law Department's feedback on that change is in comment A-10 in the middle of the page, and it removes language that says, "a current and valid email address." I think the thinking is that the purpose here is that you're going to send it to whatever email address they gave you. And to create a standard of current and valid is not something that really anyone can assess. And I could see this being misused under the law. So, the proposition being, if the party has consented to use an email address, then it's the email address they gave you that counts, whether current, or valid, or not, if that makes sense. So, it replaces that language in a different part with "email address for such purpose."

I'm going to read it as proposed from top to bottom. And the recommendation would be to replace the (1) that's on the left with the (1) that's on the right:

"(1) email, if the affected party consents to such service, and has provided the applicant with an email address for such purpose. Proof of service by email consists of a copy of a delivery receipt from the email server, indicating the email was delivered to such email address."

It's narrowing down, saying the one you gave is the one that's going to get used, and it's the one that's going to count. Any thoughts or comments on that?

Chairperson Hylton: Should we say if “an” Affected Party instead of “the” Affected Party? Because it seems like we're talking about each.

Mr. Schultz: If it matters, I'll let you know. I think the Affected Party is used throughout. I'd have to look. Each Affected Party I think is appropriate and precise because it's not just any, it's the one that's referenced in the upper section that we're talking about. So, if I'm being really nitpicky, I think “an” creates this tiny sliver of ambiguity that we don't need. Because we're talking about a specific situation, not any theoretical situation. But I'm open to hear more on that.

Chairperson Hylton: That’s fine.

Mr. Schultz: All right. Section (2) talks about faxing. And the comments, essentially, are to try to mirror what email says. One question was, why do we demand consent for email, but not for fax? I don't know that I have a good answer for that. At first, I thought, well, because email’s kind of new, and different, and maybe rare. But then, fax machines are pretty rare now, too, although they're pretty much digital. So, I didn't think it was necessary, but then I certainly couldn't make a compelling case against it -- adding language that would call for an Affected Party consenting to service by fax, as opposed to not explicitly saying so. The alternative would be to not say consent is required, and that would mean, essentially, what's always been meant, I think. If you put a fax number on your letterhead, it counts. I'm not sure of the import of not including it. I understand more clearly the import of including it, which makes service a little more particular.

Mr. Hylton: The distinction is, obviously, that email is digital. And fax, while it's not used as frequently, has been around and, at least previously, was considered more accessible. And the act of sending a fax is seen as like a signature in of itself. But I don't think it's a point to necessarily argue.

Ms. Roslund: Yes, they’re similar in the sense that you're sending something out, and you don't know that the person at the other end is getting it, as opposed to something that's delivered return-receipt or certified mail through the USPS, and you get the little green tag back, so you as the sender know that it has been delivered at the other end. So, to me it makes sense that they're similar.

Mr. Schultz: Yes, it's kind of an extrapolation. The consent for the email was pulled out of the idea that email is a little different than other forms of service, and I think Mr. Hylton is right, that it is different than fax, but it's also similar to fax. Service is fairly precious in my opinion, so without making it burdensome, I do think making it effective is good. And if fax machines are a touchy thing and adding consent can make it better, more precise I should say, I'd say it's fine there. I also think the way things are going, it's going to become a very uncommon problem. Any fax machine I know about now is a virtual fax machine on both sides, which is basically email, which is the other reason I landed on saying let's just put consent in there.

Okay, I'm going to move on then to (4); the word private in the beginning. Private delivery by a private delivery service. Law Department says that first word private is not necessary. I can't defend it. It will please them if we take it out. Does anyone mind? Great.

Ms. Oddo: Does that mean you can't use the USPS, is that what that was intending?

Mr. Schultz: USPS was in (3). Four gives you the private delivery service option. At the bottom of page 17, some of this we already talked about. At the very bottom, A-15, we did last time.

Let's go on to page 31. The first in a series of several flyspecking changes. One of the things that Law Department has pointed out is that, as a matter of form, deletion should come before additions. So, what you will see throughout many comments is that the change is that the brackets come first and the underlines second. Anytime that it doesn't do it that way, we're changing it for form purposes. The meaning does not change. Everything on page 31 would qualify as a rulemaking form change, without any effective language change whatsoever.

And then a different flyspecking item on page 34. On page 34, in (vi), there's a reference to the number three. "... Study Areas rezoned to permit residential use with fewer than three (3) as of right units..." The word three was added without being underlined. Likewise, lower in that paragraph, the number (1) in the middle was added. There was an effort toward consistency. The word three and then the numeral three. As that was being done, things were added without being underlined. This correction wouldn't change the meaning; it would just make sure the form is correct. Lastly in that paragraph, the word

article should not be underlined because it's being deleted from the original text, not added. Brackets with an underline is incorrect. If it's bracketed, it shouldn't be underlined. So those are all form things.

Pages 35 and 36 are more of the same. It's the same word every time: alteration application. Pages 37, 38, and 39 are the same.

Page 42 is more flyspecking. The proper form is deletion before additions. Pages 43, 61, and 62 we talked about those items last time.

Page 83 is really a form issue, but I'm going to expand upon it slightly, because I want everyone to be clear on these types of changes. The language being deleted within the brackets was marked yellow, as if to indicate that it was going to be filled in with a date, the effective date of the rule, but is incorrect. It is intended to be deleted because September 11, 2013, is the date we want to use for the threshold for these harassment applications. We do not want that to change. And when we effectuate this new rule, that language will no longer be accurate. September 11, 2013 will not be the effective date of the amended rule. But my understanding is there's no desire to make any substantive changes to the harassment section. So that date would remain intact. It also does not make much logical sense -- I don't think, but I'm happy to hear different -- to make it the new date. September 13, 2011, works just as well now as it did then. Any comments or questions?

On to page 101. I think we might have talked about one of these before. But essentially, the version that exists, currently, has the word reserved with brackets around it, which is a rule-drafting no-no. So, Law Department wants that fixed. If we're going to keep the word reserved, it must not have brackets. I'm willing to hear more here, but last time we spoke, every time I asked if we want to keep the word reserved, everyone said yes. It's recommended because keeping it there keeps the ordering clear. So, unless anyone has new feelings about the word reserved in this section, it's going to remain, but the brackets are going away so that it reads as laws should read. And questions on page 101?

Mr. DeLaney: I have a procedural question, if I may. First to the Chair. How long are we planning to work today?

Chairperson Hylton: Another five minutes, Mr. DeLaney.

Mr. Schultz: Okay, that's fine. In fact, I could make this the stopping point. We actually worked through the hardest pieces for today, and now I am doing the flyspecking. So, I'm fine to stop here. I'm happy to take questions or circle back on anything.

Mr. DeLaney: Actually, the reason I asked is because I wanted to raise one point with regard to this meeting and future meetings where rules are discussed. In the pre-pandemic, live meetings, there were copies of what we were working on available for the public so they could follow along. I wonder if we can take a moment to talk about how we might achieve that again going forward.

Mr. Schultz: The version that was passed in May is certainly not a secret, or I don't think it needs to be a secret, as it's the result of many public meetings. I would offer that the notes in the margin are attorney-client communications. Not that I specifically think there's anything concerning there, but nonetheless, I'd want to reserve the right to not share that. But sharing the version passed in May that we're working from, off the top of my head, does not seem problematic.

Mr. DeLaney: Does the pagination change?

Mr. Schultz: I went to great lengths to keep the pagination exactly the same. That's why I transferred Law Department's comments onto this version. So, the pagination is exactly what it was in May. And that's why I'm holding off on making physical edits, because then the pagination gets wonky.

Mr. DeLaney: Right. So maybe one option going forward would be to make the May version that we voted on available for download off the Board's website? Would that be difficult?

Mr. Schultz: I don't think so.

Chairperson Hylton: I'm sorry, Mr. Schultz, can you clarify that you don't think...?

Mr. Schultz: I don't think that would be a problem. But I'm just being a lawyer here and making sure I don't overcommit without thinking about it. But I can't think of a single thing about that version that we need to be concerned about. If I find a reason that it would be problematic, I'll let the Board know. Otherwise, we'll put it on the website.

Chairperson Hylton: With draft all over it.

Mr. Schultz: Yes. Certainly.

Chairperson Hylton: Across the entire page.

Mr. Schultz: It's already there.

Mr. Barowitz: Has the Law Department gone through the entire rule? Have they finished it all?

Mr. Schultz: Yes, twice. So, what has happened is the Law Department shared comments with us; we looked at them and provided some responsive insight, agreements, disagreements; and they responded once again. And anytime that that back-and-forth resulted in something solid enough to give you, that's what you've seen. There's still some engagement required on some other items, so we can give you the clearest suggestion. But Law Department has been through all of it, yes. Twice.

Mr. Barowitz: So, it is possible that with the two November meetings, we will finish this?

Mr. Schultz: Yes.

Chairperson Hylton: Can you be more affirmative, Mr. Schultz?

Mr. Schultz: Well, Law Department will then look again at everything we did. To put it simply, if we agree with everything Law Department says, then yes. If they say things we don't like, or we come back with option C, they're going to look at it anew and maybe have more to say. I'm trying to do as much as I can ahead. To present you with things that I'm pretty sure Law Department's going to be okay with. That's the precursor. Rather than just give it to you unfiltered, and then give it back to them, and then give it back to you. So, it's hard to guess, but I think, based on what they've said so far, what we've reviewed and commented on is going to be palatable to Law Department. Which is the goal. But if you want me to be more affirmative, I'm always going to do my job and not overpromise.

Mr. Barowitz: Will you tell the Law Department that we have perused this through page 101?

Mr. Schultz: Yes, absolutely. I want to be able to engage with them with comments, essentially saying this suggestion's accepted; this comment's been accepted with this small change, or whatever. And then again, there are some items that require some more discourse. One group of items requires touching base with OATH. There are sections of our rule changes, amendments, that invoke OATH, their procedures, and the way we interact with OATH. So, Law Department's comments had to be discussed with OATH and with the Law Department. And so that back-and-forth is currently occurring. So, again, the hope is that we'll have settled with them so we can come to you with something that they're all good with. Any other questions?

Chairperson Hylton: Mr. Schultz, thank you so much. I appreciate you and your staff's work on the rules. Board members before I close the meeting, do you have anything to say that can be said on the record?

This will conclude our October 21, 2021, Loft Board meeting. There are two meetings scheduled for the month of November. The first public meeting in November will be held on November 4th, 2021, at 2pm. The primary focus of that meeting will be rulemaking. I say primary because there could potentially be something else if there's something pressing. The second meeting in November will be held on November 18th, 2021, at 2pm. The Governor's suspension of the in-person meeting requirement of the Open Meetings Law is in effect until January 15th, 2022, so at this time, we anticipate that these meetings will also be held virtually. Information will be updated on the Loft Board's website and also an email update will be sent through the Loft Board announcement Listserv. Board members, please sign and email your attendance sheets, and I want to wish everyone a good afternoon. Thank you and see you in November.