

MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

July 21, 2022

The meeting began at 2:30pm

Attendees: Elliott Barowitz, Public Member; Charles DeLaney, Tenants' Representative; Christian Hylton, Owners' Representative; Heather Roslund, Public Member; Samira Rajan, Public Member; Nicole Oddo, Public Member; Richard Roche, Fire Department's *ex officio*; Guillermo Patino, Chairperson Designee

INTRODUCTION:

Chairperson Patino welcomed those present to the July 21, 2022, public meeting of the New York City Loft Board and explained that the meeting was being held via teleconference due to the coronavirus emergency, pursuant to legislation S.50001/ A.40001 signed by Governor Hochul. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

VOTE ON MEETING MINUTES:

Chairperson Patino: Because there were not enough votes to adopt the May meeting minutes at the last meeting, we're going to first turn to the minutes from the May 19, 2022 public meeting.

May 19, 2022 Meeting Minutes

Chairperson Patino asked if there were any comments on or corrections to the May 19, 2022 minutes. As there were none, he asked for a motion to accept the May 19, 2022 meeting minutes and for a second.

Mr. Hylton moved to accept the May 19, 2022 meeting minutes, and **Ms. Roslund** seconded.

The vote

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

Members dissenting: 0

Members abstaining: Ms. Oddo

Members absent: 0

Members recused: 0

June 16, 2022 Meeting Minutes

Chairperson Patino asked if there were any comments on or corrections to the June 16, 2022 minutes. As there were none, he asked for a motion to accept the June 16, 2022 meeting minutes and for a second.

Mr. DeLaney moved to accept the June 16, 2022 meeting minutes, and **Mr. Hylton** seconded.

The vote

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

Members dissenting: 0

Members abstaining: Mr. Barowitz, Mr. Roche

Members absent: 0

Members recused: 0

EXECUTIVE DIRECTOR'S REPORT

Personnel

Ms. Cruz introduced two new staff members: Renee Storey's first day at the Loft Board was July 5th. She comes to us from the NYC Taxi and Limousine Commission, where she worked for two and a half years. Renee, welcome to the Loft Board team. I'd also like to welcome Theodore Torry, our legal intern who is working with us for the summer. Theodore is transferring to Fordham Law school in the fall.

Registration:

The deadline for the annual registration was July 1st. So far, 210 building owners have complied and filed their annual registration. Ten of the 210 registration filings have not been processed due to errors either in the paperwork or in the payment tendered. The team is working with these owners to correct the filings. We are still receiving registration filings every day. In fiscal year 2022, we collected approximately \$1.8 million in registration and other fees.

Enforcement:

As you may recall, in April the staff issued ten violations against owners pursuant to § 2-01.1 of the Loft Board's rules. It's what we call the "reasonable and necessary" rule. We issued four violations for failure to file an Alteration Application; two violations for failure to renew permits to do the legalization work; and four violations for failing to renew the Temporary Certificate of Occupancy. Owners had thirty days to cure the violation. Unfortunately, none of the building owners cured. We have drafted nine administrative determinations. The fines imposed total more than \$150,000. The determinations will be served early next week. For the remaining violation, we will request additional information before issuing an administrative determination. Now that Renee is on board, we're working on additional enforcement notices for other buildings, and on initiating a proceeding for a housing maintenance violation.

Litigation:

Since the June meeting, we've received one decision. In that case, the tenant in a protected occupant case sought enforcement of a subpoena. The tenant sought the testimony of the prior occupant, from whom the owner alleged to have purchased their Article 7-C rights. The court granted the petition and so ordered a subpoena requiring the former tenant to appear.

Meeting with Architects on the Narrative Statement Process:

On June 21, Stephan and I met with several architects representing both owners and tenants. I will now turn it over to Stephan to discuss the highlights of the meeting.

Mr. Clarke: On June 21st, 2022, we met with eight architects, representing tenants and owners. We explained the importance of the Narrative Statement process to the architects and expressed our desire to improve it. To that end, we want to update the forms with new information and would like their input. Some of the highlights of the discussion we had with these architects are as follows:

1. Architects expressed concern about the delay in the process. When they sit down for the original Narrative Statement conference, or even at a conference for the amended plans, they come with architectural plans. Then, at the actual conference, after the tenants give their input, they have to go back and amend the plans. The owners are concerned about the delays caused by the multiple revisions. Some of the architects suggested having multiple conferences, and some said that before filing, some of the issues should be resolved in the context of the Narrative Statement process before actually filing with the DOB. The Executive Director and I expressed some concerns.
2. Architects commented on how long it takes to schedule the conference. One of the reasons for this is the Loft Board will set a date, but various parties will be unable to make that date, so it can take quite some time to get that amount of people on the same page to attend one conference. Some architects suggested there be many separate, miniconferences to allow for tenants who are not available to attend.
3. Some of the owners' architects expressed a lack of goodfaith in the negotiations. Tenants often come back with additional demands after an issue is resolved.
4. Additionally, some of the architects said that when the architects for both sides work together, it seems to be a smoother process. But sometimes, when the attorneys get involved, it becomes a bit more hostile.
5. Some of the architects suggested we include specific deadlines for when each party is to respond with their comments and have some type of enforcement for failing to meet those deadlines.

Finally, they thought the meeting was productive, and some requested that officials of the Department of Buildings attend future meetings.

We advised them that among other important modifications being made to the Narrative Statement form, we are requiring the architect to certify that the plans are based on inspections that they themselves, or someone on their staff, have done. We've also included columns on the Narrative Statement forms to allow for some cross-referencing between the plans and the actual Narrative Statement. We scheduled another meeting date.

Mr. DeLaney had some questions for Ms. Cruz: regarding the registration process, you've received registrations from 210 buildings. So about how many buildings have not responded so far?

Ms. Cruz: We have 325 buildings in our jurisdiction, so 115.

Mr. DeLaney: So, at some point in the next month or two, you will be starting to look at failure of owner to register?

Ms. Cruz: Absolutely.

Mr. DeLaney then asked for an update on the rules.

Ms. Cruz: When the Law Department returned the rules to us, they requested that Stephan and I both go through them line by line. Stephan has finished his review, and I am about halfway through my review. I'm only looking for minor items -- making sure everything's underlined, bracketed, and the like.

Mr. DeLaney: It was around this time in 2016 that Helaine Balsam took over as Executive Director and announced her intention to look at the rules. That's now six years ago. Part of the necessity for new rules was also prompted by the Loft Law amendments that were signed into law three years ago by then Governor Cuomo. Do we have any sense when we're going to be able to put these into effect?

Ms. Cruz: The Law Department is doing their review, and I don't think it's going to take that long, as we haven't really changed much since their last review. I anticipate that probably in the next couple of weeks we'll have everything back, and hopefully in the fall, be ready for hearings.

Mr. DeLaney: And with regards to that, if we are lucky enough to have hearings in the fall, then maybe the new rules could go into effect in late calendar 2022 or early 2023? And there are some significant changes with regards to how we're going to distribute cases -- posting them online, that sort of thing. Has the Board staff, with or without input from other parts of DOB or DOITT, started to take a look at what's involved in that?

Mr. Clarke: Yes, we have started to look at that, and we will be prepared once we get the preliminary approval from the Law Department to start moving forward. The entire procedure is not one hundred percent laid out yet, as we've been focusing most of our energy and our resources on trying to resolve the actual substantive rules. But we will be ready procedurally, in terms of how to implement the rules and get them into effect.

Mr. DeLaney: Good. Thank you. With regard to enforcement, as I mentioned, last month, June marked the 40th anniversary of the passage of the original Loft Law, and I believe we still have some buildings covered under the original law that have not done very much toward code compliance. Is that fair to say?

Ms. Cruz: Yes.

Mr. DeLaney: And while I think it's very helpful that we've sent out ten violations under the "reasonable and necessary" clause, none of those folks have cured, correct?

Ms. Cruz: Correct.

Mr. DeLaney: So, as I've mentioned a number of times over the last probably fifteen years or so, the Loft Law contains very specific language that would enable the Loft Board to seek specific performance in court, where a judge could say, "Okay, Mr. Owner, Ms. Owner, corporate owner, do this by this date, do this by that date, otherwise you're going to be in contempt of court." Is that a reasonable summary?

Ms. Cruz: Yes.

Mr. DeLaney: It's been forty years; we've never used this tool in our toolkit; and we have some remarkable laggards. So, I would like to request of the Chair that we put a discussion of when to employ

this tool on the agenda, hopefully for September, or maybe the Board can just get going on it. But it strikes me as unbelievable that we have not taken up this particular tool.

Chairperson Patino: Yes, I'd be happy to discuss this further.

Mr. DeLaney: I realize it's up to you, Mr. Chair, when to put it on the agenda, but I will provide a written request that we take it up in September.

Mr. Barowitz asked Ms. Cruz about how many buildings of the original 917 are still not legalized.

Ms. Cruz: There are approximately 89 buildings that are in pre-permit stage. This number includes the 281(1), 281(4) and 281(5) buildings. The stats that we have available now, which need confirmation, indicate that there are about fifteen § 281(1) and (4) buildings that are pre-permit stage. These owners have either not filed an Alt 1, filed the Alt 1 but have not started the Narrative Statement process, or if they completed the Narrative Statement process, and we issued an initial cert, they have not pulled the permit. We are taking time in August to take a deep dive into the legalization stats.

Mr. DeLaney: We've got owners who've basically done next to nothing over forty years. I understand there may be one or two of them that are in extremis, but at this point, our failure to utilize this tool that's been in our toolbox untouched for forty years, sends the message that the Loft Board isn't necessarily interested in taking all possible steps, and I'm concerned about that.

Ms. Cruz: Right now, we are just in the beginning stages of enforcement, and we are starting slowly because we've never done this type of enforcement before. My plan is to have, by September, issued notices to start the legalization process to more than just ten buildings. And now we have a much larger stick, in that these fines are hefty, so we have to give this process an opportunity to move forward. Every step of enforcement that we've taken, we have noticed improvement. When I first got here, fifty percent of the buildings were unregistered. We began the FO process, and now we have nearly full compliance. I'm not saying that the "reasonable and necessary" rule is the answer, but it's a process that we spent a lot of time developing, and we've barely started. So, I would also like to see where that process takes us.

Mr. DeLaney: What's the maximum fine we can extract?

Ms. Cruz: Right now, \$17,500 is what we plan to impose, because that's what's in our rules. But it's not just the maximum fine. It completely stops all work in the building. So, if the owner wants a permit to do something in the commercial space, now he has to come to us and not only pay the fine but also make progress on legalization. Right now, we have an owner who is trying to convince us to move forward when he has owned this building for three years and has done nothing. We've said no. We're not going to let you move forward with your other work until you do something to move legalization forward.

Mr. DeLaney: For the newer members of the Board, you're referring to the Letter of No Objection, right?

Ms. Cruz: I'm referring to the Loft Board hold that basically stops everything in the system. I'm referring to, yes, a Letter of No Objection. That means they have to come to us to tell us where they are on legalization, and how they're moving forward, and what they want to do, and how it impacts the tenants if it does.

Mr. DeLaney: Just so my colleagues on the Board are up to speed with this, the Letter of No Objection concept is, "Okay, Mr. Owner, you would like to do some work on the retail space on the ground floor and need a permit, but to get that, you now need a Letter of No Objection from us. And we're not going to give you that until you start making some progress on legalizing the housing units in this Interim Multiple Dwelling." Is that a fair summary?

Ms. Cruz: Yes.

Mr. DeLaney: And that is not a new tool. That was developed by then Board Secretary, Beverly Miller, back in, probably, 2012. So, we've had that tool in our quiver for ten years. I'm just saying, I think the violations are a very good step, but I look down, and there's still that one shiny tool in the toolbox. I don't even know if it's been unwrapped, if the cellophane has been taken off. And my bet is that if we did take one or two buildings -- and with Board counsels' assistance -- pursue specific performance and have an owner deal with a court that says, get this done by this date, that might send a very strong message to some of the other people dragging their feet.

Ms. Cruz: I'm not disagreeing with you. I think it will send a loud message. But I also think that deals with only one building and one owner. However, the efforts we're applying right now, by the end of the year, we hope to have targeted many more owners and buildings. I don't disagree with you. I think it will send a loud message. Yes.

Mr. DeLaney: I appreciate your efforts, and I'll send a letter following up. Thank you for your responses.

THE CASES

The Summary Calendar

Chairperson Patino: There are nine cases on the Summary Calendar. Two protected occupant applications were consolidated with the pending coverage case filed by the same applicants, so the cases are as follows:

	Applicant(s)	Address	Docket No.
1.	Silkaly M. Wolchok, L.P. #1	127 Greene Street, Manhattan	LF-0134
<i>Owner withdrew the application challenging the proposed sale of improvements. The application is deemed resolved.</i>			
2.	470 Manhattan Ave. LLC and Alternate Plan Application for 18 Eckford Street	18-22 Eckford Street, Brooklyn	LN-0028
<i>Owner withdrew the decoupage application. The application is deemed withdrawn without prejudice.</i>			
3.	Juan Olivares	9 White Street, Brooklyn	TA-0284
<i>In a stipulation dated December 2, 2021, Tenant withdrew the rent dispute application with prejudice. The rent dispute is deemed resolved.</i>			
4.	Erin Hudak, James Seward, Robert Thiele, Deborah Schneider, and Christopher Yu	135-139 Plymouth Street, Brooklyn	TR-1094
<i>Tenant-applicants agreed to coverage under MDL § 281(6) and withdrew the application with prejudice. The coverage application is deemed resolved.</i>			
5.	Balin Brandt and Howard Chambers	135-139 Plymouth Street, Brooklyn	TR-1177
<i>Tenant-applicants agreed to coverage under MDL § 281(6) and withdrew the application with prejudice. The coverage application is deemed resolved.</i>			
6.	Miho Teramoto	225 East 134 Street, Bronx	TR-1414, PO-0154
<i>Tenant-applicant withdrew the coverage and protected occupancy applications after owner filed a registration application and listed Tenant-applicant as the protected occupant.</i>			
7.	Raymona Tilliss	225 East 134 Street, Bronx	TR-1429, PO-0174
<i>Tenant-applicant withdrew the coverage and protected occupancy applications after owner filed a registration application and listed Tenant-applicant as the protected occupant.</i>			

Are there any comments on these cases?

Ms. Roslund: There are roughly forty-three units in the building and only twelve of them have been registered. So, in the earlier session, I had asked how we would follow up on the rest of the unregistered units.

Ms. Cruz: We don't usually respond in public session, but I will say that we're not sure of the status of the units. We don't know if they qualify for coverage. We don't have any information about them.

Chairperson Patino asked if there were any further comments on these cases (none). Then asked for a motion to accept cases 1 to 7, and for a second.

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

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Master Calendar

Chairperson Patino: There are six cases on the Master calendar. The three protected occupancy cases were consolidated with pending coverage cases for the building. The first case is:

	Applicant(s)	Address	Docket No.
8	German Valdivia and Eileen Novosel	36 West 56 Street, Manhattan	TR-1354, PO-0079
<i>The Loft Board denied the application for Article 7-C coverage and dismissed the protected occupancy application.</i>			

Mr. Clarke presented this case.

Chairperson Patino if there were any comments on the case (none). Then asked for a motion to accept this case and for a second.

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

The vote

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

Members dissenting: 0

Members abstaining: Mr. Barowitz

Members absent: 0

Members recused: 0

Chairperson Patino: The next case is:

	Applicant(s)	Address	Docket No.
9	John Roche	120 Waterbury Street, Brooklyn	TR-1377, PO-0103
<i>The Loft Board denied the application for Article 7-C coverage and dismissed the protected occupancy application.</i>			

Ms. Cruz presented this case.

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

Mr. Barowitz: Mr. Chair, a few years back we had a building, I think 79 Lorimer Street in Brooklyn, which we passed on, that had a similar situation -- one kitchen for several units and one bathroom. At the time, I mentioned that it's like a Native American Longhouse, where there are whole separate units with only one kitchen and one other facility there. So as a result, I'm going to abstain on this Order.

Mr. Roche: Mr. Chairman, as most will notice that my name is spelled the exact same way, I want to state, for clarity and transparency, that I have no relationship to the John Roche who is a tenant at this location. I'm not familiar with the gentleman whatsoever, and there's no known relationship.

Chairperson Patino asked if there were any further comments on this case (none). Then for a motion to accept this case and for a second.

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

The vote

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

Members dissenting: 0

Members abstaining: Mr. Barowitz

Members absent: 0

Members recused: 0

Chairperson Patino introduced the last case on the Master Calendar:

	Applicant(s)	Address	Docket No.
10	Opera House Lofts, LLC	11-27 Arion Place, Brooklyn	TR-1403, PO-0132
<i>The Loft Board did not issue a final order in this case.</i>			

Mr. Clarke presented this case.

Chairperson Patino asked if there any comments on the case.

Mr. DeLaney: As I stated earlier today, I plan to vote no on this Proposed Order, and I would encourage my colleagues to also vote no. In this case, both sides sought summary judgment, meaning that there will be no investigation by OATH. I understand that the court judge has found the Certificate of Occupancy to apply and ordered the Department of Buildings to amend it. However, I'm not clear how it can happen that the judge accepted the idea that this was a typographical error, and a Certificate of Occupancy was issued for a vacant lot rather than the building.

Mr. DeLaney read from the argument advanced by the tenants' attorney: "... the building is not exempt because the building lacked the final residential Certificate of Occupancy on the base dates applicable to

MDL 281(5) and (6). Rather, the building was covered by a commercial Certificate of Occupancy until September 21st, 2020, when the New York City Department of Buildings issued a new Certificate of Occupancy, certifying the building for residential use. Moreover, to the extent that the DOB issued a residential Certificate of Occupancy for the vacant lot adjacent to the building, said Certificate of Occupancy plainly states it is applicable only to the vacant lot, and neither this tribunal nor the New York City Loft Board possess the jurisdiction to modify or correct the Certificate of Occupancy.”

Initially, the owner filed a no-work application. I’m not sure I have the terminology a hundred percent correct. A different Certificate of Occupancy number was issued; then the original was corrected. Whether this was a typo or something of greater seriousness is something I think is precisely the reason the Loft Board was created -- to resolve controversies -- and is credited with having the expertise to do so. It would seem to me appropriate that both sides at least have the opportunity to present their case to the OATH ALJ rather than grant summary judgment to either side. We do have a body of expertise. In the quasi-legal pre-meeting, some new information about this building was shared, and I guess when it comes down to a Certificate of Occupancy, I'm reminded of Groucho Marx's famous question: “Who are you going to believe? Me or your own eyes?” And in this case, to me, that translates into: “Who are you going to believe? The Department of Buildings or your own eyes?” I choose to believe my own eyes. I plan to vote no.

Mr. Roche: Mr. Chairman, again for clarity and transparency, and for the sake of anyone who may not have been on previous meetings, most know that I’ve taken a position of recusal on this issue because the FDNY has been doing inspections in the best interest of the safety of occupants, tenants, visitors, etc. to that location. I consulted with several legal authorities, specifically the FDNY’s Bureau of Legal Affairs, and was given the guidance that I do not have to recuse myself from this case because we're discussing a Certificate of Occupancy, not ongoing enforcement or enforcement issues in the building. However, unfortunately, as everyone knows, I represent an agency, not my own personal interest, and additional advice was that we should meet and determine as an agency how we want to proceed on this case. Unfortunately, that piece has not been able to occur due to scheduling conflicts, so I'm going to have to abstain today from voting on this case.

Ms. Rajan: I wonder if, for the benefit of the members of the public who continue to attend Loft Board meetings when this item is on the agenda, whether it's within your purview as Chairman of this Board to direct some comments to the members of the public and clarify for them what the jurisdiction of the Loft Board is with respect to this particular case and how the fact that a court has already ruled in this matter may affect our determination; because I don't think the members of the public understand that.

Chairperson Patino asked Mr. Clarke to explain.

Mr. Clarke: In this case, the Loft Board is tasked with determining coverage. The Board members have the expertise gained from their in-depth review and understanding of the Loft Board's rules and what the law requires for coverage of a building. To make this determination, the Board members must decide whether this building meets the criteria for coverage.

The second part of the question is: "How does the judge's determination affect the Loft Board's determination?" No city agency can challenge the Certificate of Occupancy. A Certificate of Occupancy can be challenged before the NYC Board of Standards and Appeals or a court of competent jurisdiction. In this case, a court of competent jurisdiction stepped in and said, this building has a Certificate of Occupancy, and the Certificate of Occupancy has misinformation on it. The Court directed that the Department of Buildings appear as a necessary party and ordered the Department of Buildings to correct the information on the Certificate of Occupancy. The judge also ordered that the date of the Certificate of Occupancy remain in 2005. Therefore, the question before the Loft Board is: "did this building have a Certificate of Occupancy before the effective date of the law?" The Certificate of Occupancy is dated in 2005 before the effective date for both MDL 281(5) and (6).

Chairperson Patino asked if there were any additional comments on this case.

Ms. Oddo: I must publicly disclose that I did receive, read, and respond to emails sent by the tenants in this building; however, I can still make an unbiased vote based on the record.

Chairperson Patino asked if there were any additional comments on this case. (none). Then asked for a motion to accept this case and for a second.

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

The vote

Members concurring: Mr. Hylton, Ms. Oddo, Ms. Rajan, Chairperson Patino

Members dissenting: Mr. Barowitz, Mr. DeLaney

Members abstaining: Mr. Roche, Ms. Roslund

Members absent: 0

Chairperson Patino: This will conclude our July 21, 2022, meeting. Our next public meeting is scheduled to be held on September 15, 2022. At this time, we don't know if the future meeting will be held in person or virtually. Information will be updated on the Loft Board website and email updates by the Loft Board announcements listserv. Board members, please sign and email in your attendance sheets today. Thank you very much.