MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

November 4, 2021

The meeting began at 2:09 P.M.

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

INTRODUCTION:

Chairperson Hylton welcomed those present to the November 4, 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.

RULEMAKING:

Chairperson Hylton: The only item on the agenda today is the Loft Board rules and the Law Department's comments on those proposed rules.

Mr. Schultz welcomed everyone to the meeting and briefly described what the Board would be working on at this session. In May, the Board voted on, and passed, its final draft of the proposed rule changes. It then went to the Law Department, which made comments on that draft and returned it to the Board for review. Over the last two meetings, the Board has been working its way through those comments, and this meeting is a continuation of that.

Mr. Schultz clarified for the Board: All who were present at the previous working sessions know that some comments were very content-driven; others were less so. I'll try to move through them all in as thorough and efficient manner as possible. When it is a form issue, I will note it and move on, but that doesn't mean there can't be questions on it. Likewise, if I go through a content issue too quickly, please stop me. And to the staff, if I say something wrong or if there's something you think you can clarify, please do not hesitate to speak up. You have the freedom and appreciation to do just that because I have not been involved in most of the creation of this draft.

I will also rely on veteran Board members to contribute whatever they can in terms of memory and history of discussions which might clarify certain points. If I say something is my understanding of a previous discussion, please feel free to speak up to let me know if it's accurate or not. Are there any questions before we start?

Mr. DeLaney: We're working off the draft you sent captioned, clean draft markup 10 29 21?

Mr. Schultz: Yes

Mr. DeLaney: And does that include the changes we discussed at the last few meetings?

Mr. Schultz: Some of them. First, I should mention there's a version available on our website next to the public link, the calendar link, that's the Loft Board rules. And that is the version that was passed in May. It doesn't have the attorney comments the Board members have in their copies, but to answer your question, Mr. DeLaney, I started putting some of them in, but realized it was changing pagination, so I stopped, as I didn't want to disrupt any comparisons to the prior version. So I decided to just leave the discussed language, the approved language, or any changes in the margin, and then add it in all at once.

Mr. DeLaney: Does that mean that the public's version has the same pagination?

Mr. Schultz confirmed that it did, and continued: Today, we'll be skipping over items discussed in a previous meeting, unless there's an update to it. Any other comments or questions before we start?

We start on page 17, where we spent a good amount of time in September. The Law Department's suggestion, which the Board accepted, was that some language be changed to reflect that it was service

by Loft Board staff rather than a waiver of the service requirement. Those changes have been incorporated here, and it did not change the pagination.

But there was another suggestion related to that, concerning (d)(2) at the bottom of page 17: "To request service by the Loft Board, the Applicant must submit a written request, asking the Loft Board to serve each Affected Party attached to an electronic copy of the Application containing an electronic signature or a hard copy of such Application containing an original signature."

That is new language we discussed, which would change what we've already changed. And we don't do that often. It was suggested that, instead of describing all the things that are required, the language simply reference another section that describes what is required. It will be more accurate; more thorough; and will avoid a repetition that could create inconsistency. The recommended language is in the margin, and you'll see it's fairly similar, but includes language that references §1-21(e) below, which, if you turn to page 18, are the requirements for filing an application with the Loft Board.

And so the first sentence in that section (d)(2) at the bottom of 17 would now read: "To request service by the Loft Board, applicant must submit a written request asking the Loft Board staff to serve each Affected Party attached to an electronic or hard copy of the Application that complies with RCNY § 1-21 (e), below."

Chairperson Hylton asked if it was necessary to include the 29 before RCNY. After some discussion, it was decided that this should be added for consistency.

Mr. Schultz thanked the Chairperson, asked if there were any other comments, then continued with an additional Law Department comment on this section: In the next sentence of (d)(2), there's a reference to "an applicable fee." The Law Department suggests that that language is unnecessary because now that we have cleaned up the top part, it's repetitive because the applicable fee is included and discussed in (e).

You'll notice that many of the changes the Law Department is suggesting -- and some of them work, some of them might not -- are to avoid redundancy. The thinking is that redundancy can create the possibility of inconsistency. There are times where these suggestions are put here to consider; and there

are times where we have reason not to consider. Are there any questions about that comment on (d)(2)?

We're now on section (c) at the top of page 20, the second and third lines down, the language that reads, "...if any, with the Loft Board, on or before close of business on the last day of the time period." The suggestion is to add the word business before day. In analysis, I noted those words aren't actually necessary, because we have a computation of time section that clarifies this. Perhaps Law Department was not aware of that. But I wanted the Board to have the opportunity to consider it. Are there any thoughts on adding the word business before the word day?

Mr. DeLaney: This is with regards to filing answers, correct?

Mr. Schultz: Yes

After some discussion it was agreed that § 1-16 (a), which describes computation of time and occurs shortly before this section in the rules, renders the addition of the word business unnecessary.

Mr. Schultz: Moving on to page 22, this is one of a few that I'll call somewhat unresolved, and it's really more of an issue between Law Department and OATH; but I wanted the Board to be aware of it, and I'm happy to hear any thoughts.

At the bottom of page 22, in § 1-27 (c), there's language that discusses the hearings involved in our applications and states: "At the hearing, the parties may be represented by counsel, or by a duly authorized representative." The Law Department has suggested some parenthetical language that says, "provided such duly authorized representative neither provides legal advice or an opinion of law, nor holds himself or herself out as a lawyer without being admitted to the bar in the state of New York." And Law Department has legal reasons why they think this language is important.

Now, I want to be clear, this doesn't say that the individual has to be an attorney. What it says is they can't hold themselves out as one and that they can't provide legal advice. Law Department has cited what they believe are some cases to support this. OATH, so far, believes this language is unnecessary. My opinion is also that it's unnecessary, frankly, because it's going to go without saying based on the controlling law. Personally, I don't see it as our concern to address. Law Department obviously disagrees.

I wanted you to be aware of this as a space that might, eventually, need some additional conversation. I need OATH and the Law Department on the same phone call, which hasn't happened yet. I do want to present it, though, again, because to the extent that there are thoughts I could bring to that conversation from the Board, I want to be able to do that.

Chairperson Hylton: I'm just curious. What cases do they cite that makes them feel that this is necessary to put in a rule? Isn't it expressed as illegal somewhere, in some rule, some law, for a non-lawyer to give legal advice? You can't ever hold yourself out to be who you are not, anywhere.

Mr. Barowitz made the point that since you don't need to be a lawyer to defend someone in court, this paragraph was unnecessary.

Chairperson Hylton: I just find it odd that Law Department would want to do this, because this doesn't seem like something I've ever read in any rules -- adding parenthetical language to say if something is illegal, don't do it. How does everybody else feel? I don't want Law Department to hold up our rules, so I'm hesitant to say don't change it. But still, I just don't understand why they would even suggest this. OATH also disagrees, and they're the courts.

Mr. DeLaney: If I remember correctly, we put this in because when we did the very thorough comparison that Mr. Argov spearheaded, comparing our rules and OATH's rules, we noticed that OATH had this and we didn't. And it seemed like a good idea to add "duly authorized representative." But obviously, OATH doesn't think it's necessary, because they don't have it in their rules.

Mr. Schultz: So, I'll leave it at that and pause for a moment to make sure there's not another comment. Hearing from folks who've been here for a while is helpful, and I got what I needed, which is that there's nothing about that language that the Board sees as valuable. I'll stand for the proposition that we don't think it's necessary or helpful. But if it turns out that Law Department won't move on this, then I would revisit it as a point of awareness, I suppose.

Chairperson Hylton: Can I get consensus from the Board that if the Law Department feels strongly and makes a point of having to send this back to us, that we just make the change? Give Mr. Schultz the okay

to just go ahead and keep it in? We shouldn't have to come back to the Board or argue this if Law Department feels strongly about it.

Mr. DeLaney: The note also says that OATH considers this language not only unnecessary, but also improper.

Mr. Schultz: Those are my words and may be editorializing. But I do know that OATH has gone on record saying that they did not need it. And I think what they said was, largely, what I think Mr. Barowitz said, which is that ALJ's have control and authority over those kinds of issues.

The good news is that the Board seems to be in unison here. So I would put it this way. If it becomes inevitable and convincing that it needs to be there, I will come here to convince the Board of it, whether on its merits or on the need to remove it.

Chairperson Hylton: That's my point. I don't want this to have to come back.

Mr. Barowitz: I agree.

Chairperson Hylton: Thank you, Mr. Barowitz. Anyone else feel the same way?

Various Board members speak together, saying they agree.

Mr. Schultz: Thank you, everybody. Moving on to page 23, this is the second of a series of language that involves OATH. Section (f) discusses the authority that the Loft Board staff has to conduct hearings. That has not occurred in my brief time here, but I've also heard it has not occurred in a long time. Our hearings were transferred to OATH long ago. But that is not by requirement. There is a system that allows staff members to conduct hearings. And Law Department flagged this language because it was written quite restrictively from a resource standpoint, suggesting that if a Loft Board staff member conducts a hearing, then that's all they will do for the Loft Board. And I think Law Department's comment was, frankly, less legal than logistical. Adding language ensuring that there's no conflict would benefit the Board staff by giving it flexibility. Before I read the language, does everyone understand what I'm talking about? Does anyone have any questions?

So the proposed language to replace it is longer, and it's intended to say that staff members who have conducted a hearing are not restricted to doing only hearings, but would be required to proceed with other duties in a way that ensures no conflicts. The proposed language to consider for § 1-27(f) would read:

"Hearings conducted by Loft Board staff member. Where a hearing is conducted by a Loft Board staff member, such staff member may take testimony under oath, consider affidavits and other evidence, submit recommended findings of fact and a recommended decision to the Loft Board, and perform other such duties appropriate and/or necessary to carry out his or her duties as an Adjudicator. While performing such adjudicative duties, such staff member shall not perform any other duties for or on behalf of the Loft Board that could create a conflict of interest or impair his or her ability to impartially carry out his or her adjudicative duties."

Chairperson Hylton: I don't have any problem with that. I think they're saying you can be an adjudicator and make copies for the Loft Board, do something different. So it doesn't bind the Loft Board staff. But it's very clear here that you can't do anything that would create a conflict of interest in writing decisions and then adjudicating a case that results from an appeal or something like that. I think it's okay. I don't know how everybody feels.

Ms. Roslund: It's actually clearer than the existing language, which both raises the question of why can someone only be assigned to those duties and then what constitutes those duties. As Chairperson Hylton just said, if you were to make copies or something, is that outside of your jurisdiction for that day? It's not clear in the new language.

Mr. Schultz: Thank you, Ms. Roslund. Any other comments or questions?

Mr. DeLaney: I agree. I think it's a little more thorough in spelling things out.

Mr. Schultz: Moving on to page 24, on the bottom, § 1-30. This is language relating to settlements and involves where a matter is sent. It's currently sent to OATH. We've received an application; it's been sent to the hearing officer; but instead of having a hearing, the parties have agreed. They've settled. And our rules have language about how the Board will receive a summary of that and then approve it. We've

seen that in our agendas. And so the Law Department has suggested a few changes to this. One is the replacement of the word “made” with “provided,” which I thought was just a more formal use. And then there is a change in the second sentence. The effort here, according to Law Department, was to clarify the grammar. I could read the old version if you'd like out loud, but suffice to say there were some “ands” in there that made it not as clear as the Law Department thinks the current version is. The effort was to say the same thing and eliminate any confusion as to what was meant here. I'll pause for any questions.

Mr. DeLaney: I think we need a minute to read.

Mr. Schultz: Sure, take your time.

Chairperson Hylton asked about the use of the word “Board;” about how it was decided to differentiate between the Board members, the Loft Board, and the Loft Board staff.

Mr. Schultz: I don't know. I will ask the staff if they know and can provide some insight or to do a scan of the language to see if they can find other references to Board, Loft Board, Loft Board members to see if it's expressed in any particular way throughout.

If it's helpful, what the Law Department said was that it was difficult to tell the extent to which the portion about directing staff to reopen a matter related to the language at the end about referring. So it's broken into two sentences on the different language.

Mr. DeLaney: The way the comment is structured, it's a little unclear to me how they think the entire section (a) would read. Right now, (a) is one paragraph. The first paragraph in the comment piece, after the word consider, is actually making a small modification to the second sentence in what's in the text, correct?

Mr. Schultz: Yes, and I realize now that the highlighting is overstated. Yes. Thank you, Mr. DeLaney. You're absolutely right. The first sentence of section (a) would be unaffected. The first sentence of section (a) remains unchanged, and most of the second sentence is unchanged.

Mr. DeLaney: They changed the word “made” to “provide.”

Mr. Schultz: Yes. Most of it remains unchanged.

Mr. DeLaney: Then, there is a sentence in the comment paragraph. "Upon issuance of an order such summary cases shall be deemed closed." That is what is currently the last sentence in the paragraph. Then the new paragraph they suggest uses part of one of the sentences that's in the existing text.

Mr. Schultz: And I think that might be at the crux of some of the change because the suggestion that remanding it back results in a case being closed. The last sentence discussing a case being closed after just saying it's going to be remanded I think might be part of the confusion they were trying to highlight and eliminate by taking the talk of remanding and putting it below the talk of closing a matter.

Mr. Barowitz commented that he thought there was a lot of unnecessary language that would only confuse people. For example, the first sentence should simply be, the parties resolved a dispute, period. What does "to their mutual satisfaction" mean? The dispute is resolved. Period. An outsider reading this might come away wondering exactly what the main reason is for putting the settlements in here, which is, indeed, very important.

Chairperson Hylton: Good point, Mr. Barowitz. It's just that these are written by lawyers. They want to cover everything. I guess it's very possible that you can settle a dispute not to your satisfaction, if a gun was being held to your head.

Ms. Roslund: It's still settled. My question is, the sentence that Mr. Schultz just discussed -- Upon issuance of an order. Whose order? What's the order?

Mr. Schultz: The Order of the Loft Board, I'm fairly certain. The Loft Board's Order.

Ms. Roslund: To do what?

Mr. Schultz: The case. The document that is passed by the Loft Board is called the Order. Every time you vote, you vote on an Order; a Proposed Order.

Ms. Roslund: I guess I'm exaggerating to make a point. We're talking about a stipulation of settlement, which is then reported to the Loft Board, which includes the type of application, the issues presented,

the resolution reached; and then we jump to issuing an Order. So it's the process that we go through during our Loft Board meetings. The settlement is presented. We then vote upon an Order to accept the resolution, correct? But there it sort of jumps, in my opinion, in this sentence, from something being provided to us, to the Loft Board doing something.

So that's why I'm thinking it was at the end. The stipulated settlement is presented to the Loft Board and the staff; an Order is proposed; the Loft Board reviews and votes. And we can either vote to accept the Order or remand. Accept the settlement or remand. So, either of those is an Order, correct?

Mr. Schultz: Yes. Upon issuance of an Order to accept the settlement...

Chairperson Hylton: In acceptance of the settlement.

Mr. Schultz: In acceptance of the settlement, such summary cases shall be deemed closed. To distinguish between the two Orders.

Chairperson Hylton: OATH is not issuing an Order, correct? Oath is issuing a recommendation. Mr. Clarke, do you agree? What is OATH issuing?

Mr. Clarke: For these summary cases, OATH sends us a cover sheet that says the parties have stipulated, so they're sending the case back to us, and they're deeming it resolved. We get that back, and then we write summary cases based on that.

Chairperson Hylton: So they're sending us back just a stipulation. They're not sending back anything like an Order?

Mr. Clarke: No

Chairperson Hylton: So what are we remanding?

Mr. Clarke: In some situations, we've remanded some stipulations, because we've reviewed them, and we deemed them against public policy or something.

Chairperson Hylton: I understand. So we're not remanding an Order. We're just requesting, basically, that they review the matter again, correct?

Mr. Clarke: Correct

Chairperson Hylton: This last sentence needs to be clarified. "Upon issuance of an order, such cases shall be deemed closed." How do we rephrase that, Mr. Schultz?

Mr. Schultz: Upon issuance of an Order in acceptance of the settlement.

Chairperson Hylton: Upon the Loft Board issuing an Order, correct?

Mr. Schultz: Upon Loft Board's issuance of an Order in acceptance of a settlement, such summary cases shall be deemed closed. That seems to speak truth to me, in my understanding of how things work. Mr. Clarke, Ms. Lin, Ms. Lee, does that describe what happens?

Mr. Clarke: I would say yes.

Chairperson Hylton: The confusion I'm still having is I don't understand what the comment is. Are they suggesting we phrase it the way they have it here?

Mr. Schultz: The Law Department's comment is not intense. The language change was an effort to clarify it. I'll put it this way. A lawyer read it and didn't understand it. And so that's not nothing to me.

Chairperson Hylton: A lawyer wrote it.

Mr. Schultz: Well, not the same lawyer, right?

Chairperson Hylton: I agree with the language you just wrote for the last sentence, but what I'm trying to get at is this whole piece on the right side -- the Law Department's language in the comments here – is that supposed to replace something?

Mr. Schultz: Yes, everything. The first sentence I highlighted poorly. I apologize. The first sentence remains the same. And then everything after that is replaced by what's in the margin.

Chairperson Hylton: And it starts with what? A summary?

Mr. Schultz: A summary. So you see the second sentence starts with, a summary report or such matters? Most of the language in that sentence is unchanged.

Chairperson Hylton: Right, except for the word...

Mr. Schultz:...made and provided. And then it continues as it's written in the margin. And we just added some words.

Chairperson Hylton: And then it continues with, where the Loft Board determines that....

Mr. Schultz: And you'll see that it's largely a reuse of existing words, just reordered with different punctuation in an effort to make it clearer.

Chairperson Hylton: Okay, good. So the piece you just read, the last sentence, upon issuance of an Order, that new structure we just agreed upon, that's going on in the margin piece. That's correcting the last sentence.

Mr. Schultz: Yes. I was editing that for final consideration.

Chairperson Hylton: Thank you.

Mr. Schultz: I can read that entire section:

"Where the parties resolve a dispute to their mutual satisfaction, a stipulation of settlement setting out all terms of the agreement shall be entered into by the parties and reviewed by the Executive Director." That's the first sentence, unchanged. The second sentence, we'll start to see some changes toward the end. "A summary report of such matters, including the type of application, the issues presented, and the resolution reached must be provided to the Loft Board by the Loft Board staff. Upon the Loft Board's issuance of an order in acceptance of a settlement such summary cases shall be deemed closed." Continuing, and I believe without a new paragraph, now that I look at it: "Where the Loft Board determines that the record in the underlying proceeding has not been fully developed or investigated, the Loft Board may direct its staff to reopen a matter in whole or in part for further development or

investigation. As part of such investigation, the Loft Board may refer the matter back to OATH for development of a complete record."

Chairperson Hylton: Good. I remember now that OATH did not want us to use the word "remand," correct?

Mr. Schultz: I've heard that, but I'll defer to you. It does ring true.

Chairperson Hylton: That sounds good. Thank you, unless someone else has any comment.

Mr. Schultz: To be clear, everyone is going to get another chance to look at this in totality, and, hopefully, compare it to what you have here, with the few notes we're all making.

Under § 1-30 (b), there is the recommendation by the Law Department that the word "must" become the word "shall." I do not know if conversations occurred previously on must versus shall. I think either is fine, but I'll stop there for any comment.

Chairperson Hylton: I think that's the way it's being done now. They're using the word shall instead of must. It's legal stylistic language.

Mr. Schultz: Thank you. I'm going to move on to the middle of page 29, which we discussed in September. It was originally just a form issue, but then we had discussed it some more. The words "code compliance deadlines" needed to be italicized and un-bolded. And in that conversation, I suggested we put a (b) there before that because it would look nice. But that would in fact, change the citation retroactively so whenever someone cited this section previously, it would become confusing. So, I'm rescinding that suggestion, lest anyone remember it and thought it was very important. Re-labeling these things with numbers and letters can create retroactive problems. So this is one of the few times where I am revisiting something we've already discussed. Does anyone have any thoughts on that?

At the very bottom of page 45 is something we'll see a lot, and we'll move past them quickly. It's simply a matter of form editing. Deleted language comes before added language. We added the number (5)

and then deleted the word calendar. Law Department has picked out several times where those need to be swapped. It creates no change to the ultimate language.

There are more of those, and I'll note them and move on. At the top of page 50, there is a note from the Law Department about the use of the word "provide." The question becomes, do we want people to "serve" Narrative Statements or "provide" them? And does it matter? And should language be consistent?

This is one of several examples we're going to see where the feedback to Law Department is that section two is slated for a larger editing effort, a larger amendment effort, and that this kind of review is not going to help us complete the sections we need to complete to incorporate the 2019 amendments. So in cases like this, for the most part, we're simply using the language we've inherited.

There have been some other changes, but addressing the use of words and certain definitions is a deep dive that will take a lot of time to ensure accuracy. My understanding is the Board's preference is not to quibble with those things now, with the understanding that section two will receive a substantive review in the future. And you'll see this a few times, as we proceed.

Chairperson Hylton: Do Narrative Statements have to be served in a particular way?

Mr. Schultz: The language that currently exists, other than this one time, uses the word service throughout. And you'll see lower on page 50 that they actually think the word service is probably not appropriate because it's used to initiate a legal proceeding, which Narrative Statements are perhaps not. Either way, these are not the kinds of things we were looking to spend time and energy on in passing this version of the amendments. I understand there was, to some extent, a decision made, that some things would be done piecemeal, and conversations like this would be one of the things to be addressed later, in order to get the 2019 amendment language done. I'll also ask Mr. Clarke to answer your question. The Narrative Statement process is referred to as service both in the rules and in practice. Is that fair to say, Mr. Clarke?

Mr. Clarke: Yes. It's referred to as service.

Chairperson Hylton: Thank you, Mr. Clarke. So to the extent, then, that we come across it, just put serve.

Ms. Oddo: When I see the word provide, I interpret that as, it's available but not required to be given. So I do like the word service.

Chairperson Hylton: Thank you, Ms. Oddo. I think you're saying it's a requirement for service. So, you're right. It should just be service.

Mr. Schultz: So for consistency, provides should become served. I'm sure the lawyers will check to make sure it doesn't do any harm, but this leads to the bottom of the page, where more fundamentally, Law Department thinks service is perhaps inappropriate. Not only do I disagree, but my understanding is, we're not spending the time to analyze these things right now. And that's the feedback.

Chairperson Hylton: Just point them to the fact that a Narrative Statement has to be served appropriately, by our rule. They're probably just not aware of it.

Mr. Schultz: Any other comments on the top of page 50?

Ms. Roslund: Just that it's interesting that they didn't change that must to shall.

Chairperson Hylton: Where's that?

Ms. Roslund: Right in front of the word we're looking at.

Ms. Oddo: Is there another word that says that you have to give something to someone, but isn't the word service, which is also, technically, another term? There has to be another word that's better than provide, which just sounds like it means...

Chairperson Hylton: I think service, serve, is proper here because there is an actual requirement to serve the Narrative Statement. So Ms. Oddo, I think the word serve here is appropriate.

Ms. Oddo: Okay

Chairperson Hylton: So we should change that must to shall. I don't want the Law Department coming back with more objections, but...

Mr. Schultz: Let me ask the staff members about the use of must and shall before my time. One of them can surely crack the code on that.

Chairperson Hylton: Mr. DeLaney would know this. I think the plain language police prefer the word must and the Law Department prefers shall. I believe that's where that came from. But we have to go with what the Law Department wants here.

Mr. Barowitz: We also had a session about "will."

Chairperson Hylton: I guess that could be another issue.

Mr. Schultz: So for consistency and importance, we think serve is better than provide. In the unlikely event the lawyers over there somehow think that does some damage, we'll let you know. Otherwise, we'll go with that. Off the top, I think it's fine.

Chairperson Hylton: Here's the bottom line, in my own non-lawyerly thinking. If you put the words shall provide there, it just means that I could provide it tomorrow, or I could provide it some other way; I could tell you to go pick it up somewhere. There's no guidance or guideline on how. But since there are guidelines on the proper service of the Narrative Statements, then it has to be serve. You have to serve them properly, right? Otherwise, you might deliver it in some format that is not acceptable by rule. That's how I look at it. Serve is more proper.

Mr. Schultz: Thank you. Anyone else? You'll see a couple of matters of form -- deleted language comes before added language -- in that same sentence. That would just be, again, switching the positions. There is no effective change to the final language. There's another similar comment lower on page 50 in section (b). And then there is, essentially, the discussion we just had on service. While I said that Law Department is concerned the word service is inappropriately used, and while I disagree, I think the more important comment is that that is a big conversation to have, and if it needs to happen, it can happen when section two is amended. The word service is working now, and if there's a reason to change it, we can discuss that later so that we can get through the 2019 amendments.

Moving on to page 72, this is an easy one that we'll also see a lot. I almost didn't bring it to you, but I don't want anything to go unmentioned. There are several times throughout here where there's a bracket that's not necessary. It's just a straight-up typo. At the bottom of page 72, in section (c), we replace small cap occupants with large cap Occupants, and there's a bracket there that needs to go. That should be uncontroversial, because it has no place there, in section (c) on page 72, after the capital letter O, occupants.

Page 78, I bring up only to illustrate that I take nothing for granted. There are several places throughout these rules where a bracket is underlined. It's probably to replace an error or something. Anyplace you see a bracket that's underlined, that would be improper by form, and that will be changed. And there's an example of that in the last sentence of section (c) at the top of page 78.

Mr. DeLaney: Going back to page 73, where we have various things that need to be done within a certain number of business days. My recollection is that back when Helaine started this rule redrafting process -- even before the 2019 amendments, because actually these discussions predate that amendment -- we were attempting to get away from the confusion between business days and calendar days. Is that something that the current staff has focused on? Because I notice we're very clear on the top of page 78 -- and thank God for the Law Department, having us make sure that we have the bracket before the new and extraneous brackets -- but the in the middle of the page, in (f)(2), we're back to saying, "... may be preceded by informal conference, but in any case, shall be commenced not more than thirty (30) days after the decision by the Executive Director to bifurcate...." So we're back to regular days. I thought at one point -- Elliott, maybe you can help me out here – that there was a proposed goal of trying to make sure that whenever we used the term, it was the same. Does that ring a bell?

Chairperson Hylton: It does ring a bell, Mr. DeLaney. But in this particular instance, you're talking about thirty days. I think once it gets up to thirty, you're not talking about business anymore. I don't recall that there was a distinction, but for example, you wouldn't have sixty business days to do something. You'd have thirty days. You'd have five business days, ten business days, fifteen business days. But once you get into a month, you're not talking business days anymore, but actual days. Mr. Schultz, you probably want to look at that a little further, but I think that's the distinction here.

Mr. Schultz: That does seem to be the consistency to me when days are mentioned. It's usually either five, or thirty, or slightly more than thirty. When it's five, business looks to be designated, and when it's not, just days. And when it isn't designated, there is language in § 1-16 that discusses computation of time; that talks about Saturdays, Sundays, holidays, etcetera.

Mr. DeLaney: Okay

Chairperson Hylton: I think this is deliberate here, Mr. DeLaney, because it's just right below where we spell out business days. And then it's left in these two instances here, where the thirty is just days. And I would think, realistically, after the number of days hits thirty, then you stop counting business days and go with days.

Mr. Schultz: What I've seen is what Renaldo says.

Mr. DeLaney: Okay

Mr. Schultz: The bottom of page 83, Harassment, there's section (b) *Definitions*. It's recommended that language be added saying, "For the purposes of this section, the following definitions apply." And that is lifted from another place where that same language is used. But beyond consistency, it is for delineating any definitions that may be repeated, which is something Law Department has taken issue with in some cases. And our stance, to harken back to what I said before, is that the use of definitions in various places is a complicated business to adjust, and the dive it will take to do it correctly can and will be done in a wholesale amendment of section two. To do it now will slow down the adoption of the vital pieces that incorporate the 2019 amendments. That is what I have understood the Board to stand for; that is what makes sense to me; and while Law Department's just trying to do its job here, their feedback that we need to sort out these definitions here and now, can create a real risk of unintended consequences. Right now, every change that has been made does not touch those things. And so it is the current recommendation that we fry those fish later. And language like, "For the purposes of this section, the following definitions apply," and similar language that's in § 1-12 that says, "unless otherwise defined," allows room to have definitions in two places. For the most part, I've done some review, and they do look to be consistent. But where there are differences, perhaps they matter; perhaps they don't. I'll

confess, I just got here eight months ago. I don't know yet. I don't want to break anything. It seems like what I inherited felt the same way. Does that make sense?

Mr. DeLaney: Months are kind of like business days. Fifteen months from now, you can't be saying I only got here twenty-three months ago.

Mr. Schultz: As the number grows, deniability does become less convincing, doesn't it?

Mr. DeLaney: Calendar months

Mr. Schultz: Calendar months. I am still afraid to break the rules, to be perfectly honest. This got toiled over a lot, and from the notes and what I've heard from the staff, I have every understanding that the lack of touching the definitions was highly intentional. And so my inclination is to push back on Law Department on this point.

Ms. Oddo: Just to clarify, comment 67 is what somebody suggested be added? And then comment 68 is saying, no, we shouldn't touch that right now?

Mr. Schultz: No comment 67 is saying, this is some language we'll add to help ensure that people understand where definitions apply and where they don't. Part of the larger story is that a large, global definitions section has been added and changed in section one. Global meaning it defines the terms in section two. And it was done appropriately, and it was intentionally decided that section two would not be changed yet. And so to the extent that there may be nuance and definitions that need to apply in one place and not another, that is an analysis that needs more attention than we want to give it while we prioritize things. So comment 67 says, let's add this language, because it will help us make it clear this applies here and that applies there, frankly, even if they look very much the same. But right now, it's going to take some energy to see if those differences matter or not. And then comment 68 discusses how we're not going to do that right now.

Ms. Oddo: Okay, so 68 is saying let's not do 67 right now?

Mr. Schultz: No, sorry. 67 is saying, let's do it. And then 68 is saying, as long as we do things like that, we don't have to touch the text of the definitions.

Ms. Oddo: Okay

Mr. Schultz: So we are touching the definition section by giving it a disclaimer, but we are not going to add, delete, or edit the text of the definitions, other than what you see here, which is cosmetic.

Chairperson Hylton: What are you agreeing to do or not do, Mr. Schultz?

Mr. Schultz: Adding, after the word definitions, "For the purposes of this section, the following definitions apply."

Chairperson Hylton: I agree with that.

At this point, the Board paused for a two-minute break.

After the break:

Mr. Schultz: The last substantive talk we had was on page 83. Page 84 is just full of unnecessarily underlined brackets. Page 85 we actually talked about in September. And from page 86 though page 95, all items are bracket/underlining issues. I hope that doesn't require any conversation.

On page 96, there is something of not great importance. But again, I don't want any changes to happen that the Board is not aware of. The current language literally has the word "promulgated" in brackets within it, which is just simply improper. It's not needed there. It's quite clear that the language was meant to be deleted and just wasn't, because it reads "... certified by the landlord in a form prescribed [promulgated] by the Loft Board." It was apparent to me that there was a change from the word promulgated to prescribed and that the final text just left that bracketed language in. So I think using brackets, delete, brackets is what they're going to suggest, but they're checking the form on that.

Chairperson Hylton: Maybe the word promulgated was actually bracketed and left in there. And now they're deleting the word; not just the word promulgated, but the brackets also.

Mr. Schultz: Every lawyer is convinced that the word promulgated is not needed, is not meant to be there, with or without brackets.

Page 100 is another version of what we've already discussed. We discussed the word family when we went through § 1-12. Suffice to say, there's some language here that is not inconsistent, but is different. Law Department points this out, and the answer there is the answer I've given you already, which is, maybe it makes a difference; maybe it doesn't. That will take time to figure out, and we're not going to use that time right now. This language is highlighted, has not been added or edited. It exists in the rules now. It's either worked or not worked up till now. So the assessment of if and how it works can and will be done when a wholesale review of section two is complete. Again, I bring it up for your awareness. I bring it up as something Law Department has raised. I'm not sure you know exactly where that's going to lead, but my understanding from the Board and what I've inherited is that these are not things we're going to deal with right now. Any comments or questions? We'll see that a couple more times.

Page 105 is another underlined bracket. Page 106 is, again, just definitions. This comes up three or four more times. Law Department says you've got definitions there; you've got definitions in the global section; how do you reconcile? The answer is we will later, not right now. This one is only to note that the language that we added before is already there. "For the purposes of this section, the following definitions apply." That is the language we added in the prior definition section. We don't have to add it here because it's already there. Any questions?

On page 107, there is some language that is slightly different, but was inherited from the definitions that exist; it was not changed. "The following terms shall have the following definitions unless context clearly indicates otherwise." That's been in our rules for a long time now. Since this was drafted. This is not something that was changed or has been changed. Whether that language is good or bad is something that should get figured out. But not right now is what I've come to understand. Any comments or questions?

Moving on to page 115, another easy one. The word "tenant's" is there twice. It's not meant to be. It's there, then it's there in brackets, which means it got bracketed to be deleted, but was not. It appears in section (4)(i), three lines down, "... with the terms of the prospective incoming tenant's tenant's offer..." One of those tenant's is quite clearly a typographical error.

Mr. DeLaney: We're using tenant with a capital T because it's defined?

Mr. Schultz: Yes

Mr. DeLaney: If anyone has a paper copy that's quicker to move around, could we just read the definition of Tenant that's in the definition?

Mr. Schultz: I can do that. "Tenant refers to a residential tenant and is interchangeable with the term Occupant in Article 7-C and this Title." "Tenant refers to a residential tenant and is interchangeable with the term Occupant in Art. 7-C and this Title."

Mr. DeLaney: Okay, thank you. The reason I asked is because we're looking now at part of § 2-07, I believe, correct?

Mr. Schultz: § 2-07, yes

Mr. DeLaney: Which relates to the sale of improvements, which is something that doesn't happen that much anymore. The way that it was set up was that if outgoing-tenant-with-a-capital-T wanted to sell his or her fixtures, he or she had to get an offer from a prospective incoming tenant, which the owner would then have the opportunity to match, which almost always happened, as long as the owner was registered and didn't have fines; because if the building wasn't registered, then the owner wasn't allowed to challenge. Therefore, in the history, back in the day of the 80s and 90s, when we actually did this, the prospective incoming tenant, which we used to refer to as the PIT, was really a straw man. It would make an offer, and the landlord always matched the offer, because then the owner could deregulate the building. So, I'm just musing that, in this case, prospective incoming tenant actually is not a tenant. So I'm wondering if making that particular tenant capital T actually makes sense.

Mr. Schultz: First of all, thank you for that. I said to some of the staff, I know this rulemaking is tedious, but it also creates the opportunity to talk about, to learn about, things a bit. I recall that being discussed before, perhaps that's why there's an odd error there, because it was part of a prior conversation that was being bounced around. Do you remember raising this before?

Mr. DeLaney: No, I don't think we focused on it. But as I'm looking at it now... What is it that turns into a butterfly? A silkworm?

Mr. Schultz: I didn't do well in science.

Mr. DeLaney: So a silkworm is a prospective butterfly. But would it be a capital B butterfly if it never becomes a butterfly?

Mr. Schultz: I'll give one of my favorite answers. I don't know. But we can look into that.

Mr. DeLaney: Okay, thanks.

Chairperson Hylton: I could be wrong, obviously, but I actually think it's okay to be capitalized here because the word here is prospective, incoming. Meaning that, unless we're going to capitalize prospective incoming, defining somebody else....It is pointing to a future state when that capital T does refer to that person. And I understand it's not yet, but it is qualified by the word prospective in front of it. I think maybe, legally, you're correct, but I still think it's clear because it's qualified by the words prospective incoming. So not to belabor it. I know Mr. Schultz will look into it.

Mr. Schultz: If any of our staff members have a memory or clarity on it that I don't have, please speak now. Otherwise, we'll look into it.

On to page 122, where we've had this conversation before, there's a definition section. Law Department is not crazy about definitions. We have a global definition section. But one thing that helps is having this language that makes it clear that this language is for this section, and the details will be addressed in the future. That's on page 122, under § 2-08(a), which has its own definition section. There's also a small formatting issue – removing a period -- in section (1) on page 122, and the same on page 123 in section (2).

Page 124 continues that trend of removing periods, but before we get to that, there is a repetition of a rule. And this one is notable because it was added above with some new language. Then as you see by the underlines here on page 124, (ii), the words "special permit" are replaced wholesale to match what is used above; which is notable because we made some small changes to that. You recall we discussed special permit in September or October -- that special permit would mean an approval granted pursuant to a grandfathering procedure. So because that definition was repeated, we would want to repeat the change we discussed previously.

Also in special permit here, you'll see in the underlining, there's a second sentence that is actually unique to this section. And it exists because it's being pulled from a footnote -- a footnote that actually was, I've come to learn, a bit of a mystery to the staff. Our own Ms. Lee is the one who found it, in an old book – literally, a physical book – and shared it with everyone and let them know where this came from. So it's not new language. The second sentence under (ii) that reads, "Grandfathering procedures in this classification are designated in the Zoning Resolution and include, but are not limited to, § 74-782; as of April 7, 1983, as well as other sections that have been or will be adopted." That is not actually new. It was moved from a footnote that, as I understand it, had been lost in time. Whether that language is good or not can be reviewed when we review section two in its totality. Any thoughts or comments on that?

Chairperson Hylton: This underline should not be there, you say?

Mr. Schultz: No, it should be there, because the asterisks have been deleted. So the asterisks led you to that language. But it's being put right in the sections instead of as a footnote. So the deletion of the asterisks call for the inclusion of the language that would lead you to the asterisks.

The only other issues on page 124 are removals of periods. Moving now to page 126, there is one new comment in the middle. It's A118 for the members, and it's under (iii) (A). It's simply that amongst some underlying new language, there is a bracketed word "shall" that needed to be there because the word must is there.

Chairperson Hylton: So, wait a minute.

Mr. Schultz: I didn't want to go there. I was just going to remove the brackets.

Ms. Roslund: Then you have to take out must. I checked just a while ago while we were talking about this earlier, and both the Zoning Resolution and the New York City Building Code use shall.

Chairperson Hylton: That's because there are more modern updates, to the building code especially, Ms. Roslund. So they're more consistent with what the Law Department is requiring, which is the word shall. But this is contrary here, right? Is this something that Law Department did not pick up?

Mr. Schultz: I can look at their direct comment.

Chairperson Hylton: Because it seems like somebody's taken the word shall... because "[shall] must" existed there before. They're not adding must. The whole thing has been added.

Mr. Schultz: The edit the Law Department provides makes no comment on whether shall or must is appropriate. It really is just a line edit that removes the bracketed shall, because it has no place there from a forum standpoint.

Chairperson Hylton: Their comment is contrary to their stance, isn't it? That they prefer shall over must?

Mr. Schultz: I will only comment that there's one part where they changed it, and that's all I know. I haven't nailed it down.

Chairperson Hylton: They do. The Law Department is using the word shall and not must. I think it's the Mayor's office that prefers the word must. So, it seems like they're going contrary, especially considering the other comments they've made. And so we need to put the bracket around must and leave shall.

Mr. Schultz: So all else equal, is there a preference for shall by the Board? Is that true?

Chairperson Hylton: Consistency. Unless it changes something, right?

Mr. Schultz: I'll confess, what I don't know is whether or not there was a discussion where there is a difference in some cases. If it matters, I'm not sure I see it that way. But if it is this way, for a reason....

Chairperson Hylton: It certainly wouldn't matter here, except for consistency, in this reading.

Mr. Schultz: If shall moves us along, it's good with me.

Chairperson Hylton: As Ms. Roslund points out, I'm very familiar with that in the codes and their move to the word shall instead of must.

Mr. Schultz: I don't think Law Department's going to stop us. So that's fine. I'm going to move on to page 129.

Chairperson Hylton: Before you do, we're moving brackets around must and underlining shall.

Mr. Schultz: Yes. Using the word shall and deleting the word must. Although we don't need brackets around must; it's new language. We are simply removing the word must and inserting the word shall. Because it's all new language. There'll be no brackets anywhere.

Chairperson Hylton: Thank you.

Mr. Schultz: Page 129, Study area, at the top of the page, we remove that period next to the (5). Page 134, there's the word article. This is all new language, so the bracketed word doesn't need to be bracketed. It can just be deleted without a bracket. This is a form issue. There's no language change by this.

Ms. Roslund: Why are we deleting the full word rather than the abbreviated word?

Mr. Barowitz: May we go back to 134 for a minute, please?

Chairperson Hylton: Heather, hold your comment a minute.

Chairperson Hylton: Mr. Barowitz

Mr. Barowitz: I have two questions on page 134. In 1 (a), the term Artist in Residence, A.I.R., is used, but what it is, what it means, is not explained.

Chairperson Hylton: It says, "...pursuant to directives of the Department of Buildings..." Is it defined anywhere in our rules?

Mr. Barowitz: A.I.R referred to an original agreement back in 1960, between Mayor Wagner and a certain artist group, which said that if there were two illegal lofts in a building, that there needed to be a designated sign of a certain size down near the door, so in case there was a fire, the Fire Department could rescue the two lofts. When the Loft Board came into existence, two units did not adhere to the

Multiple Dwelling Law, so all those artists --- and the landlord that maintained legality, if only keeping two there -- were left without any protection. So the term A.I.R here is not explained. That's one point.

The second point is in (1) (b), and it says, “any Residential Unit designated as joint living working quarters for artists pursuant to the Zoning Resolution,” is taken out. In other words, the city’s covering itself. For reasons that we all know, after a while, everybody shut their eyes to what the city had mandated in the Zoning Resolution -- that SoHo and parts of NoHo were designated artists-only -- and other people began to move into the lofts there. So now, rather than the city taking responsibility for their lack of enforcement of the that original designation, they're taking out that whole section about pursuant to the Zoning Resolution. And as somebody involved with all this housing for a long, long time, I find these the two points really very aggravating. But I suppose nothing can be done about it.

Chairperson Hylton: Well, let’s talk about it. Mr. Schultz, could you or someone on staff look up the definition of Residential Unit? I’m wondering if there's reference to that there.

Mr. Barowitz: And also, as far as I know -- and I'm not sure about this; maybe Chuck could help me out – the designation of joint living-working quarters for artists, is this the first time it's ever been used in loft-related laws or rules? That is not a term that we have ever used or adhered to. And we certainly have never used this in terms of who and what we have certified in loft living, not only in SoHo-NoHo, but now in the other boroughs as well.

Chairperson Hylton: Well, maybe that's good reasoning then to not delete the words “pursuant to the Zoning Resolution,” because that's where...

Mr. Barowitz: What I'm saying is, they’re taking it out because the city is now covering itself, because they have not conformed to the law of the artists-only district in SoHo and, partially NoHo. And we all know that a lot of people have moved into that area that are not artists. On the other hand, it looks like the City Council will confirm the new SoHo-NoHo and Chinatown designation. It also says in that resolution, if an artist owns a space in SoHo or NoHo and then sells it to a non-artist, they have to pay $100 per square foot to some city agency, going into some of the primary institutions of art in the city. So, I must say that, being involved in this thing for so many years, when I suddenly read this, I got really suspicious about why this was put in, particularly towards the end to the whole procedure.

Mr. Schultz: I see references to it on page 135, in un-underlined language where it's cross-referenced.

Ms. Roslund: As someone who only anecdotally understands A.I.R. and the joint living-working quarters, and who is not familiar with what the qualifications or the process of becoming certified as such are, I'm asking, is it because they don't recognize someone living in a commercial space, as opposed to someone living in a residential space?

Mr. Barowitz: The answer to that is neither. Except that in 1981, the Loft Law was passed, and those that were living in either commercial or industrial spaces in SoHo and NoHo then were able to confirm themselves under the Loft Law. And as a result, most of those buildings in SoHo and NoHo are basically legal now.

Ms. Roslund: Yeah, I guess my question is, Elliott, is your question, why is this language in here?

Chairperson Hylton: It's not new.

Ms. Roslund: It's not new, right? He asked, why was it put in here? Let's take the why was it put in here; but then the question of why is it in here at all? He also said, in no other place in the rules are these designations referred to or in the Loft Law -- are these particular designations referred to. So it's raising the question of why, in this section, are they referred to? So if a residential unit just requires that someone be using it residentially, then why does it reference these specific types of occupancy? I'm wondering, is there something in those specific types of occupancies that preclude them from a residential definition?

Mr. Barowitz: I really don't know what to say. The area of SoHo, as we know it, is, generally speaking, made up of loft buildings, most of which were used commercially and industrially. That happened to be the hat-and-feather area of New York City, of America. But over the years, those manufacturers began to move out, mostly because it became apparent that horizontal buildings worked better for them than vertical buildings. In any event, artists began to move into those areas before 1960. And when the Loft Law came into effect, it certified as legal the artists living and working in those commercial and industrial buildings.

Chairperson Hylton: Thank you, Mr. Barowitz. I think I have a clearer understanding of why this is here. If you look at the very top, it talks about, "For purposes of counting Residential Units to determine whether the building qualifies for coverage..." Itemized under (1) are instances where they do count, right? Occupancies that will qualify for coverage. And they're saying, (a) " ' Artist in Residence' as pursuant to any DOB directive," because maybe there was some DOB directive that counts these as Artists in Residence. And secondly, under (b), ...Residential Unit designated as JLWQ -- joint living work quarters for artist -- also is there. And then "...any other residential units occupied by a subtenant or assignee of the prime tenant of such unit." So it's just saying that these instances do qualify for coverage, right?

Ms. Roslund: Right, but why are they specifically called out?

Mr. Barowitz: (unclear) New York buildings did not qualify for coverage, because they were not interim multiple dwellings. And that's not true.

Ms. Roslund: We just read the rule.

Mr. Barowitz: (unclear), and as a result, they're not covered by the Loft Law.

Chairperson Hylton: Mr. Barowitz, these rules are not new. This has been here. Are you saying that these instances have never qualified for coverage?

Mr. Barowitz: Rather recently, there was one area in Chelsea that covered a two-unit building. Otherwise, that was not the case. And I remember when that happened. 2015, 2016. There was just one area of the city that allowed (inaudible) to be covered by the Loft Law.

Ms. Roslund: That's a different point than whether or not an A.I.R is allowed to be counted as a residential unit.

Chairperson Hylton: For the purpose of coverage.

Mr. Barowitz: You're conflating residential with what we're doing with the Loft Board and making it legal to live there. A.I.Rs are illegal to this very day to live in, even though they're there. Even though

people are living in buildings that have that sign A.I.R, they don't come under the Loft Law. Except for the one small area of Chelsea in Manhattan.

Ms. Roslund: So, Chairman, I'm wondering if it allows you to register without going through the proving-out process. To prove that there's a residential....

Chairperson Hylton: Exactly, because they are illegal, right? Because they're illegal is why this rule is saying to make an exception here for these occupancies to be counted for purposes of coverage. This is not new. It's there. Whether or not it's necessary to be there anymore, because there may or may not be that many, doesn't matter at this point. But it's not something new, and it's just that they're making these three exceptions. For purposes of coverage of the building, these occupancies will count. This is not before us now. This is not new language for us to debate.

Mr. Barowitz: That is very true. On the other hand, I don't know, I've been sitting here for at least fifteen years, or thereabouts. We have never come across something called A.I.R.

Chairperson Hylton: Exactly, because it's nowhere in the Loft Board's rules or anything like that. As they say here, pursuant to any directives of the DOB. Apparently, somewhere in the DOB directives, there may be some reference to A.I.R. And somewhere before your time, I guess, this rule wanted to count them for coverage. Mr. DeLaney, do you have any recollection of this at all?

Mr. DeLaney: Yes

Chairperson Hylton: Please, you have two minutes. And then Mr. Schultz will close up in five minutes after that. Thank you

Mr. DeLaney: Because of the awareness of the Multiple Dwelling Law potentially applying to these loft buildings that started in the late 70s with a ruling by a judge named Leonard Cohen, a lot of landlords went through different posturing. I'll rent you a space and you can subdivide it, but I don't know about it. So it's only going to be one unit, even if you move somebody in. That would be covered by (c) in this calculation. So what we have here is the legacy of the legal mind of Carl Weisbrod trying to clarify, back in 1983, various types of units that would count toward meeting the necessary number of three for Loft

Law coverage. And rather than have people argue, oh, it's not a residential unit, it's an A.I.R unit, the Board at that time spelled out that A.I.R units would count, just as subdivided spaces would count, and anything that was designated joint living-work quarters, which I think, actually, comes from Article 7-B, would count. So, it was just kind of an early 80s effort to try to shut down arguments before they came up.

Chairperson Hylton: Thank you. I thought that's what it was. Mr. Barowitz, I hope you understand, this is not something new before us to argue right now. And I think the Board still wants to keep this in. I don't see why we want to remove it or even try to modify this language. We can't do it right now, actually, but thank you, Mr. DeLaney, for clarifying that. Board members, I really do want to have respect for your time and that of the public. So, Mr. Schultz unless someone else wants to say something....

Ms. Roslund: This is quick. I'm wondering why we're replacing the full word Article with Art. Which maybe is not simple, but again, to be consistent with other codes and regulations... It an odd decision in my mind.

Mr. Schultz: It's everywhere. So the answer I can give, it's consistent. How it happened, would frankly predate me. Fewer letters? If anyone remembers how or why that happened...? In this draft, I see it several times. And I see it changed throughout.

Mr. DeLaney: I think this is the Law Department in its first pass wanting to shorten Article to Art.

Ms. Roslund: It's not what I would choose to do, but whatever.

Chairperson Hylton: They do some things consistently inconsistent in a way.

Ms. Roslund: I'm all for consistency, but I guess I would go the other way.

Chairperson Hylton: We use the Art. here, except where it means something else somewhere else.

Mr. Schultz: I'm guessing it's not a hill we're going to die on.

Chairperson Hylton: Mr. Schultz, I've eaten up some of your five minutes. Are you of the opinion that we could probably wrap the rest of this up at the next Board meeting?

Mr. Schultz: Yes, certainly. There's not so much remaining to work through that we wouldn't be able to do our normal business at the next meeting and then this. Shall I continue?

All right. Page 145 is another case of deleted language comes before added language. Pages 151 and 152 are a lot of underlined brackets. Page 165 -- and just to be clear, when I skip pages, there is no comment that we haven't already talked about, if any comment. Page 165. There's a comment here that I'm not sure is ripe, actually, for me to give a recommendation. Law Department has asked, when we say, insert a date, what the intended date is. Often there's language surrounding it that says, insert date within ninety days of the passage of this rule, or otherwise. Here and in other places, I've seen deleted language that gave me some indicia of what is intended here, but I do not know what is intended here. Unless someone has an instant suggestion, I will reserve this till next time, when I can come with a recommendation. If we had more time, I might ask veteran members for thoughts on it, but I don't think we're at a point in the meeting where that's going to be productive.

Suffice to say, the date needs to be clarified, and I don't yet know what the right answer is. So that will probably be tabled, unless someone has the answer now. You can see items included here that are not yet resolved with a recommendation. That is because I want you to have everything Law Department has shared in front of you now. This is the universe. I did it piecemeal up until now, but this is everything. Page 166 is more underlined brackets.

Chairperson Hylton: Back to 165. Is there a reason why we couldn't find that out easily, in terms of (D), the date the IMD unit becomes covered under § 2-81(5)?

Mr. Schultz: I don't want to guess publicly, but I imagine it's going to be the date of the passage of this rule. That's the trend I think I see in (A) through (C).

Chairperson Hylton: Right. So, isn't that something we could put in now until the rule is actually passed?

Mr. Schultz: It's supposed to indicate the date that this rule will be passed, I think, right? And so whether it's a side note or something, I think the Law Department wants to know what date is intended there. Which is a fair question. And the fact that it can't be answered immediately means it's a good question. And I don't want to tell you until I'm sure, and I didn't have time to get sure before today. That's it. I think it will be the date that the rules are passed, because previously, it discusses September 11, 2013, which is the prior rulemaking amendment adoption date. But I don't want to be wrong.

Chairperson Hylton: So what the Law Department is saying is -- if what you're saying here is correct -- what we should be putting here is insert the date, the effective date of the amended rule. That language should be right there.

Mr. Schultz: Yes. And adding that language is helpful, because if they had added it under (C) back in 2013, I'd know what the trend is. So when someone adds another one after it in the year 2035, they'll know why that date matters with a lot of specificity.

Chairperson Hylton: Okay

Mr. Schultz: It's not a ripe recommendation yet. But I'm inclined to think that's going to be the inclusion of that language that's in the margin.

Chairperson Hylton: So that's something you and your staff need to iron out?

Mr. Schultz: Yes, that's correct. And I'll make it my goal to do that before November 18th, if I can. Any comments or questions on that? Page 166 and 167 are underlined brackets. Page 168 is the inclusion of some language. I'm in section (b) (1), numbers (i) through (iv). This goes back to what I just said. There's basically a section there for each iteration of the MDL. And to update it consistently, it should say under (iv), "MDL § 2-81(6), which occurs on or after insert date, the effective date of this amended rule." So it's simply the insertion of the word amended, which is consistent with other sections. And it's consistent with what you see directly above that's been deleted. So it's adding the word amended for consistency sake.

I'm going to skip page 169, because I made an error in my comment, and it will be easier to fix it for next time than to try to explain it. So if you don't mind, I'm going to save page 169 for next time. On page

171 section (iii), a format form change, not a language change. Prime Lessee should be underlined. It's been defined and capitalized, so it needs to be underlined as added language.

The last item is something we've already talked about. Page 175 under Rent Adjustments, § 2-12 is another definition section, where it's recommended that we add the language, for the purposes of this section, the following definitions apply. And then we do not move, alter, delete, change or add whatever is already in the current version of the definition. Changes that are in those definitions are cosmetic for consistency, and substantive review can wait until we get the 2019 amendment passed.

I know I went fast there at the end. We can certainly revisit anything I sped through too quickly. Please feel free to follow up with me directly, or we can talk about it at the next meeting.

Mr. DeLaney: Can you quickly explain what 179 through 182 is attempting to do?

Mr. Schultz: Yes. It's all deleted. When we spoke in September, the definition of the word family was discussed. I included this not as any sort of amendment; it was for reference, and I put it on the same document to try to make life easy. It is simply a copy and paste of a section of our rules that is not being amended. But for that conversation we had in September, I thought perhaps members would want to reference it. I will remove it, lest it accidentally show up. There are no changes there. Thank you, everybody. Any other questions?

Chairperson Hylton: Excellent, Mr. Schultz.

Mr. Schultz: Thank you, everybody. I always learn a lot when I do this with you.

Ms. Roslund: Interesting session

Chairperson Hylton: Yeah, it was really great, spirited, and I appreciate everyone's involvement in the rules. Before we close, are there any comments? I certainly want to thank Mr. Schultz and his staff.

Mr. Schultz: I need to interrupt you because I need to say I don't get here without the staff. A lot of the untangling I just said out loud was the result of a lot of behind-the-scenes assistance from the staff. Mr. DeLaney mentioned the work Mr. Argov had done; there was the big discovery Ms. Lee made about

grandfathering; and Mr. Clarke, Ms. Lin sat here in my office and fed me the right answers to give you here today. In fact, some very big ones. They gave me course and direction from both their experience and instincts. I cannot thank them enough. I did all the talking, but I did not do all the work. Far from it.

Chairperson Hylton: Thank you. And thank you to both legal and administrative staff for putting this all together. I think we really made headway today. I realize we're not done yet, but there's some light at the end of the tunnel, and I appreciate that.

This will conclude our November 4th, 2021, Loft Board meeting. Our next public meeting will be held two weeks from now, on Thursday, 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 Loft Board meetings will continue to 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's announcements Listserv. Board members, please sign and email in your attendance sheets. Thank you, everyone. Have a great afternoon.