

MINUTES OF PUBLIC MEETING  
New York City Loft Board Public Meeting

November 18, 2021

The meeting began at 2:12 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 18, 2021, public meeting of the New York City Loft Board and explained that the meeting was being held via teleconference due to the coronavirus emergency, pursuant to 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.

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**VOTE ON MEETING MINUTES:**

**October 21, 2021 Meeting Minutes**

**Chairperson Hylton** asked if there were any comments on or corrections to the October 21, 2021 minutes.

**Mr. DeLaney** noted the omission of the word have on page 2.

**Chairperson Hylton** noted the correction and asked for a motion to accept October 21, 2021 meeting minutes, and for a second.

**Mr. DeLaney** moved to accept the October 21, 2021 meeting minutes, and **Mr. Hylton** seconded.

**The vote**

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

**Members dissenting:** 0

**Members abstaining:** Mr. Roche

**Members absent:** 0

**Members recused:** 0

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**EXECUTIVE DIRECTOR'S REPORT**

**Mr. Schultz** noted that the meetings are still virtual due to the ongoing public health crisis and the legislation signed by the Governor that suspended the in-person meeting requirement of the Open Meetings Law until January 2022, and that the Loft Board staff will notify everyone as soon as they know what the circumstances of the next meeting, to be held in January 2022, would be.

**Chairperson Hylton** added that this might not be known until days before the meeting, so interested parties should pay attention to emails, the Listserv, and the Loft Board website for updates.

**Mr. Schultz continued:**

SoHo-NoHo Rezoning: The City Planning Commission just approved a proposal, which is under City Council's review.

Revenue: The unofficial Loft Board revenue for October was \$23,860.

Heating: As winter is approaching, building owners need to ensure that all their units have sufficient heat, as required by Loft Board rules. There are temperature standards, and complaints can be made directly to the Loft Board office from tenants who are not receiving sufficient heat.

Enforcement: There were thirty-five inspections in October, including seven violations. Two of those violations related to improper drainage issues. One was corrected, and as of now, the other is mostly corrected. It was reported as corrected. There were five violations for lack of Loft Board signage in the vestibule area. These are the result of our inspector proactively visiting our buildings. I believe one is pending re-inspection; two have been corrected; and two are not yet corrected. These are matters we want to resolve with the owners by simply achieving compliance. We're not averse to bringing Enforcement action on this, but we hope and expect that compliance is easy. So, our Enforcement attorney and our inspector are doing the follow-up appropriate for these lack-of-signage violations.

Our inspector and our Enforcement attorney can sometimes make a phone call, which saves us time, and have an issue resolved to everyone's satisfaction without an inspection. For the month, a number of complaints were addressed without an inspection.

Litigation: There are no new decisions or cases since our last meeting, so I have no litigation updates.

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#### **PUBLIC SERVICE ANNOUNCEMENT FROM THE FIRE DEPARTMENT**

**Mr. Roche:** We want to dovetail with what Mr. Schultz said regarding heating season and encourage anyone with a heating issue to report it and not to resort to an alternative, unsafe method of heating. As I always say, the Fire Department is here for you. We do not mind hearing from you. Many of you know how to reach me or you can contact me through the Loft Board. We don't want anyone creating their own heating alternatives because they feel their heat is inadequate. So please, please follow Mr. Schultz's advice and report these heating issues to the Loft Board staff. We want to help you have a peaceful, enjoyable, and safe winter.

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#### **UNSOLICITED COMMUNICATIONS TO BOARD MEMBERS**

**Chairperson Hylton:** Mr. DeLaney had requested some time on this issue, and I now turn it over to him for discussion.

**Mr. DeLaney:** I think there are really two aspects of this. The first was triggered a couple of months ago when some members of the Board received a direct email from an attorney, commenting on a case that was on the docket for that day or the following day, I forget. I think it may have come late at night. And as I pointed out at that time, before email, the most common way that someone would reach out to the Board would be writing a letter to a Board member, or to all the Board members individually, and mailing it to the Loft Board. The Loft Board staff would open it and determine if it was appropriate to forward on to the member; or, if it was something related to a pending case and wasn't part of what was in the record, it would be embargoed, I guess would be a fair word, and only distributed to the Board members after the case was decided.

But now, given the greater fluidity of communication and people's email addresses being fairly easy to access, we had a situation where some people received a communication about a specific matter. The Executive Director made a reasonable decision to distribute the same commentary to everybody, since the cat was literally out of the bag.

So, I think the first question is how do we handle that kind of unsolicited communication? Which I think of as kind of an external attempt to put a thumb on the scale. The second question, I think, which also warrants some consideration and is tied, in part, to the Board's rules, is to help us all reach an agreement as to what's fair and proper in our quasi-judicial function with regard to discussing cases among ourselves, discussing cases with other people, and taking it upon oneself to do research.

For example, years ago, we had a Board member who took it upon herself to go out to a building where there was a question of whether or not one of the people who claimed to live there actually lived there. She went to the building, and his name wasn't on the mailbox, which was great amateur detective work, but probably not part and parcel of the record.

Now, it's easy enough to just say, oh, gee, this is an interesting building. I wonder what it looks like? You type the address in Google, and you can look at the street view, or you can look at look at it from overhead, and you could see that, gee, the owner says it's vacant and going to be commercial, but they're advertising for residential tenancy.

There's so much information out there that I think there are really two questions. One is, what do we do about somebody who tries to put their thumb on the scale? And the second question is, what is the proper demeanor and conduct for Board members to take upon themselves?

**Mr. Schultz:** Thank you, Mr. DeLaney. I'll answer what I can right now and then acknowledge which parts we're going to research to give you all better answers. I'll start with the unsolicited communications piece and a couple of fundamentals in the law I think we can rely on. You're right, these emails are instantaneous and to some extent uncontrollable. So, the content of that communication will inform a few things for whoever's reading it, whether it's myself, or all of you, or some of you. And I'm speaking in legal terms here. Let's talk about some legal definites, and then we can talk about what we might prefer as a Board.

One thing to look out for is whether or not that communication is trying to add evidence to the record. Not arguments, not feelings, or opinions, but evidence to the record. It would then be all of our obligations to limit its distribution and eliminate its consideration. Once something has been presented to the Board, it has to be based on the record, and the record is what's provided to us, as the staff, and then provided to the Board members. We have to limit the considerations to the record, so if someone is trying to add to that record at the last minute outside the scope of the process, that's improper, and that shouldn't be shared or considered.

The other thing that shouldn't be shared or considered are ex parte communications. And officially, legally speaking, an ex parte communication would be from one of the two parties involved and not including the other party. So it comes from one side of the case, the adversarial relationship, and they did not copy or include the other side. That would be an ex parte communication. If it comes from one of the parties and does copy the other side, it would not be an ex parte communication. But it would still be last-minute, still be unsolicited, still be something to think about for a lot of reasons. But it wouldn't be ex parte.

The other thing that, by every legal definition I can find, would not be ex parte, is a communication from a third party. And again, that doesn't speak to what we want to do with it. But just to be clear, there is no particular legal bar on that communication, but for what might be in its content. So, with that, I'll

answer a question that wasn't asked. What should you do if you get a communication that's unsolicited, not asked for? And the short answer is, as soon as you notice it relates to the Loft Board -- which, hopefully, is clear from the title itself -- don't look at it any further and send it to the Loft Board Executive Director.

As Mr. DeLaney noted, in the old days of letters, the Loft Board Executive Director and staff would review it and decide what to do next. And based on what I just said, for certain types of communications, we know exactly what to do next. It won't be distributed, and those who received it will be told, don't look at it, don't consider it, throw it in the trash, delete it from your inbox and your recycle bin. It's not part of the record.

Communications that are not barred in the ways I mentioned would be considered by the Executive Director and staff to arrive at a well-informed decision. Which is to say that, regardless of when it was received, if there's a communication that's not ex parte, that's not trying to add evidence to the record, and which includes some parties and not others, from what I can see, there is room under the law for some decisions to be made there. And those decisions could be made based on a lot of different factors, but one of them certainly would be what the Board would like to see happen.

**Chairperson Hylton:** Mr. Schultz, as a Board member, I often received such emails, and to be perfectly honest, I don't open them. But what kind of messaging can we put out there to prevent this? These are often coming from folks who should know better. And there's no longer even the time-lag it takes to open an envelope. These things just come at you. So I'm trying to see if there's some information or direction we can put on our website to inform the public. What kind of direction would you give to those who may want to provide the Board with information? What is the procedure? Would they just email you alone?

**Mr. Schultz:** I think putting something on the website that explains this is a very good idea. We could put that together. My understanding is that, except for you, the Chairman, who is a public servant, the contact information for the Board members is not public. When someone wants to contact the Board or any of its members, it should be done through the Board staff. Whether they want to contact all of you, or some of you, we are your front office for that communication. And to be specific, if you're

contacted outside that forum about a pending application, Board members really should not and cannot consider those things.

**Chairperson Hylton** added that Mr. Roche is also a public servant, and stated that, in general, if someone wants to address the Board, there is a general email address for the Loft Board, and it should be done through contact with the Loft Board staff and/or Executive Director.

**Mr. Schultz** reiterated that information that could be considered ex parte or adding evidence to the record cannot and would not be distributed. Board members were advised that, if they receive such information, they are not to review or consider it. Paying attention to subject lines and/or headings can forestall reading any further, and the item should be forwarded to the Executive Director, who will advise how it should be handled from there – either ignore or, if it isn't of a prohibited nature, the Executive Director can consult with the Board to determine whether or not it is something they want to see and consider at that juncture. It is certainly within the Board's discretion to say they don't want to see anything last-minute, even if it is legally permissible. It could also be reasonable for a Board member to say, if someone else saw it, they, too, want to see it. Each situation may elicit different reactions.

**Mr. Schultz** wondered if there were any thoughts on such scenarios, at least concerning information that is permissible under the law, in terms of the desire to see or not see it. This would help the Executive Director's decision about what to do next – whether to show it to Board members before a vote, after a vote, etc.

**Chairperson Hylton** asked Mr. Schultz for clarification of his question.

**Mr. Schultz:** If a communication is sent to a fraction of the membership, and it is not ex parte, it is not adding evidence, do the Board members feel that the Executive Director should tell those Board members who received it to ignore it, or share such communication with the rest of the Board? It depends on the communication. It might depend on a lot of circumstances, so the easy answer to give right now is your Executive Director will make the best decision they can in the given circumstance. That might start to lay some groundwork for when this and not that. Again, we're speaking about times when the law doesn't lead us to a clear answer.

**Chairperson Hylton:** So, hypothetically, I get an email from someone about a case. The case is on for tomorrow, and I'm the only one copied on it. I opened it. I accidentally read it. I realize it's about a case that's on for tomorrow. I was supposed to have read the case. Obviously, it's ex parte. Should I be open about this and let everybody know that this has come to me, and I've read it? Or do I say to you, okay, I've read it, so now everyone has to actually see what I've read?

**Mr. Schultz:** To be nitpicky for a minute, what you described wasn't necessarily ex parte. It's ex parte if it comes from one party (in the case) and doesn't copy the other party. But what you got was unsolicited, and it came only to you, and you stopped as soon as you noticed it was Loft Board related. There's some amount of information in your head, and you are certainly obligated to share that with the Executive Director and await direction. Depending on what kind of content it is, I think one of the likely outcomes of that is you will be told not to look at it any further, to throw it away, and not to consider it. And then there will be some version of disclosure to the rest of the Board that you received the communication and how it was handled. And again, the best-case scenario is everyone is stopping just as soon as they notice it has anything to do with the law. That protects us from challenges that might come after a vote on a matter where this happened.

**Chairperson Hylton:** And I imagine this could potentially lead to the Board member having to recuse himself from voting on the case, correct?

**Mr. Schultz:** I won't say it's impossible. We can research precisely when that would be required. I don't have that level of detail, but I'll find out. It's a very good question. I shouldn't say required, although it might be strongly advisable, versus more discretionary. It probably comes down to how deep that Board member got into the material. If they got the email, they saw the address on the title, and they forwarded it on without reading any further, I think I could safely advise that person to vote. If they got to the end of the letter and realized what it was about, it may be inadvisable to vote on that. I can certainly try to find a better answer.

**Chairperson Hylton** asked if there were any additional comments or questions for Mr. Schultz.

**Mr. Roche:** Just for the record, I actually do have some additional questions, but I think I'm going to hold off for now until I figure out how I want to phrase them, because it ties into the unique role that



both the Chairman and I have as civil servants, who have to view things through two separate lenses sometimes. I'm going to hold off, and we'll circle back with you on some of those concerns at another time.

**Mr. Schultz:** Thank you, Mr. Roche. I got so focused on the Chairman's role working with DOB, that I lost sight of the fact that you are in a similar, if somewhat different situation. So that does raise some questions that I'm going to work to get an answer to.

One of the things Chairperson Hylton mentioned was putting something on the website. But I want to take this opportunity to address the audience we have today. Hopefully the conversation we had today will help if you're wondering how to message, how to communicate properly, with the Board. Our practitioners, our interested parties, our affected parties, our applicants should all take notice that these unsolicited communications may not be appropriate, so we are going to be working to safeguard against anything inappropriate or prejudicial.

**Chairperson Hylton:** I suppose you can also just email the Executive Director with any questions, and maybe it's a good idea to copy everyone on that correspondence. Board members, do you have any questions for Mr. Schultz? Okay, thank you. Is that all, Mr. DeLaney?

**Mr. DeLaney:** I feel like we've kind of started to scratch the surface. I don't know if it's the ending.

**Chairperson Hylton:** But is that all you wanted to say for today, or do you want to go further?

**Mr. DeLaney:** Maybe no one on the staff is prepared to do this, but to my recollection, the current rules do describe what Board members are supposed to do in terms of discussion of cases among themselves. At some point, a summary of that and a discussion might be helpful.

**Chairperson Hylton:** You mean amongst Board members?

**Mr. DeLaney:** Yes

**Chairperson Hylton:** I think as long as there's not a quorum, I don't believe the Board members are prohibited from discussing a case with another member. Mr. Schultz?

**Mr. Schultz:** Until it's been presented to the Board. After an application to the Board and until it's been presented to the Board, there's not supposed to be communication between Board members or between Board and staff, except between us, because you're the Chairperson.

**Chairperson Hylton:** But when you say, presented to the Board....Once the Board has been distributed the material, it is now presented to the Board, correct? It's before the Board?

**Mr. Schultz:** In my time, that has been the interpretation I've come to understand.

**Chairperson Hylton:** Otherwise, this discussion wouldn't even be questioned here, because if it's... .You couldn't discuss anything prior to the Board meeting, if it wasn't during that period of time....

**Mr. Schultz:** About an active application. Anything is a big word, so I just want to define it. About a submitted application. And I guess one of the reasons I'm saying when you get something, send it to us, is because we'll have answers to those questions -- whether it's about an application, if and how it's been presented to the Board, and so on. Generally speaking, a letter about a Loft Law concern or even rulemaking isn't really invoked by this. It's applications.

**Chairperson Hylton:** So, let me make it clear. What I'm asking is, on a Friday evening, when all the materials for the Board members have been distributed to all members of Board, is that when you would consider that it is before the Board? Or would it be at a Board meeting, like today, when you're actually discussing?

**Mr. Schultz:** Once the Board members receive the materials.

**Chairperson Hylton:** It has been my understanding, throughout all the Boards that I've served on, that if two members want to speak about a case to each other just for clarity or whatever -- they are allowed to, as long as there's no Board meeting, which is defined by a majority of the Board being present. Is that the case here as well?

**Mr. Schultz:** I will work to get an answer to that.

**Chairperson Hylton:** Okay. Thank you.

**Mr. Schultz:** But until further notice, maybe don't, because I don't think you are. Maybe you are. I don't know that to be happening.

**Chairperson Hylton:** It's just been my experience that I could pick up the phone, for example, and speak to Heather about a particular matter if I need some understanding on something that she may have expertise on. That's been my understanding.

**Mr. Schultz:** For who?

**Chairperson Hylton:** For all of us. But I couldn't just pick up a case that has not yet been before the Board, that hasn't been decided, and start discussing it.

**Mr. Schultz:** Certainly. I don't want to go on record with an answer right now.

**Chairperson Hylton:** I understand. You're being cautious, and that's good. Do we have any other questions? Mr. DeLaney?

**Mr. DeLaney:** In all candor, I guess this discussion, for me at least, has raised more questions than it has provided answers and suggests that maybe this is an area that we should continue to give some thought to and discuss periodically. One could say, well, how do they handle this over at OATH? But of course, at OATH, you've got individual judges and a large administrative support group, which is kind of different than having nine seats on a Board making a decision by majority vote. And presumably, there may be different boundaries for people who are public officials versus Board members, who represent an interest group, versus public members. Just as we have suffered through great detail in determining a quorum based on what type of member is present or absent, so it seems to me there's more work to do here.

**Chairperson Hylton:** Absolutely. There's a lot of different consideration. How would you compare? I guess it depends on the situation you're in. But let me just say that OATH has a Board similar to this Board, that considers appeals and so on. So, they do have these rules similar to what we have, what they can consider as ex parte for those matters that come before that Board. It's similar to what's

happening here now. But there are also a lot of other Boards. So, Mr. Schultz, you have your work cut out for you.

**Mr. Schultz:** From my point of view, I agree Mr. DeLaney, we raised some great questions. I tried to answer some of the questions about unsolicited communications, themselves, which is what I was prepared to focus on. It went into some other areas I think are questions ripe for answers -- as far as defining what's legally improper; what the Board's preferences are as far as the practice, now; and as you said, we no longer have the benefit of the delay of postage. Unsolicited communication can also come well before there's a matter on an agenda, and that's a different scenario, which leads me to just one more comment. I would guess that often people are unwittingly copying public members, and/or they might think it's right to copy the Board member who represents their interest. Maybe they just need to be told, please don't do that, and we will do that as Board staff. There could be a time when we may need or want a Board member to join us in that communication, so that there's clarity across that interest, so they don't think we're just trying to keep them away. That hasn't specifically happened. But I think that was the last note I wanted to put out here today.

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## THE CASES

### Appeals and Reconsideration Calendar

Chairperson Hylton introduced the first case.

	Applicant(s)	Address	Docket No.
1.	114 West 14 Realty LLC	112-114 West 14th St. NY, NY	R-0383
<i>On March 27, 2020, Owner filed a reconsideration application alleging the Loft Board committed errors of law and denied due process in the underlying LBO 4944. Owner claimed the Loft Board committed an error of law when it failed to deregulate the unit because the IMD tenant abandoned the unit, however, no abandonment application was ever filed with the Loft Board. Owner claimed the Loft Board committed an error of law when it invalidated an alleged prior sale of rights and improvements, however, Owner failed to prove a valid sale existed because Owner could not establish the prior tenant used the unit as her primary residence at the time of the purported sale and therefore, she was not the protected occupant at the time of the purported sale. Owner alleges the Loft Board committed an error of law when it found the current Tenant was the protected occupant of the unit because he is not the type of tenant the Loft Law is intended to protect based on his alleged perjury, misrepresentations, and intentional withholding of information. However, the current Tenant met the requirements for protected occupancy pursuant to 29 RCNY § 2-09(b)(4) and the rule does not require additional</i>			

*showings or impose any additional restrictions. Owner also alleged denial of due process, however it failed to provide evidence to support this claim. This Order further modifies LBO 4944 to reflect the correct milestone increase of 8% for Owner obtaining an alteration permit in 1996 and adjusts the maximum permissible rent for the unit and the rent overcharge award accordingly.*

**Mr. Clarke** presented this case. Before starting, Mr. Clarke made note of some edits to the Proposed Order. The first two were on page 3 below ANALYSIS I Owner Failed to File an Abandonment Application. The word “prior” should be inserted before the word owner. So, it should read, Prior Owner Failed to File an Abandonment Application. Below that, in the second sentence, below Roman numeral number one (I), it says, “Owner states that it is undisputed that the Ms. Hoff...” That the should be removed. Finally, at the bottom of page 5, in the paragraph right above Roman numeral three (III), the second sentence, which begins, “The Loft Board agrees...” should be stricken. And in the following sentence, “Furthermore” should be replaced with However.

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

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

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

### The Vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Hylton

**Members recused:** 0

**Chairperson Hylton** introduced the next case.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
2.	99 Sutton LLC	99 Sutton St., BK, NY	AD-0110
<p><i>The owner of the building appealed an administrative determination dated June 11, 2020. In the administrative determination, the former Executive Director rejected sales filings, which the owner had submitted for Units 218 and 419 on April 25, 2019 and May 23, 2019, respectively, because the owner had failed to adequately substantiate the alleged sales of Loft Law rights for both units. On appeal, the owner contends that the former Executive Director committed an error of law and that the facts found in the administrative determination are not supported by substantial evidence in the record.</i></p> <p><i>The former Executive Director did not commit an error of law. However, the former Executive Director’s rejection of the alleged sales is not supported by substantial evidence in the record. The owner’s appeal is granted, and the administrative determination is reversed to the extent that it rejected the alleged sales of Loft Law rights and related sales filings for Units 218 and 419.</i></p>			

**Ms. Lee** presented this case.

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

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

**Mr. Hylton** asked if there were any comments on the case. (None).

**The Vote**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Hylton

**Members recused:** 0

**The Summary Calendar**

**Chairperson Hylton** introduced the two cases on the Summary Calendar.

	Applicant(s)	Address	Docket No.
3.	Matter of Gerding	35 Broadway, BK, NY	TR-1396; PO-0119
<p><i>Jeanine Gerding and Taliah Lempert, the residential tenants of units 4B and unit 3 respectively, filed a joint application for Loft Law coverage of their units and a joint application for protected occupancy status for themselves. Owner opposed the applications. After the matter was transferred to OATH for adjudication, both applications were amended to add Nidhish Sasi, the residential tenant of unit 4C as an applicant. The parties ultimately reached an agreement whereby, among other things, the parties agreed the Building is subject to the Loft Law and that each applicant is the protected occupant of their respective units. Loft Board records indicate the Building is registered and the applicants are listed as protected occupants of their respective units. The applications are deemed resolved.</i></p>			
4.	Matter of Lanzano	49 West 19th St., NY, NY	TA-0286
<p><i>Louis Lanzano, the residential tenant of apartment 2 on the first floor of the Building, filed a rent dispute application alleging rent overcharge. The owner opposed the application. After the Loft Board transferred the application to OATH for adjudication, the parties reached an agreement whereby, among other things, the parties agreed upon the legal rent for the unit and the Mr. Lanzano agreed to withdraw his application with prejudice. The application is deemed resolved.</i></p>			

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

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

**Mr. Hylton** asked if there were any comments on these cases. (None).

**The Vote**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Hylton

**Members recused:** 0

**The Master Calendar**

**Chairperson Hylton** introduced the one case on the Master Calendar

	Applicant(s)	Address	Docket No.
5.	Alexander Kosolapov	58 E. 11th St., NY	TN-0222
<p><i>Tenant and Owner entered into a stipulation in which Owner acknowledged that it violated the legalization timetable and agreed to obtain a residential CO on or before an agreed-upon deadline of December 31<sup>st</sup>, 2015. In the stipulation, Owner also agreed to deposit \$20,000 in escrow, and to release the escrow funds to the Loft Board if no CO was obtained by the deadline. Owner further agreed to deposit an additional \$100 per day into the escrow fund for every day past the deadline that it failed to obtain a CO.</i></p> <p><i>Owner failed to obtain a CO by the deadline. Tenant argued Owner was liable for a \$192,800 fine to the Loft Board under the terms of the stipulation. Tenant further argued that pursuant to 29 RCNY § 2-01(c) and § 2-11.1(b)(1), Owner is subject to a \$5,000 fine for missing the 7-B compliance deadline, an additional \$5,000 fine for missing the CO deadline, as well as a \$17,500 fine for failing to take reasonable and necessary action to obtain a final CO pursuant to § 2-01.1.</i></p> <p><i>The Loft Board accepted the ALJ's report and recommendation and fines the owner \$10,000. Although the parties had agreed to a higher penalty in the stipulation, that penalty is unenforceable by the Loft Board, as it is an administrative agency that only possesses the powers conferred to it by statute. Furthermore, prosecution under § 2-01.1 is limited to Loft Board-initiated enforcement proceedings. In accordance with the fine schedule listed in § 2-11.1, the Order fines Owner \$10,000 for violating its legalization timetable obligations, which is the maximum permissible fine under the rules.</i></p>			

**Ms. Lin** presented this case.

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

**Ms. Roslund** moved to accept this, and **Ms. Rajan** seconded.

**Mr. Hylton** asked if there were any comments on the case.

**Ms. Roslund** asked if Mr. Schultz could give a brief statement about the Enforcement issues concerning this building.

**Mr. Schultz:** There is action not being taken because it's tenant-initiated, but there are provisions in the rules that allow the Loft Board to initiate Enforcement proceedings against buildings in this situation. So, this matter has been referred to the Loft Board Enforcement attorney and is under review.

**Mr. DeLaney:** I think the public is entitled to a little more background on this case. This particular filing by the tenant for violation of the legalization timetable, finding the owner not in compliance, was filed more than seven years ago, in July of 2014, and the stipulation alluded to briefly came a year later, in



August 2015. “Tenant and Owner entered into a stipulation of settlement... Owner acknowledged it violated the legalization timetable under the Loft Law. Owner agreed to deposit with its attorneys \$20,000 in escrow...Owner agreed that if it failed to obtain a residential Certificate of Occupancy... on or before December 31, 2015, the Escrow Funds would be released to the Loft Board,” not the tenant. “Owner further agreed that if no residential Certificate of Occupancy is obtained by December 31, 2015, it would deposit an additional \$100 per day in the escrow fund until a residential CO is obtained.”

Skipping a few paragraphs: “Tenant argues that because the Owner had failed to obtain a residential C of O by December 31, 2015, it must abide by the terms of its 2015 Stipulation and release the Escrow Funds to the Loft Board.” Sounds pretty fair to me, editorializing. “Tenant argues that the escrow fund should now total \$192,800, which represents the original \$20,000 that had been deposited plus the additional penalty of \$100 per day after December 31, 2015. By tenant’s calculation, 1,728 days have passed since December 31, 2015, and the escrow funds should have been increased by \$172,800. The tenant also argues that there should be a \$17,500 fine for failing to take reasonable and necessary action...”

This is just such an extraordinary state of affairs, and I appreciate that we're thinking about taking a look at Enforcement opportunities. I had written an opinion, cited by the OATH judge, that I thought was a good case for specific performance back when the original fine was put down, back in the prior cases. There’s a long history here. I just think this is one lucky owner. And I spared the Board members in prior legal discussion my usual concern about the Loft Law neither accepts nor rejects terms of the stipulation, but the fact that this stipulation is somehow not enforceable....I understand the reasoning, but I have to say, I don't get it, and it doesn't, in my view, pass the smell test.

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

### The Vote

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

**Members dissenting:** Mr. DeLaney

**Members abstaining:** 0

**Members absent:** Mr. Hylton

**Members recused:** 0

**A brief intermission**

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**RULEMAKING**

**Mr. Schultz** informed the Board and public that Christian Hylton has been unable to access video, but he has been present via telephone.

**Chairperson Hylton** turned the meeting over to Mr. Schultz and Mr. Clarke.

**Mr. Schultz:** I have very few items to cover, but before starting, I want to correct one thing from the last meeting. I finished by thanking Ms. Lin, and Mr. Clarke, and Ms. Lee, and Mr. Argov, but I failed to mention Mr. Silverstein, who, in the short time he's been with us, has been a tremendous help to me in preparing, especially for that November 4<sup>th</sup> meeting. So, I want to take a moment to mention him and his excellent help throughout this whole process, and all the others mentioned are included once again in what we're going to discuss today.

We start on page 115 of the document shared with the Board members relating to rulemaking, titled Rulemaking, Draft Board Member Version, Clean Draft Markup, November 12<sup>th</sup>, 2021. A corresponding version is available to the public that will match the pages.

Page 115 is a section we discussed on November 4, and I said we'd revisit it. There was some question about whether or not the word tenant should be capitalized there, and Mr. DeLaney offered some insight about prospective incoming tenant. The staff and I looked at it, and we do think the capitalization of tenant is appropriate there. I think un-capitalizing it might create undue confusion or just look like an error. The words before it, "prospective incoming," create what we think is all the context that word needs to give it proper meaning. If there are no comments on that, I'll continue.

Next is page 165. We indicated last time that we'd revisit this with a recommendation to improve clarity. And essentially, the recommendation is to include after "{insert date}" the language, "the effective date of this amended rule," which is consistent with other portions and also provides the context the final draft will need to know what date goes there. And that is appropriate by context because the preceding section references September 11, 2013, which is the previous effective date of this amended rule.

I hesitated to confirm that last time because I just hadn't looked at it closely enough. But with some context review...

**Mr. DeLaney** asked for clarification.

**Mr. Schultz:** We're inserting language after "insert date." There is no explanation of what that date is supposed to be, so we would be adding it, as it has been done in other portions of the rules, using the same language. So, we wouldn't be changing it. We'd be adding, "the effective date of this amended rule" after "insert date," which is the way it's done in other parts of the rule.

**Chairperson Hylton:** Except the other parts of the rule don't mention....It just inserts a date.

**Mr. Schultz:** Are you referencing section (C) immediately above? That's the anomaly. Other references to September 11, 2013, include that additional language. Its absence above is exactly what begged this question. More significantly than normal. If you do a search for September 11, 2013, you'll see it referenced consistently and accurately as the effective date of the amended rule. See page 154, for instance. And this is language that is unchanged.

**Chairperson Hylton:** And you didn't want to change (C)?

**Mr. Schultz:** No, it's unnecessary. That section is not being changed. That portion is not being changed. I'm also trying to do no harm with more changes, because more conversation on changes elicits more conversation, which elicits more delay, which is what we've done in many months.

**Chairperson Hylton:** So, Mr. Schultz, just to make clear, what will go in here. Say the rule passes January 1, of 2022. Then January 1, 2022, would be the effective date of this amended rule for an IMD unit, right? That's how it would read?

**Mr. Schultz:** Followed by 281(5).

**Chairperson Hylton:** Okay

**Mr. Schultz:** Now to page 169. I'm raising this because Law Department raised it. Let me begin by saying I'm inclined to think that the entire option A or option B here is inconsequential. But because I'm not sure, and because it's a question for another day, I'm recommending there be no change to this language. Law Department has suggested that it read, "insert date, which is ninety (90) days following the effective date of this amended rule." That sounds familiar because we just talked about it. I am suggesting that it remain the way it looks in front of you simply because it is mirroring the language that was used previously.

If you look at section (iii) above, it refers to it as a section and not an amended rule. I'm not sure there's a difference, but I'm not sure there isn't. And so part of what we're trying to do in section two is do no harm, because we have been told, we have decided, that we are going to give it a substantive overhaul at another time. So, I am not suggesting we change it because the language that you see before you there at the end of section four (iv) -- "{insert date}, which is ninety (90) days following the effective date of this section" -- would remain consistent with what's existed before. And so, if there's a problem, if there's a difference, that will be figured out in the next stage of substantive review.

So, to recap: Leave the last sentence on the entire page as it is now. And that is the last rulemaking comment. As for an update on the Law Department: The responses to the Law Department's comments incorporating everything we've discussed have been submitted to the Law Department, including the three we just discussed, with the caveat that they still need to be looked at. But the version I just presented was given to them as, I don't want to say presumptive, but with the asterisk of, I've got to talk to the Board because we hadn't talked about it yet. But I didn't want to delay the Law Department's review of everything.

So, the Law Department's currently looking at everything we've discussed, reviewing our responses to their responses. That doesn't mean it's over yet. This Board hasn't yet voted on a new, clean version. And we would hope to do that once Law Department and the Loft Board, through its staff, have come to a meeting of the minds on a few of the things that are still up in the air; things where we didn't take their suggestions. So, there will still be another version to review, to be voted on.

**Mr. DeLaney:** Just to understand the significance of that. At this point in time, you have some additional open items you hope to resolve with the Law Department. Once those are resolved, it comes back to us for one final review, then we would vote to publish it for comment, correct?

**Chairperson Hylton:** I hope it's one final review, Mr. DeLaney.

**Mr. Schultz:** I like the optimism. I wasn't going to challenge that.

**Mr. DeLaney:** And at this point, is it fair to say that the staff's position would be that no other substantive issues would be entertained in this round of rulemaking? I know there are things we want to go back to and look at in section two, some of which are small and relatively ministerial; some might be larger. But that's all going to wait for another round of rulemaking in the staff's view? Is that correct?

**Mr. Schultz:** Yes, the priority is to get the things that make the 2019 rules effective going. The other things that make it just a cleaner, a nicer piece of law, and maybe even some substantive things in section two would be looked at, substantively, at that time. When you mention open items, I want to be clear. Everything that's being talked about is on this version that you've seen, and we have talked about publicly.

**Mr. DeLaney:** So, what most of us would consider legal technicalities, that's up to you and the Law Department to resolve. Then at that point, we would move forward in a timely fashion. Whereas if, for example, I had significant concerns about an area that we're already amending, that would be whole new territory, and the Board staff position would be later for that.

**Mr. Schultz:** Right

**Chairperson Hylton:** For now, the Chair's position is we need to move forward. Unless, of course, the Board wants to consider something. But the Chair's not going to entertain any more changes except what's before us right now.

**Mr. Barowitz** asked the Chair and Mr. Schultz if they have any idea when the document may come back from Law Department.

**Mr. Schultz:** I would be hesitant to posit a guess, other than to say that if I haven't heard anything by the end of the year, I'd be very politely knocking on the door. By early-mid December, I'm hoping we can continue that conversation.

**Mr. Barowitz:** The date we will insert will be the date that it comes back to us from the Law Department?

**Mr. Schultz:** No. The date that will be inserted will be the date after the public comment period.

**Chairperson Hylton:** It's what is called Final Rule. It's the date the rule takes effect.

**Mr. Barowitz:** Are we going to have an open meeting?

**Chairperson Hylton:** Yes, absolutely. This back-and-forth with Law is just to get their approval, so we can publish for open comments. At that point, the public will be able to express themselves, and you will also, as a Board, be able, if you're willing, to make changes in response to public comment. You can make those changes, but then that will prolong the process. But certainly, the process is open. And after public comment is over, it goes back to Law for final approval, and then back to you for a vote to make it Final Rule for publication. And generally, the rule takes effect thirty days after we have published in the City Record, I believe.

**Mr. DeLaney:** Just to be clear, best-case scenario, we get this back from the Law Department in time for the January meeting. We vote it out. The public hearing would take place in either February or March?

**Chairperson Hylton:** It probably would never be February, because you need to meet on it and then send it back to Law for further review and final approval. Then it comes back to you again, and then

you'd have a public hearing. So, I would say, really, the earliest now would be March. If everything is as you say.

**Mr. DeLaney:** I don't know about the rest of you, but I'd love to be done with this. If you and the Law Department agree on everything, and it comes back to the Board and gets reviewed in January, if we don't have any changes, it would get published, and a hearing date would be set, right?

**Chairperson Hylton:** That depends on whether, in January, the Law Department sends it back without any comments; as if saying, I finally approve this.

**Mr. Schultz:** Taking Mr. DeLaney's premise of best-case scenario, I think meaning that the Law Department comes back with exactly what we have here; no surprises for the Board or so minimal news that they live with it, and it can be covered in one meeting -- in theory, I do think that could happen. I'll emphasize theory without being pessimistic. The good news is that this time between meetings, between now and January, can be used by us to go back and forth and try to work out as much as we can, if there are things to be worked out. None of this is brand new. A lot of these questions have been circling between us and Law Department for quite a while, since before I started.

**Chairperson Hylton** asked if there were any additional comments or questions. As there were none, he turned the floor over to Mr. Schultz for some additional news.

**Mr. Schultz:** It's my sad duty to announce that this is Deputy Director Lin's last meeting. She is moving on from the Loft Board. I'll probably get tongue-tied because this won't be easy. It certainly won't be easy after she's gone. Before I arrived, she served as the Acting Director, and as Director, I know how hard that is. And she did it in the middle of a pandemic; she did it when staff was very, very lean, and when this Board had such important work that you've really got to hand it to her. Then after that trial, I show up, and she had to train her new boss, which is a whole other trial for her. We're very lucky that she's so smart, so capable, so hard-working, that the Board's business continued through all that. I will just thank her and express my appreciation to her with the most sincerity I can muster. I couldn't have made it to this point without her. She really was the rock, and such an intellectual. These are hard things that the Board does, and, Ms. Lin, you wrestled with them every day for a long time without a lot of support. And so, kudos and thanks. And you will be dearly, dearly, dearly, missed.

**Chairperson Hylton:** Thank you, Mr. Schultz. Right before the pandemic started, Ms. Lin came to the Board and, in the military where I served, I think this is called baptized-by-fire, where you're thrown into a situation and just have to perform. And I tell you, she really stepped up, not even knowing what Loft Board meant before the interview a couple weeks before. And then being asked to step up as the Acting Executive Director, and I think Tina, you really stepped up surprisingly, to everyone. Not that it was surprising, because we knew you were quite capable, but quite unexpectedly, that a new person would come on and just step into that role like that, having to learn so quickly and be able still to perform to such a high degree. And so, we thank you for the time. You led us through a very difficult time in the city and on the Board, when we had to do this through COVID, and also through these remote meetings that we have now. You put it together well and really stepped up to the plate. So, we really appreciate you. We appreciate your time with us. You've taught the Board a lot that we will use in times to come. I really appreciate your service to the City of New York and to this Loft Board. So good luck.

**Ms. Lin:** Thank you very much. I wasn't going to say anything, but I feel like I have to. I could not have done this without the staff. I'm not an effusive person, but this is, hands down, the best staff I've ever seen. They're intelligent, they're hard-working, and just such lovely people, and I cannot say enough good things about the Loft Board staff. That's all. Thank you everyone.

**Ms. Roslund:** Yes, thank you, and all the best in your next endeavor.

**Mr. Barowitz:** You've been absolutely terrific, very smart. Your analyses have been great. I'm glad that you've been here, and I wish you very well.

**Chairperson Hylton:** Just to set the record straight, Ms. Lin is leaving on her own accord. She's leaving city government. It's really a pleasure to have had her service, especially here in the Loft Board. Thank you, again, Tina, and good luck.

At this time, I also want to wish the Board a happy holidays and also happy New Year, because I won't see you until then, at least. Unless the Law Department comes back with this rule, and we need to get this done really quick. So, I appreciate your time, and happy holidays.



New York City Loft Board: Minutes of Public Meeting: November 18, 2021

This will conclude our November 18, 2021, Loft Board meeting. I want to say first of all, happy Thanksgiving. You and your families, please stay safe. Our next public meeting is scheduled for January 20, 2022. The Governor's suspension of the in-person requirements of the Open Meetings Law is in effect until January 15, 2022. Therefore, at this time, we do not know if the meeting will be held in person or virtually. Information will be updated on the Loft Board's website and also in email updates to the Loft Board announcement Listserv. I would encourage the public, if you have not yet signed up for the Listserv, that form and ability to do so is on the Loft Board's website, so you can stay in touch with what's happening. Board members, please remember to sign and email in your attendance sheets.