

MINUTES OF PUBLIC MEETING  
New York City Loft Board Public Meeting

March 16, 2023

The meeting began at 2:15pm.

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

**INTRODUCTION:**

**Chairperson Patino** welcomed those present to the March 16<sup>th</sup>, 2023, public meeting of the New York City Loft Board. 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:**

**February 16, 2023, Meeting Minutes**

**Chairperson Patino** asked if there were any comments on or corrections to the February 16, 2023 minutes. He then asked for a motion to accept the February 16, 2023, meeting minutes.

**Mr. DeLaney** moved to accept the February 16, 2023, meeting minutes.

**Mr. Roche** noted that the year in the heading was 2022 instead of 2023.

**Chairperson Patino** said it would be corrected and asked if there was a motion to accept the minutes with that correction, and for a second.

**Mr. Hylton** moved to accept the February 16, 2023, meeting minutes, and **Mr. Roche** seconded.

The vote

<b>Members concurring:</b>	Mr. Barowitz, Mr. Roche, Mr. DeLaney, Mr. Hylton, Ms. Roslund, Chairperson Patino
<b>Members dissenting:</b>	0
<b>Members abstaining:</b>	0
<b>Members absent:</b>	Ms. Oddo and Ms. Rajan
<b>Members recused:</b>	0

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STAFF REPORTS

Executive Director's Report (by Martha Cruz)

Good afternoon. I have a short report, but my report will be followed by a report from Mr. Clarke about rulemaking, and a report by Ms. Storey about enforcement, and another report by Mr. Kim on Narrative Statement issues.

About litigation, on Monday, March 13, the Supreme Court issued a decision which dismissed the case against HPD and the Loft Board brought by the owner of 517-525 West 45th Street.

To provide context about the building, in 2010, the prior owner of the building was found guilty of harassment. Because the building is in the Special Clinton Anti-Harassment District, the DOB requires a CONH (Certificate of No Harassment) from HPD before the issuance of a final Certificate of Occupancy.

In 2014, the current owner purchased the building, and in 2016, the current owner entered into a cure agreement with HPD to obtain the cure certificate needed for issuance of the alteration permit and the final C of O. It is HPD's position that the owner is in default of the cure agreement, and it is the owner's position that it has fully complied with the agreement. The complaint listed the Loft Board because the building is an IMD but did not challenge any Loft Board action. In this decision, the court dismissed the complaint, finding it barred by *res judicata* due to a 2021 decision in another case brought by this owner against HPD. I did not distribute this decision because it came after the cases that I sent over, but I will send it over after this meeting.

Meeting with owners' attorneys: After the last Board meeting, I met with five attorneys from four law firms representing owners. The take-aways are that:

- 1) The enforcement effort seems to be having an effect on the community, as they are getting more calls about legalization, violations and the fines.
- 2) They requested that Narrative Statements be scheduled within thirty (30) days of the Narrative Statement filing, as stated in our rules. The staff has been focusing on this group of buildings, and I am hopeful that there will be an improvement in the scheduling.
- 3) They asked about expediting the processing of extension applications, as some have been pending for quite some time. Florence Oyegue, our new attorney, has been working on these extension cases, and there will be progress on that front also.
- 4) They expressed interest in further amendments to our rules. The staff's response was that they should file a petition requesting the Board take up their issues of concern.

Rulemaking (by Stephan Clarke)

The final version of the amendments to our rules was published in the City Record on March 1<sup>st</sup>. A copy of the amendments can be found on our website for the public. From the home screen, members of the public can click on the link for the Amended Rules. The final version of the amended rules will open in a PDF format.

The rulemaking process is now complete, and the Loft Board would like to thank everyone that played a part in achieving this, including the staffs of all the agencies, the Board members, and the members of the public. Are there any other questions or concerns?

**Mr. DeLaney** commented on the fact that when the existing rules are combined with the amendments, the result will be about four hundred pages of rules.

**Mr. Clarke** explained that American Legal Publishing would be combining the two documents.

**Mr. DeLaney** inquired about the timing for incorporating the amendments.

**Mr. Clarke** responded that he was not sure. He would report back about the timing.

**Mr. DeLaney** also inquired about the new process of posting Proposed Orders online. Those copies would be redacted to protect personal information, but would the Board members receive unredacted copies? **Ms. Cruz** confirmed that they would.

**Mr. Barowitz** asked if the new set of rules would be available in hard copy at some point, and **Ms. Cruz** confirmed that it would.

Enforcement (by Renee Storey):

**Ms. Storey** reported that the staff met with one IMD owner concerning legalization and outstanding registration fees and another meeting with another IMD owner was scheduled the following day to discuss legalization.

**Ms. Storey** stated that letters will be sent to all IMD owners regarding the new quarterly reporting requirements. The staff is preparing the mass mailing.

**Ms. Cruz** added that a new version of the Legalization Report would be posted on the website.

Narrative Statement Issues (by James Kim):

**Mr. Kim** reported that in November of 2022, Ms. Storey prepared and circulated a list of all the buildings under Loft Board's jurisdiction. Since then, he has been doing a comprehensive review of all the buildings that have the legalization status of "Open NS". Most of these buildings filed a Narrative Statement but have not yet received an initial certification for an Alt-1 application to pull a permit and commence legalization work. This has required review of our records, as well as DOB records, including paper files.

**Mr. Kim** provided a copy of the statistics. There were fifty-five (55) buildings on the list. He summarized the breakdown of buildings as follows:

- (7) Buildings have an Incomplete Narrative Statement Filing
- (3) Buildings need a Narrative Statement Conference date
- (3) Buildings have a Narrative Statement Conference coming up

- (13) Buildings are in the plan exam process or there are revisions to be made to the plans
  - Active - (5)
  - Inactive - (8)
- (13) Buildings are ripe for a Notice of Opportunity (45-day Clock) to be issued
- (5) Buildings have an active Notice of Opportunity (45-day Clock)
- (10) Buildings are post-clock and further review is necessary. Two of these buildings have a certification pending but additional documents are needed from owner
- (1) Building has an active alternate plan application pending at OATH

Please note that these numbers are not meant to be determinative or exhaustive, as they change daily. Regarding next steps, as this analysis was very recently finished, we are currently considering how best to engage with the owners of buildings that have not been as active in our process.

**Mr. Barowitz** asked if he could receive a list of the buildings with addresses, and **Ms. Cruz** confirmed.

**Mr. DeLaney** stated that he has been hearing a lot of vague feedback from tenants that they don't understand the Narrative Statement Process. He suggested a fact sheet about Narrative Statement process including what parties should expect and what they should bring to the conference. So, rather than paying lawyers, whose information may or may not be totally accurate, tenants could receive the correct information directly from us. Helpful information may include an explanation about the Narrative Statement process, an explanation about 45-day clock; what it means; when it starts and the possible options when tenants receive the notice.

Particularly, with bigger buildings in the system and buildings that have yet to start the narrative statement process, it would be a good thing for us to represent what we believe it to be, rather than leave that to owners and tenants, who may come in with an incomplete or incorrect set of expectations.

**Mr. Hylton** agreed that it would be helpful to supply accurate information up front, so nothing is left open to interpretation.

**Mr. Clarke:** We agree, and it is our intention to put together something we can put up on the website about the Narrative Statement Process for public access.

**Mr. DeLaney:** I think that's great. And if there's a way that I can be of assistance, I'd be happy to offer that. And maybe when a Narrative Statement conference is initially scheduled, which can now be conducted, we could send a link directly to that explanation once it exists.

**Ms. Roslund** volunteered that the Department of City Planning's website was a good example of how to do this.

**Mr. DeLaney** inquired about enforcement under the reasonable and necessary rule. He asked if we had exhausted the list of potential violations.

**Ms. Storey** stated that the staff is still working through the list and investigating the buildings. The staff is concentrating on the sixty-one (61) violations that have been issued. The staff has issued fines against owners of approximately forty-two (42) buildings and notices of withdrawal for eighteen (18) buildings.

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**THE CASES:**

Appeal Calendar

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
<b>1.</b>	400 South 2 <sup>nd</sup> Realities LP	394-400 South 2 <sup>nd</sup> Street, Brooklyn	AD-0111
<i>The Loft Board denied the appeal application challenging the denial of an extension of the code compliance deadlines.</i>			

**Mr. Kim** presented this case.

**Chairperson Patino** asked if there were any comments on this case. Hearing none, Chairperson Patino then called for a motion to accept this case, and for a second.

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

The vote

**Members concurring:** Mr. Barowitz, Mr. Roche, Mr. DeLaney, Mr. Hylton, Chairperson Patino

**Members dissenting:** Ms. Roslund

**Members abstaining:** 0

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**Members absent:** Ms. Oddo and Ms. Rajan

**Members recused:** 0

	Applicant(s)	Address	Docket No.
2.	Slavik Gofman	279 Church Street, New York	AD-0126
<i>The Loft Board denied the appeal application challenging the imposition of a fine for failure to exercise all reasonable and necessary effort to obtain a residential certificate of occupancy.</i>			

**Ms. Storey** presented this case.

**Chairperson Patino** asked if there were any comments on this case. Hearing none, Chairperson Patino then called for a motion to accept this case and for a second.

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

The vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Ms. Oddo and Ms. Rajan

**Members recused:** 0

Summary Calendar

	Applicant(s)	Address	Docket No.
3.	475 Kent Owner LLC	473-475 Kent Avenue, Brooklyn	LS-0250
<i>The Loft Board deemed the access application settled.</i>			
4.	Workable 239 LLC	239 Banker Street, Brooklyn	LS-0292
<i>The Loft Board deemed the access application withdrawn.</i>			
5.	Kristofor Giodano	538 Johnson Avenue aka 75 Stewart Avenue, Brooklyn	TR-1065
<i>The Loft Board deemed the coverage application settled.</i>			
6.	Clara Fairbanks	538 Johnson Avenue aka 75 Stewart Avenue, Brooklyn	TR-1346
<i>The Loft Board deemed the coverage application discontinued with prejudice.</i>			

	Applicant(s)	Address	Docket No.
7.	Patrick M. Walsh Jr.	42-46 West 38 Street, New York	TR-1417
<i>The Loft Board deemed the coverage application discontinued with prejudice.</i>			

Chairperson Patino asked if there were any comments on these cases. Hearing none, Chairperson Patino asked for a motion to accept the proposed orders, and for a second.

Mr. Hylton moved to accept these cases, and Mr. Roche seconded.

The vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Ms. Oddo and Ms. Rajan

**Members recused:** 0

Master Calendar

	Applicant(s)	Address	Docket No.
8.	Various Tenants	1609 Dekalb Avenue Brooklyn,	TR-1389
<i>The coverage application involved fourteen units in the building. The Loft Board deemed the coverage claims for twelve (12) units withdrawn with prejudice and dismissed as moot two (2) units that were registered.</i>			

Ms. Storey presented this case.

Chairperson Patino asked if there were any comments on this case. Hearing none, Chairperson Patino then called for a motion to accept this case, and for a second.

Mr. DeLaney moved to accept this case, and Ms. Roslund seconded.

The vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Ms. Oddo and Ms. Rajan

**Members recused:** 0



SOHO-NOHO Rezoning

**Mr. Barowitz** stated that on March 15<sup>th</sup>, he went to Court for the case that was brought by the SoHo-NoHo Alliance against the City of New York about the redistricting of Soho and NoHo. There were about thirty people in the gallery.

After consulting with the parties in chambers, the judge returned to announce there would be a hearing on April 5 and a trial on April 26. Afterwards, I met with several lawyers, loft dwellers, and two judges – one retired, who was helping the Soho-NoHo Alliance and another prominent lawyer who was very interested in the Soho and NoHo controversy.

There seemed to be consensus that the Loft Board should issue a press release describing who they are, what they do, etc., because there was a great lack of knowledge among all of those involved in these particular cases about the function of the Loft Board.

Is the release of such a statement something the Board would like to discuss? I would be happy to create a draft for your review.

**Mr. DeLaney** agreed, based on his experience over the years facing the lack of awareness about what the Loft Board is, what it does, and significant events in its history, such as the Loft Board's helping to engineer non-artist grandfathering. He believed any light that could be shed could not hurt and recalled that Ms. Cruz, along with a former Executive Director, had attended several public meetings on Soho-NoHo.

**Ms. Roslund** asked Mr. Barowitz what he thought should be said in this statement.

**Mr. Barowitz** commented that he would not write a press release that would discuss a particular opinion about the controversy. It would only provide information about the Loft Board and the Board's duties.

**Chairperson Patino** noted that The Department of Buildings recently published guidance about the conversion process from a JLWQA to a class A apartment and in that guidance, it does

address the Loft Law, and it specifies that this guidance doesn't apply to buildings covered by the Loft Law.

**Mr. Barowitz** commented that the guidance certainly gets into the controversy, and it has become clear to me that those covered by the Loft Law are not subject to the same requirements. First, I would recommend just writing about who we are and what we do.

**Ms. Cruz** commented it was a good idea but wasn't sure where exactly it should be distributed or how.

**Mr. Barowitz** recommended that it should be published somewhere, in order to reach a wider audience than it would if simply posted on the website.

**Mr. Roche** suggested a news story on the history of the Loft Board.

**Ms. Roslund** inquired about who should receive it.

**Ms. Cruz** suggested the Community Boards and/or non-profits in communities most affected like Williamsburg and Greenpoint.

**Mr. Hylton** suggested maybe the community newspapers that service the areas where the lofts exist.

**Mr. Barowitz** said he had some contacts that were willing to help with getting a wider distribution.

**Mr. DeLaney** commented that he participated in a working group, which included institutional players like NYU, and the notion that a unit couldn't be legalized either as a Class A multiple dwelling or Joint Living Work Quarter for Artists -- that might as well have been mentioned in a foreign language for all the comprehension it was met with. He further noted that there are parts of the Loft Law that have city-wide effects and there are communities like SoHo and Noho, because of their M1-5 zoning designation and number of loft units in these communities, where

the provisions of the Loft Law have a different impact. He suggested a fact sheet to provide information to the community.

**Mr. Barowitz** agreed and recounted an anecdote about Mayor Koch not believing that Soho and Noho were zoned for residential use for artists. He stressed the extraordinary importance of the arts – of all the arts – to New York City.

**Mr. Roche** agreed and supported the idea to do community outreach and education.

**Mr. DeLaney** noted that there's also a great deal of misinformation out there.

**Mr. DeLaney** recalled a Tenants Association meeting with the then-DOB Commissioner during the Giuliani Administration when he noted that there are some very high-profile, expensive co-ops in SoHo with some big-name celebrities and hedge fund founders living in them; but also commented that there were still many working artists who can live in Soho, mainly thanks to the Loft Law.

**Mr. DeLaney** also remarked about an organizing meeting maybe ten years ago on a building on Green Street, and one of the tenants was the foremost manufacturer of specialty footwear for theater. She made them in her loft. And to the extent that the rezoning puts people like that at risk --- any light we can shed on what is happening on the ground would be very helpful.

**Mr. Barowitz** observed that there are still many people living in Soho-Noho who are not high-profile people with great incomes. But that's what the general belief is: that Soho-Noho is a community of very wealthy people. And that's not the case.

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PUBLIC SERVICE ANNOUNCEMENT (by Mr. Roche)

**Mr. Roche** requested a few moments for an important public safety announcement. The announcement concerned the uptick of problems caused by the handling of lithium-ion batteries.

He recommended these devices not be stored in any pathway for egress and any unsafe storage of these devices be reported to 311 immediately. These devices should not be stored in a residential space and should not be stored or charged by the front door or anyplace that could obstruct egress in the event of a fire. These devices should not be charged overnight.

**Mr. Roche** warned against:

1. Leaving e-bikes or any personal mobility device unattended when charging; and
2. Modifying any of these batteries to get longer life out of them.

**Mr. Roche** suggested, if replacement of these batteries is necessary, to return to the device to the manufacturer or at least get their guidance on where to purchase the battery, the charger, or any charging hardware. And when it comes time to make that purchase, he recommended that the batteries, the chargers, the extension cords etc. are all Underwriters Laboratory listed approved. There are companies that are manufacturing products that are not consistent with the current fire and safety standards.

Finally, Mr. Roche recommended a call to 311 if there are concerns with any device or if more information is needed. The public can call the FDNY's Bureau of Fire Prevention Customer Service Center, and they can provide additional guidance.

**Mr. DeLaney** asked if traditional fire extinguishers worked on fires started by lithium-ion batteries.

**Mr. Roche** noted that there is a concern about their effectiveness. There's even a greater concern in the firefighting community about how to deal with the transition of society to electric cars and more. Having a fire extinguisher is better than not having one, but there is definitely concern that these fires burn hotter, quicker, and faster than your average fire, so the best thing to do is get out, and call 911 on your way out the door and have the Fire Department respond.

**Mr. DeLaney** added don't lock the door.

**Mr. Roche** responded that doors should be closed in a fire emergency. Closing the door contains the fire and the smoke. When the smoke gets out into the hallways, it filters through the stairwells and everywhere else. There are numerous city agencies working on this issue, but everybody must help. Just because you don't have an e-bike doesn't mean you don't walk past one in your hallway every night when you go home to your building. So, anything you can do to help the FDNY in fire prevention, will be greatly appreciated.

**Chairperson Patino:** Thank you. This will conclude our March 16<sup>th</sup>, 2023, Loft Board meeting. Our next public meeting is scheduled to be held on April 20<sup>th</sup>, 2023. Thank you, everyone.