

New York City Loft Board: Minutes of Public Meeting: March 21, 2024

MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

March 21, 2024

The meeting began at 2:07 PM

Attendees: Elliott Barowitz, Public Member; Charles DeLaney, Tenants' Representative; Heather Roslund, Public Member; Samira Rajan, Public Member; Nicole Oddo, Public Member; Chief Peter Archer, Fire Department's ex officio; Guillermo Patino, Chairperson Designee.

INTRODUCTION:

Chairperson Patino welcomed those present to the March 21, 2024 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.

VOTE ON MEETING MINUTES:

February 15, 2024, Meeting Minutes

Chairperson Patino: asked if there were any comments or corrections to the February 15, 2024 minutes.

Mr. DeLaney: You reported last month that your fact sheets are now live on the website. What are the next facts sheets?

Ms. Cruz: The Sales of Rights and Sales of Improvements.

Mr. DeLaney: Okay, I would like to lobby for letter of no objection fact sheet as well.

Ms. Cruz: I thought we did that one.

Mr. Delaney: You did?

Ms. Cruz: I think so.

Mr. DeLaney: I did not see it there.

Ms. Cruz: I'll take look at it.

Chairperson Patino asked if there were any comments on or corrections to the February 15, 2024 minutes. Hearing none, Chairperson Patino then asked for a motion to accept the February 15, 2024, meeting minutes and for a second.

Ms. Rajan: moved to accept the February 15, 2024, meeting minutes, and **Mr. Barowitz** seconded.

The vote

Members concurring: Mr. Barowitz, Mr. Delaney, Ms. Roslund, Ms. Oddo, Ms. Rajan, Chairperson Patino
Members dissenting: 0
Members abstaining: Chief Archer
Members absent: 0
Members recused: 0

TENANT PROTECTION PLAN PRESENTATION – Department of Buildings (DOB) Office of Tenant Advocate:

Ana Pluchinotta and Zong Ji Zhan presented.

- A. What is a tenant protection plan (TPP)? It is a narrative that explains in detail what the contractor will do to protect tenants in 10 essential elements:
1. List all units that will or may be occupied during construction
 2. Egress
 3. Fire Safety
 4. Health Requirements
 5. Lead & Asbestos
 6. Compliance with Housing Standards
 7. Structural Safety
 8. Noise Restrictions
 9. Maintaining Essential Services
 10. Other Requirements (as applicable)
- B. When is it required? The TPP is required whenever any dwelling unit remains occupied during alteration, partial demolition, and construction. The TPP is required even when residential space is not within the proposed construction area (for example work on commercial spaces in a mixed-use buildings).
- C. When did it become a requirement? The “Tenant Safety Plan” dates to Directive 1 of 1984.
- In 2009, the TPP was first included in the Building Code.
 - Changes to the TPP required by a handful of laws in 2017, 2019 and 2021.
 - In DOB Now, the TPP online fillable form has expanded to 10 elements.
- D. Explain how the TTP has evolved over the years.

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1. Local Law 154 of 2017 reformed the TPP and set mandatory inspections requirements by DOB.
 2. Local Law 106 of 2019 shifted the requirement to file the TPP to the architect or engineer hired by the GC. And it increased inspection mandate to 10 %.
 3. Local Law 116 of 2019 the TPP is submitted Prior to Permit as opposed to Prior to Approval.
 4. Local Law 118 of 2019 required both owner and applicant's signature. Also increases penalties for failure to file a TPP to \$10,000 for 1st offense and \$25,000 for subsequent offenses.
- E. Explain how it changed in 2022.
1. Local Law 40 of 2021 enhanced lead-based paint requirements in TPPs. The Law went into effect on November 14, 2022.
 2. Local Law 126 of 2021 added a special inspection requirement for projects that require a TPP. The law went into effect on November 7, 2022.

Mr. DeLaney: I want the public to know that what they are hearing is what we are seeing on the screen.

- F. What is the role of third-party inspections? Third party inspections for the TPP are conducted by a qualified special inspector. The special inspector is required to be independent of the contractor. The owner hires the special inspector to inspect construction at regular intervals (weekly) to ensure they are complying with TPP.
- G. What is the Office of Tenant Advocate? The Office of the Tenant Advocate (OTA) at the NYC Department of Buildings is a unit that advocates for tenants internally within DOB for construction related complaints or other issues under DOB's jurisdiction permit filings, service restoration where DOB fillings are necessary.
- H. What is OTA's Role?
1. OTA investigates complaints of "construction as harassment" for work that requires a DOB permit. We also work with the Tenant Protection Inspection Unit to inspect for the TPP for compliance. OTA staff also facilitates access during Vacate Orders and provides DOB – related information on service interruptions.
 2. OTA coordinates various investigations and enforcement initiatives on major cases and represents the Department on the City and State Tenant Harassment Task Force that investigates allegations of tenant harassment across an owner portfolio.
 3. OTA partners with other City and State agencies to investigate tenant harassment. DOB supports their actions and any potential lawsuit but does not commence litigation itself. Other agencies also have dedicated units- such as HPD's (AHU) Anti -Harassment Unit

and the Tenant Protection Unit at NYS DHCR and Mayor's Office to Protect Tenants. OTA also has team of plan examiners who perform proactive and special audits of Tenant Protection Plans filed for work in occupied residential and mixed-use buildings.

- I. When is it appropriate to file a complaint with (OTA)? It is appropriate when there is active construction work in an occupied multiple dwelling or mixed-use building. We do what we can to help guide tenants in the right direction so that they get the assistance they need.
- J. How do I file a complaint? Tenant can call or email the unit directly. They can also call 311 and the dispatcher will transfer their call to our unit. The office line is s 212-393-2949 and our email address is tenantadvocate@buildings.nyc.gov.

Additional Resources: You can find more information about the TPP on the Department of Buildings' website in the frequently-asked-question tab.

Chairperson Patino: asked if there were any questions or comments.

Mr. DeLaney: First, thank you. This request only came up last month. I want to thank both the Loft Board Staff and you all. Sometimes when we ask for someone to speak with us it could takes 6 months. Secondly, I'm advised there are about 30 people watching this virtually and we haven't had this many people in the public meeting for over a year. The last time was for a public hearing where people were able to speak. Here, they cannot.

My first question is under the fine structure for failure to file TPP. Has anyone ever been fined?

Ms. Pluchinotta: do you mean for failure to file the TTP?

Mr. DeLaney: Yes.

Ms. Pluchinotta: Yes. So, we can sometimes get a complaint from the public where, they notice that on the PW1, which is a plan work application, the owner filled out the application stated that the building will be occupied during construction.

Mr. DeLaney: So, the tenant protection plans are not actually explained, correct?

OTA TEAM: The confirmation that the building will be occupied during construction (answering yes question on the PW1 application) triggers the tenant protection plan. So, when they say yes, the system will automatically make a Tenant Protection Plan requirement prior to receiving a permit. Obviously, the tenant protection plan is meant to protect the tenants during construction. If the system is told that the building will not be occupied, then that requirement would not appear.

Mr. DeLaney: I live in a 4 unit building. Three of which were initially protected and it took roughly 30 years for my landlord to succeed in completing the necessary work to get a certificate of occupancy. Now a lot of the buildings that are covered are much bigger buildings. We started to see what someone called

the weaponization of code compliance work. So, we are getting a lot more complaints about egress being blocked, doors not being locked, dust, dirt all kinds of stuff. The tenant protection plan gets filed but it is not like an alteration plan. It does not get approved, correct?

Ms. Roslund: No, it gets reviewed. In DOB NOW, there is a bar that goes across the top of the screen and it tells you where in the process your various applications are. There is a milestone for review, for example: acceptance, review and it keeps going. So, some somebody looks at it or at least the computer is telling me somebody is looking at it.

Ana Pluchinotta: well, there was change. When the tenant protection plan was a requirement prior to approval and the job application goes through the plan examination process, the TPP was reviewed by a plan examiner at that time. There was legislation that changed that and made it a prior to permit item, which means there is some review, but it's not a plan examination review. DOB can issue a violation for an inadequate tenant protection plan. If that happens, there will be an audit and a review will happen as part of that process.

Ms. Roslund: Right or to that point, maybe you could talk a little bit about some of the thresholds. Even though it's called a plan, one might assume that it's a drawing, but it's not. It's a paragraph. It's a checklist. So, the contractor certifies basically that he will not block the egress. He certifies that he will mitigate the dust. The contractor will go through the items. So, it's really sort of like a one-page written summary of what the plan is to do, not a plan. On larger projects, the contractor will provide plans depending on the complexity of the job. The TPP can be a couple paragraphs, or it can be several drawings.

Ana Pluchinotta: Yes, that is correct. In this case, the tenant protection plan is actually a narrative. So, they are writing it out unless they are doing complicated changes to the plans in terms of egress where it's hard to explain in narrative, then we recommend that they submit a plan drawing to supplement their narrative so that it's easily understood. Otherwise, we do not require them to submit plans or physical drawings. The tenant protection plan narrative is usually sufficient to explain 90% of the jobs.

Ms. Roslund: And then, can you add a little bit about posting notices and how then the tenants who are meant to be protected know that there's a TPP and where they can access it.

Zong Ji Zhan : Yes, they are required. It's required to post the tenant protection plan at each stairway. The tenants can also request it from the owner. Even if there's one residential tenant living there, they have to submit a tenant protection plan and the tenant may request it from the owner.

Ana Pluchinotta: The actual tenant protection plan application is not what is required to be posted. A tenant protection plan notice is required to be posted. It needs to be posted on each floor within 10 feet of every elevator or stairway.

Mr. DeLaney: I went to a party in a rent stabilized apartment. And it was the first time I'd seen a tenant protection plan signed and they were everywhere. I was very impressed.

Mr. DeLaney: This is not a public hearing. The members of the audience are not allowed to speak. But I guess they can probably raise their hands. For those of you that have work being done now in their building, were there tenant protection notices posted? You could also shake your head. Yes, that's also permissible.

(Audience responded no)

Ana Pluchinotta: Let me put my contact information back on the screen. Please reach out to us.

Mr. DeLaney: Will you provide the board members with a copy of your presentation?

Ana Pluchinotta: Yes.

Mr. DeLaney: Because again, I think there is a lot of concerns here. I'm glad that 311 does refer to you. That was going to be one of my questions. I understand that an owner's professional can modify the plan.

Zong Ji Zhan: What do you mean by the owners professional?

Mr. DeLaney: Can a design professional change the TPP?

Zong Ji Zhan: Yes, they can modify. They can go in and change the tenant protection plan.

Mr. DeLaney: My next question is process oriented. In a regular apartment building, theoretically, if it's built a new, the work is done and the certificate of occupancy, or at least a temporary certificate, is issued before anybody moves in. You may also have buildings where somebody's renovating an apartment or a group of apartments while someone is living there. But, all interim multiple dwellings have people living in them when the work is done. So to help facilitate the dialogue between the owner and the tenants who were in occupancy, the Loft Board holds this event, called the Narrative Statement Conference. Are you familiar with that?

Zong Ji Zhan: no

Mr. DeLaney: ok, I think it's important just to summarize that briefly. So, they're aware of how that fits in. Would you like to do that?

Ms. Cruz: After the owner has filed the alteration Type 1 application, an owner files with the Loft Board a narrative of the work described on the actual plan. The plan and the narrative are filed with the Loft Board. The narrative is served on the tenants. We bring the parties together in the conference room, or virtually --- since COVID, to discuss this plan. Out of those discussions, changes can happen.

Mr. DeLaney: As a tenant, once I see the sign that says there is a tenant protection plan, I can find a copy of it, correct?

Ana Pluchinotta: Yes, you can also request it. It is a requirement for the general contractor or the owner to provide you with a copy.

Ms. Roslund: Well, that is a good question because most people don't have access to DOB Now. Is it under the application on BIS?

Ana Pluchinotta: So, the Department of Buildings has two databases. One of them is being BIS. That's where you'll find our older job applications. The second one is the DOB public portal. You'll find most of the recent applications on that portal. So, it is important to check both. A clear sign to know where the application was filed (BIS or DOB Now) depends on the job application number. If it starts with the letter it was filed in the DOB Now, so M for Manhattan, B for Brooklyn, X for Bronx, Q For Queens, and S for Staten Island.

Ana Pluchinotta: Yes, so if it starts with the letter it was filed via DOB now, so you will know to look at the DOB now database. If it starts with a number, it was filed in BIS. So, it is important to check both and yes, the tenant protection plan will be available on both, or at least it should be.

Mr. Archer: What sort of education is done to prevent unnecessary unfounded complaints? In other words, how much dust constitutes a health hazard? For example, sometimes a fire alarm system needs to be shut down. Are the tenants educated as to what is a violation and what isn't? I asked this because I've been on many complaints and the vast majority of them are unfounded because the complainant doesn't understand the rules.

Ana Pluchinotta: We do our best. We received phone calls from the public all day. So, we do our best to educate the tenants who reach out. A lot of them are nifty and they are knowledgeable about the rules. So, it makes our jobs a little bit easier as far as routing purposes and inspection requests. As you know, I don't know what type of information the tenants have or the owners have passed on to the tenants at the time of construction. But, if they do have a question, they're welcome to reach out to us and we'll do our best to educate them as best we can and we do.

Mr. Archer: Before the complaint is made, do the tenants that you're trying to protect have the information?

Ana Pluchinotta: We have several presentations that are available on our website. We hope that they're doing their own research, but if not, we are happy to inform them.

Mr. Barowitz: Is there any way that you can put up posters in Soho, Noho, and elsewhere, informing tenants that such a thing exists.

Ana Pluchinotta: We've had a commercial. I don't know if anybody saw it but we did have a commercial. We had some advertisements in the subways. So, we have done our best to kind of put our information out there. So, I hope it was worth it. I hope people saw it.

Chairperson Patino: Alright, thank you Anna Pluchinotta and I appreciate it. Excellent presentation. Thank you.

EXECUTIVE DIRECTOR'S REPORT

1. Personnel

We will be posting job notice for an attorney position. If you are interested, please apply.

2. Litigation

In the meeting materials, I shared a decision of a case brought by the tenants of 72 Warren Street. The tenants appealed the dismissal of a Supreme Court case challenging the issuance of a certification of the narrative statement process. The appellate division affirmed the dismissal. The court found that the tenants failed to exhaust their administrative remedies prior to filing the underlying Article 78 petition.

Early this week, we received another decision, which was distributed today. This decision involved 517-525 West 45th Street. The owners of the building brought a second case against HPD and the Loft Board seeking a cure completion certificate from HPD. In the first case, the court dismissed the mandamus petition finding that the decision to issue the certificate involved a matter within HPD's discretion. In this second case, the owner raised a breach of contract claim. Based on the doctrine of *res judicata*, the court dismissed the case finding that owner should have included the breach of contract claims against HPD in the first case.

3. Resolution for Terry Ryan

We have with us today the Resolution for Terry Ryan. Please sign it before you leave today.

ENFORCEMENT AND LEGALIZATION REPORTS – Renee Storey

LEGALIZATION REPORT:

(1) Narrative Statement Conferences

- a. 3 Narrative Statement Conferences.
- b. 7 Narrative Statement Conferences have been scheduled for February to April.
- c. 2 requests for Narrative Statement Conference are pending.

(2) Certification Requests

- a. 3 Certifications issued.

We continue to appreciate the help of all professionals throughout this process.

Mr. DeLaney: Any updates on 255 18th St?

Ms. Cruz: Yes, I have an update. The violations were issued. Mr. Curtis hasn't re-inspected all the units. He reinspected three of the units for the heat violations. It seems as if the condition was corrected in those three units. The other two still have to be reinspected. He needs access. We're still in contact.

THE CASES:

Appeal and Reconsideration Calendar:

	Applicant(s)	Address	Docket No.
1.	Various Tenants	11-27 Arion Place, Brooklyn	R-0391
<i>The proposed reconsideration application did not pass. The Loft Board did not issue a final order in this case.</i>			

Renee Storey presented the case.

Chairperson Patino: Thank you. Are there any comments on this proposed order?

Mr. DeLaney: Yes, I would just reiterate, I plan to vote against this as I voted against the underlying case. I think there is an argument to be made that the Board should work with other parts of the city to seek the revocation of this certificate of occupancy. And I think the expertise of the Loft board is such that there are several questionable circumstances around this building, including the fact that the certificate of occupancy is issued for a vacant lot, which some people refer to as a typo, but which might be indicative of other things. So, I plan to vote no.

Chairperson Patino: asked if there were any comments?

Ms. Roslund: I was just going to bring up some of the conversation was based around the issue that some of the violations and had they been present in 2005 would have precluded the issuance of a certificate of occupancy and do present some serious safety issues to the tenants of the building. Is some follow through on DOB's part or on somebody's part that these violations are corrected. Can we at least talk to that point? Is there something to be done? How? How would something be done?

Mr. DeLaney: We have no jurisdiction.

Ms. Cruz: Yes.

Mr. Barowitz: My question is if we table this case, is there any way that we can come back with a better solution? If the case fails, where are we?

Mr. DeLaney: I defer to the Chairman.

Chairperson Patino: What alternative solution do you have in mind Mr. Barowitz?

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Mr. Barowitz: I don't have an alternative solution , but you are a lawyer. I'm not a member of the staff. I just don't know. The more I read about it, the more confused I get.

Chairperson Patino: I would argue not to table this case today. The issue before us is something for the Board to decide and whatever actions DOB takes are outside of our jurisdiction. Violations have been issued, some of which have been resolved, some of which have not. But that's again outside of our jurisdiction. So, we move forward with the vote.

Chief Archer: Mr. Chairman, with all due respect, I've been at thousands of buildings. There are deliberate typos. There are deliberate oversights in the paperwork. Especially before the digital age, the DOB does a really good job, but it wasn't always filed digitally. And if there's a typo in an address in a certificate of occupancy, then miraculously it falls through the cracks forever. And I have a hard time penalizing the tenants. I'm not even claiming it was the present owner, but it's difficult to penalize the residents and make them live in this sort of condition when DOB couldn't possibly do their job because this thing didn't exist. It existed as a vacant lot.

Chairperson Patino: The case was heard before the Supreme Court and it decided that it was issued in error to the vacant lot. And then that error was addressed by the Department of Buildings.

Mr. DeLaney: the New York Supreme Court not United States Supreme Court.

Chairperson Patino asked if there were any further comments. He then asked for a motion to accept these cases, and for a second.

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

The vote

Members concurring: Mr. Barowitz, Ms. Roslund, Ms. Rajan, Chairperson Patino
Members dissenting: Mr. Delaney, Ms. Oddo, Chief Archer
Members abstaining: 0
Members absent: 0
Members recused: 0

Summary Calendar:

	Applicant(s)	Address	Docket No.
2.	Craig Tilford and Jamie Lee Johnsen	657 Fifth Avenue, Brooklyn	AD-0134
<i>The Loft Board deemed the application withdrawn with prejudice.</i>			
3.	KPG 480 Broadway Owner	482 Broadway, New York	LS-0293 and LS-0294
<i>The Loft Board deemed the application withdrawn without prejudice.</i>			
4.	Camille (Ashley) Mouton	304 Meserole Street, Brooklyn	PO-0223 and TA-0309
<i>The Loft Board deemed the application withdrawn with prejudice.</i>			
5.	Daniel Boventer, Micaela Carolan and Emma Anderson	792 Flushing Avenue, Brooklyn	TA-0313
<i>The Loft Board deemed the application withdrawn without prejudice.</i>			
6.	Krishjan Moore-Snell	338 Moffat Street, New York	TR-1475

The Loft Board deemed the application withdrawn without prejudice.

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

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

The vote

- Members concurring:** Mr. Barowitz, Chief Archer, Ms. Roslund, Ms. Rajan, Mr. Delaney, Ms. Oddo, Chairperson Patino
- Members dissenting:** 0
- Members abstaining:** 0
- Members absent:** 0
- Members recused:** 0

Master Calendar:

	Applicant(s)	Address	Docket No.
7.	6R Tribeca Owner 2021 LLC	72 Warren Street, New York	LS-0304
<i>The Loft Board directed the Owner to provide a written submission by a design professional on the issue whether an alteration permit is required for the work proposed.</i>			

Executive Director Cruz presented the case.

Chairperson Patino asked if there any comments on this case?

Mr. DeLaney: I would just comment that this is a case where we have basically decided not to accept the recommendation and require the owner to demonstrate that the permit is not required or get a permit to do this probing. And I think the tenant who represented himself *pro se* did a very competent job in raising this issue.

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

Ms. Rajan moved to accept this case, and Ms. Oddo seconded.

The vote

- Members concurring:** Mr. Barowitz, Chief Archer, Ms. Rajan, Mr. Delaney, Ms. Oddo, Chairperson Patino
- Members dissenting:** 0
- Members abstaining:** 0
- Members absent:** 0
- Members recused:** Ms. Roslund

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	Applicant(s)	Address	Docket No.
8.	Franmar Infants Wear Inc.	648 Broadway, New York	LE-0749
<i>The Loft Board granted the removal application.</i>			
9.	Momart Discount Store Ltd.	870 Broadway, New York	LE-0750
<i>The Loft Board granted the removal application.</i>			
10.	New 379 Bridge, LLC	287 Broadway, New York	LE-0751
<i>The Loft Board granted the removal application.</i>			
11.	325 Lafayette St. Tenants Corp	325-331 Lafayette Street, New York	LE-0752
<i>The Loft Board granted the removal application.</i>			

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

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

The vote

- Members concurring:** Mr. Barowitz, Chief Archer, Ms. Roslund, Ms. Rajan, Mr. Delaney, Ms. Oddo, Chairperson Patino
- Members dissenting:** 0
- Members abstaining:** 0
- Members absent:** 0
- Members recused:** 0

Mr. Barowitz asked about the vacant seats on the Board.

Ms. Cruz said that she was working on it.

Mr. Barowitz suggested elimination the requirement for a manufacturing representative.

Chairperson Patino: Mayor's Office of Appointments is actively reaching out to potential candidates, so hopefully we'll have an update to share soon.

Ms. Roslund: I've gone to a couple presentations about the "City of Yes" at various community groups. As I raised in January, I believe this will affect us as it does have some provisions for expanding what constitutes living quarters. Not specifically lofts, it really addresses basement units and some other things. Chair, maybe you have some more insight into how we might review and discuss the information or how it would impact our work or how our work could impact the proposed rules?

Chairperson Patino: The last time we discussed meeting with City Planning. They said they would send somebody.

Chairperson Patino: Yeah, but I think they were doing some public rounds of presentations. So, I think we are still waiting, but we'll reach out again.

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Chairperson Patino: Thank you everyone. This will conclude our March 21, 2024 public meeting, our next public meeting is scheduled for April 18, 2024.