



Transcript of the November 18, 2021

Meeting of the

New York City Loft Board

This transcript has been prepared pursuant to legislation S.50001/A.40001 signed by Governor Hochul, which suspended Article 7 of the Public Officers Law to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

The meeting began at: 2:12 P.M.

1 **Chairperson Hylton:** Good afternoon. My name is Renaldo Hylton, the Chairperson designee of the
2 New York City Loft Board. Welcome to our November 18th, 2021, public meeting. This meeting is being
3 held via teleconference in accordance with legislation signed by Governor Hochul on September 2nd,
4 2021, due to the Coronavirus emergency.

5 Section 282 of the New York State Multiple Dwelling Law establishes the New York City Loft Board. The
6 Board is charged with overseeing the conversion of Interim Multiple Dwelling buildings from commercial
7 and manufacturing spaces to safe, rent-regulated residences that comply with the minimum standards
8 of safety and fire protection stated in Article 7-B of the New York State Multiple Dwelling Law. To
9 achieve this goal, the Board adjudicates and mediates disputes between owners and tenants, tracks the
10 progress of each building undergoing legalization, and prosecutes parties who violate the Loft Law and
11 the Loft Board rules.

12 We first turn to a vote on the minutes from the October 21st, 2021, meeting. Are there any corrections
13 to or comments on these minutes? Absent any comments or correction, is there a motion then to
14 accept...Mr. DeLaney, I'm sorry.

15 **Mr. DeLaney:** Just one, on page 2. Mr. Schultz's report in the paragraph on new staff, staff accountant,
16 where he introduced David Silverstein, the third line states, as a reservist, we only him fifteen hours a
17 week. I think it should probably say we only have him available fifteen hours a week, or something to
18 that effect.

19 **Mr. Schultz:** Thank you. Yep. Perfect. Thank you so much.

20 **Mr. DeLaney:** That's it.

21 **Chairperson Hylton:** Thank you, Mr. DeLaney. Thanks for that level of detail. I appreciate that. Any
22 other comments, corrections? Do I have a motion? Mr. DeLaney has motioned. Do I have a second?

23 **Mr. Hylton:** Second.

24 **Chairperson Hylton:** Mr. Hylton, thank you. Ms. Rivera, could you please poll the Board members?

25 **Ms. Rivera:** Mr. Barowitz?

- 1 **Mr. Barowitz:** Yes
- 2 **Ms. Rivera:** Mr. Roche?
- 3 **Mr. Roche:** Abstain
- 4 **Ms. Rivera:** Ms. Hayashi?
- 5 **Ms. Hayashi:** Yes
- 6 **Ms. Rivera:** Mr. Hylton?
- 7 **Mr. Hylton:** Yes
- 8 **Ms. Rivera:** Mr. DeLaney?
- 9 **Mr. DeLaney:** Yes
- 10 **Ms. Rivera:** Ms. Roslund?
- 11 **Ms. Roslund:** Yes
- 12 **Ms. Rivera:** Ms. Oddo?
- 13 **Ms. Oddo:** Yes
- 14 **Ms. Rivera:** Ms. Rajan?
- 15 **Ms. Rajan:** Yes
- 16 **Ms. Rivera:** Chairperson Hylton?
- 17 **Chairperson Hylton:** Yes
- 18 **Ms. Rivera.** Eight in favor; one abstain
- 19 **Chairperson Hylton:** Thank you Ms. Rivera. Next on the agenda is Mr. Schultz's Executive Director
- 20 Report. Mr. Schultz.
- 21

1 **Mr. Schultz:** Good afternoon, everyone. Thank you for joining us today. First, with respect to COVID-19
2 response, as I've said in prior meetings, we're virtual due to the ongoing public health crisis and the
3 legislation signed by the Governor that suspended the in-person meeting requirement of the Open
4 Meetings Law. And that suspension as written extends to January 2022. I've not yet gotten word of any
5 change to that or extension to that. We will keep everyone posted as to exactly what will happen there.
6 There won't be a December meeting, so what happens in 2022, we will let everyone know as soon as
7 possible.

8 **Chairperson Hylton:** And that's because we don't anticipate a meeting in December, right, Mr. Schultz?

9 **Mr. Schultz:** Yes

10 **Chairperson Hylton:** So, don't expect an update to this order until days before. That's consistent what's
11 been through the pandemic. It's only a matter of days, when they extend these Orders. Maybe even
12 overnight. So please just watch. We'll let you know by email or whatever, by the Listserv. The public will
13 be told the format of the next meeting. Thank you.

14 **Mr. Schultz:** And as a brief update on the SoHo-NoHo rezoning mentioned last meeting, last October
15 meeting, the City Planning Commission just approved a proposal, and now that proposal is under City
16 Council's review.

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

18 And another thing from the October meeting is that it's heating season. As winter is upon us, building
19 owners need to ensure that their IMD units and all units have heat. Heat is required by our Loft Board
20 rules.

21 **Chairperson Hylton:** Sufficient heat

22 **Mr. Schultz:** Sufficient heat. Yes, thank you. Sufficient heat, and there are temperature standards, and
23 complaints can be made directly to our office from tenants who are not receiving sufficient heat.

1 Also on Enforcement, total inspections for October was thirty-five. Amongst those were seven
2 violations. Two of those violations related to improper drainage issues. One of those was corrected, and
3 I think the other was what I call mostly corrected. It was reported as corrected. There's some follow-up
4 that's being done by the owner. Then there were five violations written for lack of Loft Board signage in
5 the vestibule area. These are the result of our inspector proactively going out trying to visit our
6 buildings. And I believe one of them is pending re-inspection. Of the others, two have been corrected,
7 and two are not yet corrected. These are matters that we, frankly, want to resolve with the owners just
8 by having compliance. We're not averse to bringing Enforcement action on this, but we hope and expect
9 that compliance is easy. So, our Enforcement attorney and our inspector are doing the follow-up
10 appropriate for these lack-of-signage violations.

11 And then I'd also like to mention that for the month there were a number of complaints that have been
12 addressed without an inspection. Our inspector and our Enforcement attorney can sometimes make a
13 phone call, which saves us time, and have an issue resolved to the tenant's satisfaction and the owner's
14 satisfaction without an inspection. And that's part of the work as well, but not really in the numbers.

15 There are no new decisions or cases since our last October meeting, so I have no litigation updates. And
16 that is the conclusion of my report.

17 **Chairperson Hylton:** Thank you, Mr. Schultz. Do we have any questions for Mr. Schultz? Mr. Roche, I'm
18 going to give you a little chance here. I think you always do have some public service announcement
19 from the Fire Department.

20 **Mr. Roche:** Thank you, Mr. Chairman. Yes, we just would like to dovetail with what Mr. Schultz said
21 regarding heating season, and encourage you, if you do have heating issues, to report them and not
22 take to some alternative that may not be a fire-safe alternative. So please, as I always say, the Fire
23 Department is here for you. We do not mind hearing from you. Many of you know how to reach me or
24 you can contact me through the Loft Board. But we certainly don't want anybody out there creating
25 their own heating alternatives because they feel they have substandard heat. So please, please follow
26 Mr. Schultz's advice. Report these heating issues to your Loft Board staff. We want to help you have a
27 peaceful, enjoyable, and safe winter. Thank you, Mr. Chairman.

1 **Chairperson Hylton:** Thank you. Thank you, Mr. Schultz, Mr. Roche. Next on our agenda is the topic of
2 unsolicited communication to Board members. Mr. DeLaney has requested some time on this issue, and
3 I now turn it over to Mr. DeLaney for discussion.

4 **Mr. DeLaney:** Okay, thank you, Mr. Chairman. I guess there's really two aspects of this. The first was
5 triggered a couple of months ago when some members of the Board received a direct email from an
6 attorney, commenting on a case that was on the docket for that day or the following day, I forget. I think
7 it maybe came in late at night. And as I had pointed out at that time, way back when, before Alexander
8 Graham Bell, or whoever it was invented email, the most common way that someone would reach out
9 to the Board would be to write a letter to a Board member or to all the Board members individually and
10 mail them to the Loft Board. The Loft Board staff would open them and determine if it was appropriate
11 to forward on to the member; or, if it was something that was in relation to a pending case that
12 probably wasn't part of what was in the record, it would be kind of embargoed, I guess would be a fair
13 word, and only distributed to the Board members after the case was decided.

14 So now, given the greater fluidity of communication sponsored by email and people's email addresses
15 either being known or pretty easily guessed, or whatever, we had the case of the specific matter where
16 some people received the communication. The Executive Director made a reasonable decision to
17 distribute the same commentary to everybody, since the cat was literally out of the bag.

18 So, the first part of the discussion is really, or, the first question of what I perceive to be two questions
19 is, how do we handle that kind of what was called unsolicited communication? I would think of it more
20 as kind of an external attempt to put an external thumb on the scale. But then the second question, I
21 think, which also warrants some consideration and is tied, in part, to the Board's rules, is to help us all
22 reach an agreement as to what's fair and proper in our quasi-judicial function with regard to discussing
23 cases among ourselves, discussing cases with other people, (and/or) taking it upon oneself to do
24 research.

25 Years ago, we had a Board member who took it upon herself to go out to a building where there was a
26 question of whether or not one of the people who claimed to live there, lived there. And so I went to
27 the building, and his name wasn't on the mailbox, which was kind of like our great amateur detective

1 work, but probably not part and parcel of the record. Now, it's easy enough to just say, Oh, gee, this is
2 an interesting building. I wonder what it looks like? Well, you type the address in Google, and you can
3 look at the street view, or you can look at look at it from overhead, and you could see that, gee, the
4 owner says it's vacant and going to be commercial, but they're advertising for residential tenancy.
5 There's so much information out there that I think there are really two questions. One is, what do we do
6 about somebody who tries to put their thumb on the scale? And the second question is, what is the
7 proper demeanor and conduct for Board members to take upon themselves?

8 **Mr. Schultz:** Thank you, Mr. DeLaney. I'll give the portion of answers that I can, and then acknowledge
9 which parts we're going to research to give you all better answers. I'll start with the unsolicited
10 communications piece, with a couple of fundamentals that are in the law that I think we can rely on,
11 which leads up to your question. You're right, these emails are instantaneous. They're uncontrollable to
12 some extent. So, the content of that communication will inform a few things for whoever's reading it,
13 whether it's myself, or all of you, or some of you. And a couple things to look out for are one, whether or
14 not that communication is -- and I'm speaking in legal terms here, right, so let's talk about some legal
15 definites, and then we can talk about what we might prefer as a Board. If the communication is trying to
16 add evidence to the record, not arguments, not feelings, or opinions, but evidence to the record, it
17 would be all of our obligations to limit its distribution and eliminate its consideration. So once something
18 has been presented to the Board, it has to be based upon the record, and the record is what's provided
19 to us, as the staff, and then is provided to the Board members. We have to limit the considerations to
20 the record, and so if someone's trying to add to that record at the last minute outside the scope of the
21 process, that's improper, and that shouldn't be shared or considered.

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

1 The other thing that, by every legal definition I can find, would not be ex parte, is a communication from
2 a third party. And again, that doesn't speak to what we want to do with it. But just to be clear, there is
3 no particular legal bar on that communication, but for what else might be in its content. So, with that,
4 I'll answer a question that wasn't asked. What should you do if you get a communication that's
5 unsolicited, not asked for? And the short answer is, as soon as you notice it relates to the Loft Board,
6 which, hopefully, is clear from the title itself perhaps and no more, send it to the Loft Board Executive
7 Director and don't look at it anymore until further notice.

8 The Loft Board Executive Director and staff, as Mr. DeLaney noted, when it was in the old days of letters,
9 would do a review of it and figure out what to do next. And based on what I just said, for certain types of
10 communications, we know exactly what we'll do next. It won't be distributed, and those who got it will
11 be told, don't look at it, don't consider it, throw it in the trash, delete it from your bin and your recycle
12 bin, and it's not part of the record.

13 For communications that aren't barred in those ways that I discussed, there is discretion to be had, a
14 conversation to be had, a consideration that the Executive Director has to make and can make with
15 informed thoughts from this group. So, this is as good a time as any to do that. Which is to say that, if
16 there's a communication that's not ex parte, it's not trying to add evidence to the record, and really,
17 regardless of when it comes, but it comes last-minute, let's say, and it includes some parties and not
18 others, there is room under the law, from what I can see, for some decisions to be made there. And
19 those decisions could be made based on a lot of different factors, but one of them certainly would be
20 what this Board would like to see happen, if possible. I'll stop there, and if anyone has a comment or a
21 question...

22 **Chairperson Hylton:** Mr. Schultz, as a Board member, I often get these, and just to be very plain right
23 now, I don't open them. But what kind of messaging can we put out there to try to prevent these? I
24 notice a lot of these communications are coming from folks who we think should know better, if, in fact,
25 it violated any ex parte rules. Mr. DeLaney actually hit it kind of jovially, but this whole thing with emails,
26 it's instantaneous right now, and it's not even like taking time to open an envelope and see. This stuff
27 just comes at you. And I'm trying to see if there's some information or direction that we can put on our
28 website to inform folks. What kind of direction would you give to those folks who may want to present

1 something or provide the Board with information? What is the procedure? Would they just be emailing
2 to you?

3 **Mr. Schultz:** My understanding is that, but for you, the Chairman, who is a public servant, the contact
4 information for the Board members is not public. It's private. It doesn't mean people don't have it by
5 whatever scenarios. So to put something on the website that helps explain this I think is very good idea.
6 We could put that together. But in simple terms, when someone wants to contact the Board, it's done
7 through the Board staff. Whether they want to contact all of you, or some of you, we are your front
8 office for that communication about Loft Board matters. And to be specific, if it's about a pending
9 application, if you're contacted outside that forum, the Board members really can't and shouldn't
10 consider those things.

11 **Chairperson Hylton:** I just want to add that Mr. Roche is also a public servant.

12 **Mr. Schultz:** Oh, that's correct. Mr. Roche is a public servant.

13 **Chairperson Hylton:** We have a general email also, correct, for the Loft Board? If there's something that
14 you may want to say, you can provide it to the Executive Director through that email and ask for what
15 you want to be done. And you make that determination. Is that...?

16 **Mr. Schultz:** Yes. I will give my best recommendation by starting to mention first that things that are
17 prohibited as ex parte or adding evidence to the record, those can't and won't be distributed. And if
18 someone receives them, if part of the Board receives them, they're going to receive instruction, kind of
19 like a jury receives instruction -- to not review or consider that piece of information if it comes, because
20 you can't stop it. But we can protect ourselves by, once you notice what it is -- and again, hopefully, it
21 can be very early from the title of the email, the address or whatever -- stop then and there, share it
22 with the Executive Director, and stand by. Depending on what kind of communication it is, you'll get
23 some kind of instruction. And if it's not the kind of communication we can consider, you'll get an
24 instruction to throw it away, ignore it, don't consider whatever you saw. If it isn't one of those
25 prohibited types, it does lead us to question -- leads the Executive Director to a question -- whether or
26 not it's something the Board would want to see and consider at that juncture. I think it's within the
27 Board's discretion to say they don't want to see anything last-minute, even if it might be legally

1 unprohibited. It could also be the Loft Board's reasonable stance to say, as long as it's not illegal in some
2 other way, if someone else saw it, I want to see it, too. There might be different scenarios where you
3 would feel differently about that. I don't know if I'm queuing up the question well enough, but I
4 wondered if there are any thoughts on that scenario, where at least according to what we see in the
5 law, not a prohibition, explicitly, but the desire to see it or not see it could inform the Executive
6 Director's stance on what to do next. Or maybe see it before the vote, see it after the vote, things like
7 that.

8 **Chairperson Hylton:** Can you clarify, Kevin, what you're asking?

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

16 **Chairperson Hylton:** So, let me ask you. Hypothetically, I get an email from someone about a case. The
17 case is on for tomorrow, and I'm the only one copied on it. I accidentally read it. I opened it. I read it, I
18 realized it's about a case that's on for tomorrow. I was supposed to have read the case. Obviously, it's ex
19 parte. Should I just let everybody know that this has come to me, and I've read it, but I shouldn't have
20 read it? And just make that open? Or do I say to you, okay, I've read it, so now everyone has to actually
21 see what I've read?

22 **Mr. Schultz:** So to be nitpicky for a minute, what you described wasn't necessarily ex parte. It's ex parte
23 if it comes from a party (in the case) and doesn't copy the other party. But what you got was unsolicited,
24 and it came only to you, and you stopped as soon as you noticed it was Loft Board related. There's some
25 amount of information in your head. You certainly are obligated to share that with the Executive
26 Director and, frankly, await direction. And I think that direction, depending on what content it is, I think
27 one of the likely outcomes of that is you will be told not to look at it any further, to throw it away, and to

1 not consider it. And then there will be some version of disclosure to the rest of the Board that you
2 received the communication and the extent of how it was handled. And again, the best-case scenario is
3 everyone is stopping just as soon as they notice it has anything to do with the law. That protects us from
4 challenges that might come after a vote on a matter where this happened.

5 **Chairperson Hylton:** And I imagine this kind of stuff can potentially create a problem for the Board
6 member having to recuse himself from voting on the case, correct?

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

14 **Chairperson Hylton:** Thank you. Do we have any additional comments or questions for Mr. Schultz?

15 **Mr. Roche:** Just for the record, I actually do have some additional questions, but I think I'm going to
16 hold off right now, Kevin, until I figure out how I want to phrase it, because it ties into the unique role
17 that both Renaldo and I have, in that we are civil servants and have to view things out of two separate
18 lenses sometimes. I'm going to hold off, and we'll circle back with you on some of those concerns at
19 another time.

20 **Mr. Schultz:** Thank you, Mr. Roche. That's enough for me to take a note to try to research it. I'll be
21 honest, I got so focused on Mr. Renaldo Hylton's role as Chairperson working with DOB, that I did not
22 know that you are in a similar but different situation. So that does invoke some questions that I'm going
23 to work to get an answer to. Thank you.

24 One of the things, Chairperson Hylton, you mentioned, was putting something on the website. I will take
25 this opportunity for whatever audience we have out there in the public, if you're talking about how to
26 message, how to communicate properly, having this conversation was hopefully part of it. Our

1 practitioners, our interested parties, our affected parties, our applicants should all take notice that these
2 unsolicited communications aren't necessarily going to serve the purpose...They may not be
3 appropriate. And so we are going to be working to safeguard against anything inappropriate or
4 prejudicial.

5 **Chairperson Hylton:** Thank you. And I suppose you can also just email the Executive Director with any
6 questions; and maybe it's a good idea to copy everyone on that correspondence. Board members, if
7 you have any questions for Mr. Schultz....

8 **Mr. Schultz:** Oh, from the Board members? Yeah. I thought you were saying from a member of the
9 public.

10 **Chairperson Hylton:** No. Board members? In regard to this? I wouldn't do that to you, Kevin. Okay,
11 thank you. Is that all, Mr. DeLaney? Is that the end of your...?

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

13 **Chairperson Hylton:** I meant for today. Is that all you wanted to say? Or do you want to go further?

14 **Mr. DeLaney:** I guess it wouldn't -- and maybe no one on the staff is prepared to do this -- but the
15 current rules -- and to my recollection, we're not making any significant changes to those rules -- do
16 describe what Board members are supposed to do in terms of discussion about cases among
17 themselves, that kind of thing. At some point, a summary of that and a discussion might be helpful.

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

19 **Mr. DeLaney:** Yeah

20 **Chairperson Hylton:** Well, I've served on a couple of Boards. I don't know if the rules are the same. I
21 don't think there's any articulation here in the rules, but as long as there's no majority of a quorum, I
22 don't know if there's anything that prohibits a Board member from discussing it with another member.
23 Kevin, I mean, do you want to...?

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

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

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

7 **Chairperson Hylton:** Otherwise, this discussion wouldn't even be questioned here, because if it's...
8 Chuck is asking about...You couldn't discuss anything prior to the Board meeting, if it wasn't during that
9 period of time, where you're...

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

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

19 **Mr. Schultz:** Once it's been presented to the Board. Once the Board members get the materials.

20 **Chairperson Hylton:** So, what I was saying to that is that it has been my understanding, throughout all
21 the Boards that I've been serving on, that if two members want to speak about the case to each other
22 just for clarity or something like that – are they allowed, as long as there's no Board meeting, which is
23 defined by a majority of the Board being present?

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

25

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

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

4 **Chairperson Hylton:** It's just been my thing that I've always been allowed to speak. I could pick up the
5 phone, for example, and speak to Heather about a particular matter if I need some understanding on
6 something that may be there, that she may have an expertise on, and so on. That's been my
7 understanding.

8 **Mr. Schultz:** For who?

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

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

12 **Chairperson Hylton:** I understand. You're being Kevin, and that's good. All right, do we have any other
13 questions, so we can move on? Mr. DeLaney?

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

23 **Chairperson Hylton:** Absolutely. There's a lot of different things. How would you compare? I guess it
24 depends on the situation you're in. But let me just say that OATH has a Board similar to this Board, that
25 considers appeals and so on. So, they do have these rules similar to what we have, what they can

1 consider as ex parte for those matters that come before that Board. It's kind of similar to what's
2 happening here now. But there are also a lot of other Boards. So I guess, Kevin, you have your work cut
3 out for you. You may want to call the members of the Supreme Court and see what they think.

4 **Mr. Schultz:** From my point of view, I agree Mr. DeLaney, we raised some great questions. I tried to
5 answer some of the questions about unsolicited communications, themselves, which is what I was
6 prepared to focus on. It went into some other areas that I think are questions ripe for answers. As far as
7 defining what's legally improper, and then trying to think about which, is an open question; what the
8 Board's preferences are as far as the practice, now, and as you said, we don't have the benefit of the
9 delay of postage, versus the immediacy of email. Unsolicited communication can also come well before
10 there's a matter on an agenda, and that's a different scenario, which leads me to just one more
11 comment, which is to let people know... I would guess, often, people are sometimes unwittingly
12 copying, as Mr. DeLaney said, there are public members and then there are those who are interested in
13 group representation. So, some people might think it's right to copy their respective Board member of
14 their interest. And often perhaps, maybe they just need to be told, please don't. And so we will do that
15 as Board staff. I think it's possible sometimes -- we may need or want that member to join us in that
16 communication, so that there's clarity across that interest, so they don't think we're just trying to keep
17 them away. That hasn't specifically happened. But I think that was the last note I wanted to put out here
18 today.

19 **Chairperson Hylton:** Thank you. So we now turn to the Appeals and Reconsideration Calendar. There
20 are two cases on the Appeals and Reconsideration Calendar.

21 Case #1: 114 West 14 Realty, LLC 112 -114 West 14 Street, New York Docket # R-0383

22 Mr. Clarke, are you ready to present this case?

23 **Mr. Clarke:** Yes, Chairperson Hylton. Before I present the Summary case, there are three edits I would
24 like to make to the Proposed Order that was sent to you. The first two are located on page 3 of the
25 Proposed Order, underneath where it says analysis, Roman numeral number one. It says, Owner failed
26 to file an Abandonment Application. We need to put in there "prior" before the word owner. So it
27 should read, Prior owner failed to file an Abandonment Application. Underneath that, in the second

1 sentence, underneath Roman numeral number one, it says, Owner states that it is undisputed that the
2 Ms. Hoff... We need to remove that the. And finally, at the bottom of page 5, in the paragraph right
3 above Roman numeral three, the second sentence, which begins, The Loft Board agrees, we're just
4 going to strike that sentence. And the sentence after that, where it says, Furthermore, we're going to
5 change furthermore to however.

6 **Chairperson Hylton:** That is page 5 under Roman numeral three, you said?

7 **Mr. Clarke:** It's on top, above Roman numeral three, I'm sorry.

8 **Chairperson Hylton:** Oh, I see okay.

9 **Mr. Clarke:** Those are the three changes that we need to make to this Proposed Order.

10 **Chairperson Hylton:** Go ahead. Thank you.

11 **Mr. Clarke:** Thank you. Board members, on February 20th, 2020, the Loft Board issued Loft Board Order
12 number 4994. The Order found that Unit 4E in the building had not been deregulated by an alleged prior
13 Sale of Rights and Improvements because the prior occupant was not a protected occupant at the time
14 of the alleged sale, and the October 2009 sales agreement and sales record forms appeared suspect.
15 The Order granted tenant protected occupancy status of the unit and found that he was entitled to a
16 rent overcharge award in the amount of \$20,900.88. On March 27th, 2020, owner filed this
17 Reconsideration Application seeking a review of the Order, alleging three errors of law and denial of due
18 process.

19 Owner's application argues the Loft Board committed the first error of law by failing to deregulate the
20 unit upon the death of Ms. Hoff in 2008. However, even though the Loft Board's rules allow an owner to
21 apply to the Loft Board for an Abandonment finding upon the death of an IMD tenant, no Abandonment
22 Application was ever filed with the Loft Board, pursuant to 29 RCNY 2-10(f). Owner argues the Loft
23 Board committed the second error of law by invalidating the alleged Sale of Rights and Improvements
24 between prior owner and Ms. Herdoon, the then occupant of the unit in October 2009.

1 In the Order, the Loft Board weighed the evidence presented by both parties to determine if Ms.
2 Herdoon, a prime lessee with an expired lease, used the unit as her primary residence, pursuant to 29
3 RCNY 2-09(b)(4). The Loft Board found owner failed to prove a valid sale occurred because there was
4 insufficient evidence to establish Ms. Herdoon used the unit as her primary residence at the time of the
5 purported sale, and therefore, she was not the protected occupant of the unit at the time of the
6 purported sale.

7 In owner's Reconsideration Application, owner stated language in the purported sales agreement
8 stating Ms. Herdoon's desire to vacate the unit was proof Ms. Herdoon used the unit as her primary
9 residence at the time of the proposed sale. However, such language in a Sales Agreement does not add
10 significant weight for the Board to consider when determining primary residency, and the Loft Board, in
11 this Order, affirms the previous Order's conclusion that owner failed to prove a valid sale occurred
12 because Ms. Herdoon was not the protected occupant at the time of the alleged sale. Furthermore,
13 although the Loft Board admitted the 2009 Sales Agreement and the Sales Form between prior owner
14 and Ms. Herdoon appeared suspicious, the Loft Board's conclusion that Ms. Herdoon was not a
15 protected occupant at the time of the purported sale is sufficient to make a determination that the
16 purported sale was invalid, and the unit was not deregulated.

17 Owner argues the Loft Board committed the third error of law when it found tenant was the protected
18 occupant of the unit because tenant is not the type of tenant the Loft Law is intended to protect, based
19 on his income, alleged perjury, misrepresentations, and intentional withholding of information.
20 However, tenant met the requirements for protected occupancy pursuant to 29 RCNY 2-09(b)(4), and
21 the rule does not require additional showing or impose any additional restrictions. Further, as stated in
22 the Order, the First Department dismissed owner's claim of fraud against tenant, and the Loft Board
23 lacks jurisdiction to consider equitable claims.

24 Owner also alleges denial of due process because it was denied discovery during the OATH proceeding;
25 however, owner failed to provide any support for such a claim for the Board to evaluate. Finally, owner
26 argues the tenant should be estopped from the claim that his monthly rent paid to owner from July
27 2014 to September 2014 is \$7,800 because he previously stated under oath in an unrelated action that
28 his monthly rent was \$5,000. However, there is no dispute that in the tenant's last lease, the monthly

1 rent for the unit was set at \$7,800, and tenant paid owner \$7,800 per month from July 2014 to
2 September 2014. Therefore, in calculating the overcharge from July 2014 to September 2014, the rent
3 paid by tenant is \$7,800 per month.

4 For the reasons stated, this Order denies owner's Reconsideration Application. It also modifies Loft
5 Board Order number 4994 to reflect the correct milestone increase of eight percent for owner obtaining
6 an alteration permit in 1996; adjusts the maximum permissible rent for the unit to \$873.48 per month;
7 and adjusts the rent overcharge award to \$20,779.56.

8 **Chairperson Hylton:** Thank you. Do I have a motion to accept this case? Mr. Barowitz. Do I have a
9 second?

10 **Mr. Roche:** I'll second that.

11 **Chairperson Hylton:** Ms. Oddo, thank you. Thank you, Rich, but Ms. Oddo has seconded. Do I have any
12 questions? Comments? Or do we have any comments on this case? Absent comments, Ms. Rivera,
13 could you please poll the Board members?

14 **Ms. Rivera:** Mr. Barowitz?

15 **Mr. Barowitz:** Yes

16 **Ms. Rivera:** Mr. Roche?

17 **Mr. Roche:** Yes

18 **Ms. Rivera:** Ms. Hayashi?

19 **Ms. Hayashi:** Yes

20 **Ms. Rivera:** Mr. Hylton?

21 **Chairperson Hylton:** Mr. Hylton?

22 **Mr. Schultz:** I believe he stepped away from the meeting.

1 **Ms. Rivera:** Mr. DeLaney?

2 **Mr. DeLaney:** Yes

3 **Ms. Rivera:** Ms. Roslund?

4 **Ms. Roslund:** Yes

5 **Ms. Rivera:** Ms. Oddo?

6 **Ms. Oddo:** Yes

7 **Ms. Rivera:** Ms. Rajan?

8 **Ms. Rajan:** Yes

9 **Ms. Rivera:** Chairperson Hylton?

10 **Chairperson Hylton:** Yes

11 **Ms. Rivera:** Mr. Hylton came back, no?

12 **Chairperson Hylton:** Mr. Hylton will be, I guess, absent. Mr. Barowitz, how would you record Mr.
13 Hylton? He's not absent from the meeting. I rely on your expertise here.

14 **Mr. Barowitz:** Absent

15 **Chairperson Hylton:** Absent. Okay

16 **Ms. Rivera:** Eight in favor, one absent.

17 **Chairperson Hylton:** Thank you, Ms. Rivera. The next case is an applicant

18 Case #2: 99 Sutton, LLC 99 Sutton Street, Brooklyn, New York Docket # AD- 0110

19 Ms. Lee is prepared to present this case.

1 **Ms. Lee:** Thank you, Chairperson Hylton. In this case, the owner of the building challenges an
2 administrative determination, dated June 11th, 2020, that was made by the former Executive Director of
3 the Loft Board. The former Executive Director rejected sales filings which the owner had submitted for
4 Units 218 and 419, on April 25th, 2019, and May 23rd, 2019, respectively, because the owner had failed
5 to adequately substantiate the alleged sales of Loft Law rights for both units.

6 The owner claims that the former Executive Director committed an error of law and that the facts found
7 in the administrative determination are not supported by substantial evidence in the record. This
8 Proposed Order finds that the former Executive Director did not commit an error of law; however, it
9 agrees that the facts found in the administrative determination are not supported by substantial
10 evidence in the record. In the underlying matter, the former Executive Director raised two issues in
11 regard to the sales filings, specifically relating to payment.

12 First, the former Executive Director noted that the canceled checks which the owner had included in its
13 sales filings for Units 218 and 419 predated the respective sales agreements. The record shows that the
14 owner submitted an affidavit as well as a copy of its bank statement, which indicates that payments to
15 the tenants of Units 218 and 419 were completed after the execution of the respective sales
16 agreements. Therefore, the fact that the canceled checks predate the sales agreement does not
17 invalidate the alleged sales of Loft Law rights for the two units in question.

18 Second, the former Executive Director observed that the backs of the canceled checks only contained
19 the words, for deposit only hyphen JPMC, and were not signed by the payees. It is generally known that
20 the words for deposit only on the backs of checks signifies restricted endorsement and requires the
21 checks to be deposited into the accounts of the payees only. This notation, coupled with the owner's
22 affidavit and bank statements, adequately demonstrates that payments were made to the tenants of
23 Units 218 and 419. Therefore, the lack of signatures on the backs of the canceled checks does not
24 invalidate the alleged sales of Loft Law rights for the two units in question.

25 Given that the Sales Agreements for Units 218 and 419 explicitly cite the Loft Law and the relevant
26 sections thereof, which conveys an intentional relinquishment of known Loft Law rights, and given that
27 there is sufficient evidence to show that payments were made to the tenants as stipulated in their

1 respective sales agreements, this Proposed Order finds that the former Executive Director's rejection of
2 the alleged sales of Loft Law rights for Units 218 and 419 is not supported by substantial evidence in the
3 record. Accordingly, this Proposed Order grants the owner's appeal and reverses the administrative
4 determination to the extent that it rejected the alleged sales of Loft Law rights, as well as related sales
5 filings for Units 218 and 419.

6 **Chairperson Hylton:** Thank you, Ms. Lee. Do we have a motion to accept this case? Ms. Roslund. Do I
7 have a second? Mr. Roche. Thank you, Mr. Roche. Do we have any comments? Do we have a comment?
8 Any comments? Absent comments, Ms. Rivera, can you please poll the Board members?

9 **Ms. Rivera:** Mr. Barowitz?

10 **Mr. Barowitz:** Yes

11 **Ms. Rivera:** Mr. Roche?

12 **Mr. Roche:** Yes

13 **Ms. Rivera:** Ms. Hayashi?

14 **Ms. Hayashi:** Yes

15 **Ms. Rivera:** Mr. Hylton?

16 **Chairperson Hylton:** He's absent

17 **Ms. Rivera:** Mr. DeLaney?

18 **Mr. DeLaney:** Yes

19 **Ms. Rivera:** Ms. Roslund?

20 **Ms. Roslund:** Yes

21 **Ms. Rivera:** Ms. Oddo?

22 **Ms. Oddo:** Yes

1 **Ms. Rivera:** Ms. Rajan?

2 **Ms. Rajan:** Yes

3 **Ms. Rivera:** Chairperson Hylton?

4 **Chairperson Hylton:** Yes

5 **Ms. Rivera.** Eight in favor; one absent

6 **Chairperson Hylton:** Thank you Ms. Rivera. So there are two Summary Cases on the calendars. These
7 cases are

8 Case #3: Matter of Gerding 35 Broadway, Brooklyn, New York Docket #s TR-1396, PO- 0119

9 Case #4: Matter of Lanzano 49 West 19th Street, New York, NY Docket # TA-0286

10 Do I have a motion to accept these cases?

11 Thank you, Ms. Rajan. Second? Mr. Barowitz. Thank you. Does anyone want to comment on these
12 cases? Thank you. Ms. Rivera, could you please poll the Board members?

13 **Ms. Rivera:** Mr. Barowitz?

14 **Mr. Barowitz:** Yes

15 **Ms. Rivera:** Mr. Roche?

16 **Mr. Roche:** Yes

17 **Ms. Rivera:** Ms. Hayashi?

18 **Chairperson Hylton:** Yes. That's a yes.

19 **Ms. Rivera:** Mr. DeLaney?

20 **Mr. DeLaney:** Yes

21 **Ms. Rivera:** Ms. Roslund?

1 **Ms. Roslund:** Yes

2 **Ms. Rivera:** Ms. Oddo?

3 **Ms. Oddo:** Yes

4 **Ms. Rivera:** Ms. Rajan?

5 **Ms. Rajan:** Yes

6 **Ms. Rivera:** Chairperson Hylton?

7 **Chairperson Hylton:** Yes

8 **Ms. Rivera.** Eight in favor; one absent.

9 **Chairperson Hylton:** Thank you Ms. Rivera. So we turn our attention now to the Master Calendar.
10 There's one case on the Master Calendar, and that case is

11 Case #5: Alexander Kosolapov 58 East 11th Street, New York, New York Docket # TN-0222

12 Ms. Lin, will you please present this case?

13 **Ms. Lin:** Thank you, Chairperson. Case number 5, in the matter of Alexander Kosolapov, is a tenant-
14 initiated violation of legalization timetable application against Bijan Realty Corp., the owner of the
15 building located at 58 East 11th St., New York, New York. Tenant filed this application in June 2014. In
16 August 2015, the parties entered into a stipulation of settlement, in which owner acknowledged that it
17 had violated the legalization timetable under the Loft Law and agreed to obtain a residential Certificate
18 of Occupancy on or before December 31st, 2015. Owner agreed to deposit \$20,000 in escrow with its
19 attorney and agreed to release the escrow funds to the Loft Board if no residential CO was obtained by
20 December 31st, 2015. Owner further agreed that if no residential CO was obtained by the December
21 2015 deadline, it would deposit an additional \$100 per day into the escrow fund.

1 Owner failed to obtain a residential CO by the deadline. According to tenant's calculation, with the
2 addition of the daily penalties, owner is liable for a \$192,800 fine to the Loft Board under the terms of
3 the parties' 2015 stipulation.

4 In September 2019, the Loft Board issued an Order, Loft Board Order number 4897, remanding the
5 matter back to OATH for adjudication. The administrative law judge found that the penalty provided for
6 in the parties' 2015 stipulation was unenforceable and recommended a fine of \$10,000 against the
7 owner for its failure to comply with Loft Law deadlines.

8 This Proposed Order adopts the ALJ's recommendation and fines the owner \$10,000. Although the
9 parties had agreed to a higher penalty in their 2015 stipulation, this penalty is not enforceable by the
10 Loft Board. The Loft Board, as an administrative agency, only possesses the powers conferred to it by
11 statute. Tenant has not cited to any provision of the MDL or Loft Board rules that would authorize the
12 Loft Board to issue an Order compelling owner to pay \$192,800 to the Loft Board. The Loft Board rules
13 set out a fine schedule that the Loft Board may charge and collect for a violation of its rules. In
14 accordance with this fine schedule, the Proposed Order fines the Owner \$10,000 for violating its
15 legalization timetable obligations, which is the maximum permissible fine under the rules.

16 **Chairperson Hylton:** Thank you, Ms. Lin. Do we have a motion to accept this case? Ms. Roslund. A
17 second? I see Ms. Rajan. Thank you, Ms. Rajan. Do we have any comments on this case?

18 **Ms. Roslund:** I was just going to quickly ask Mr. Schultz to give a brief statement about the info around
19 the Enforcement issues of this building.

20 **Mr. Schultz:** Sure. So this is, as is begged by the Order itself... There is action not being taken because
21 it's tenant-initiated. There are provisions of the Loft Board rules that allow the Loft Board to initiate
22 Enforcement proceedings against buildings in this situation. This matter has been referred to the Loft
23 Board Enforcement attorney and is under review, amongst others, similarly situated as well.

24 **Chairperson Hylton:** Thank you, Mr. Schultz. Mr. DeLaney has comments.

25 **Mr. DeLaney:** Yeah, I just think the public is really entitled to get a little more background on this case.
26 This particular filing by the tenant for violation of the legalization timetable, finding the owner not being

1 in compliance, was filed more than seven years ago, in July of 2014. And the stipulation alluded to
2 briefly came a year later, in August 2015. Tenant and Owner entered into a stipulation of settlement.
3 Owner acknowledged it violated the legalization timetable under the Loft Law. Owner agreed to deposit
4 with its attorneys \$20,000 in escrow. Owner agreed that if it failed to obtain a residential Certificate of
5 Occupancy on or before December 31st, 2015, the escrow funds would be released to the Loft Board,
6 not the tenant. Owner further agreed that if no residential Certificate of Occupancy is obtained by
7 December 31st, 2015, they would deposit an additional \$100 per day in the escrow fund until a
8 residential C of O is obtained.

9 Tenant argues that because the Owner -- skipping a couple paragraphs -- had failed to obtain a
10 residential CO by December 31st, 2015, it must abide by the terms of its 2015 stipulation and release the
11 escrow funds to the Loft Board. Sounds pretty fair to me, editorializing. Tenant argues that the escrow
12 fund should now total \$192,800, which represents the original \$20,000 that had been deposited plus
13 the additional penalty of \$100 per day after December 31st, 2015. By tenant's calculation, 1,728 days
14 have passed since December 31st, 2015, and the escrow funds should have been increased by \$172,800.
15 The tenant also argues that there should be a \$17,500 fine for failing to take reasonable and necessary
16 action.

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

25 **Chairperson Hylton:** Anyone else has a comment to make? Absent any other comments, Ms. Rivera,
26 could you please poll the Board members?

27 **Ms. Rivera:** Mr. Barowitz?

1 **Mr. Barowitz:** Yes

2 **Ms. Rivera:** Mr. Roche?

3 **Mr. Roche:** Yes

4 **Ms. Rivera:** Ms. Hayashi?

5 **Ms. Hayashi:** Yes

6 **Ms. Rivera:** Mr. DeLaney?

7 **Mr. DeLaney:** No

8 **Ms. Rivera:** Ms. Roslund?

9 **Ms. Roslund:** Yes

10 **Ms. Rivera:** Ms. Oddo?

11 **Ms. Oddo:** Yes

12 **Ms. Rivera:** Ms. Rajan?

13 **Ms. Rajan:** Yes

14 **Ms. Rivera:** Chairperson Hylton?

15 **Chairperson Hylton:** Yes

16 **Ms. Rivera.** Seven in favor; one against; one absent

17 **Chairperson Hylton:** Thank you Board members, and thank you, Ms. Rivera. The next item on the
18 agenda is rulemaking. At this point I will ask for a two-minute pause, a break, Mr. Schultz, and then we'll
19 come back and discuss rulemaking. Is that all right? Board members, just put yourself on mute. And
20 please, it shouldn't be a very long meeting, so we just want to come right back. Thank you.

21 **Mr. Schultz:** We will not stop recording.

1 **Chairperson Hylton:** Okay, Board members, I'm just waiting for you to put your cameras back on, so
2 just go back on camera so I know you're on. Thank you.

3 **Mr. Schultz:** I'll just take a moment to mention Christian Hylton has been on the telephone. He was not
4 able to do video, but he was able to listen via telephone. So, make everyone aware of that.

5 **Chairperson Hylton:** We have quorum, and we're about to start. Thank you very much for your
6 patience. I'm all sugared up again; I'm ready to go. Next item on the agenda is Mr. Schultz's discussion
7 regarding rulemaking. So, Mr. Schultz will lead the discussion with the help of Miss Lin and Mr. Clarke.
8 Thank you, Mr. Schultz.

9 **Mr. Schultz:** You're welcome. Thank you. This should be relatively quick, honestly. I have very few items
10 to cover. Perhaps members want to bring up something. Before I start, I want to correct one thing from
11 last time. I finished up thanking Ms. Lin, and Mr. Clarke, and Ms. Lee, and Mr. Argov, and I left off Mr.
12 Silverstein, who, in the short time he's been with us, has been a lot of help to me getting ready,
13 especially for that November 4th meeting. And I didn't get his name in there, so I want to take a
14 moment just to mention him and his excellent help throughout this whole process. And all those people
15 are included once again in what we're going to discuss today.

16 We could start on page 115. It's a document that was shared with the Board members relating to
17 rulemaking, it's called Rulemaking, Draft Board Member Version, Clean Draft Markup, November 12th,
18 2021. There is a corresponding version available to the public that will match the pages.

19 Page 115 is a section we discussed on November 4th, and I said we'd revisit it. There was just some
20 question about, thought about, whether tenant should be capitalized there, and Mr. DeLaney gave
21 some insight about prospective incoming tenant. The Board staff and I looked at it. We do think the
22 capitalization of tenant is appropriate there. I think un-capitalizing it might create undue confusion or
23 just look like an error. The words before it, "prospective incoming," create what we think is all the
24 context that word needs to give it its proper meaning. I'll stop there and be happy to listen to more
25 thoughts on that if there are any others.

1 Next is on page 165. This is something that we indicated last time that we'd revisit with a
2 recommendation because there was lack of clarity. And essentially, the recommendation is to include
3 the language --- after "{insert date}" -- include the language, "the effective date of this amended rule,"
4 which is both consistent with other portions, but provides the context the final draft will need to know
5 what date goes there. And that is appropriate by context because the preceding section references
6 September 11th, 2013, which is the previous effective date of this amended rule. So, with some context
7 review, I think I was hesitant on confirming that last time. I just hadn't looked at it closely enough. I see
8 Mr. DeLaney, your green light has popped on, so please.

9 **Mr. DeLaney:** I'm just trying to understand the comment versus... are we changing this or...?

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

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

16 **Mr. Schultz:** What are you referencing there? Are you referencing section (C) immediately above?
17 That's the anomaly. That section (C) above is the anomaly. Other references to September 11th, 2013,
18 include that additional language. Its absence above is exactly what begged this question. More
19 significantly than normal. If you want to do a search for September 11th, 2013, you'll see it referenced
20 consistently as -- and it's accurately referenced as -- the effective date of the amended rule.

21 **Chairperson Hylton:** And you didn't want to...

22 **Mr. Schultz:** Page 154, for instance, and this is language that is unchanged.

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

24 **Mr. Schultz:** No. It's unnecessary.

1 **Chairperson Hylton:** Okay

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

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

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

9 **Chairperson Hylton:** Okay

10 **Mr. Schultz:** To page 69

11 **Mr. DeLaney:** Page 169?

12 **Mr. Schultz:** Page 169, yes. And I'm raising this because Law Department raised it, and I believe that
13 once I finish talking, you'll...Let me begin with saying I'm inclined to think that the entire option A or
14 option B here is inconsequential. But because I'm not sure, and because it's a question for another day,
15 I'm recommending there be no change to this language. Law Department has suggested that the last
16 line read, "{insert date}, which is the effective date of this amended rule." The language that exists is,
17 which is... I'm sorry, not effective date. Let me start over. Law Department has suggested that it read,
18 "insert date, which is ninety (90) days following the effective date of this amended rule." That sounds
19 familiar because we just talked about it. I am suggesting that it remain the way it looks in front of you
20 simply because it is mirroring the language that was used previously.

21 If you look at section three (iii) above, it refers to it as a section and not an amended rule. Not sure
22 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
23 do no harm, because we have been told, we have decided, that we are going to give it a substantive
24 overhaul at another time. So, I am not suggesting we change it because the language that you see
25 before you there at the end of section four (iv) -- "{insert date}, which is ninety (90) days following the

1 effective date of this section"-- would remain consistent with what's existed before. And so, if there's a
2 problem, if there's a difference, that will be figured out in the next stage of substantive review.

3 **Chairperson Hylton:** Are we on page 168?

4 **Mr. Schultz:** 169. Did I say 168?

5 **Chairperson Hylton:** Okay. I'm sorry. Okay. That's my fault then.

6 **Mr. Schultz:** I'll say that again, quickly. Last sentence on the whole page. Leave it the way it looks. That
7 is the last rulemaking comment. Well, I shouldn't say that. The last about the language of the rules. I'll
8 share an update. The responses to the Law Department's comments incorporating everything we've
9 discussed have been submitted to the Law Department, including the three we just discussed, with the
10 caveat that they still need to be looked at. But the version that I just presented was given to them as, I
11 don't want to say presumptive, but again, it has the asterisk of, I've got to talk to the Board because we
12 hadn't talked about it yet. But I didn't want to delay the Law Department's review of everything.

13 So unless something...My point is that the Law Department's currently looking at everything we've
14 discussed, reviewing our responses to their responses. That doesn't mean it's over yet. This Board
15 hasn't yet voted on a new, clean version. And we would hope to do that, once Law Department and the
16 Loft Board, through its staff, have come to a meeting of the minds on a few of the things that are still up
17 in the air, where we didn't take their suggestions. So, there will still be another version to be looked at,
18 to be voted on, to be clean and compared to these comments.

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

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

23 **Mr. DeLaney:** Yeah, yeah, yeah, yeah, yeah

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

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

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

11 **Mr. DeLaney:** Right, but some of the -- what most of us would consider kind of legal technicalities,
12 whether it says effective date or some version of that -- that's up to you and the Law Department to arm
13 wrestle over and resolve. And then at that point, we would move forward in a timely fashion. Whereas
14 if, for example, I had significant concerns about an area that we're already amending, that would be
15 whole new territory, and the Board staff position would be later for that.

16 **Mr. Schultz:** Yeah

17 **Chairperson Hylton:** The Chair's position, we need to move forward. That's what would be for now.
18 Unless, of course, the Board wants to consider something. But the Chair's not going to entertain any
19 more changes except what's (before us) right now. We just want to move forward.

20 **Mr. Barowitz:** Renaldo and Kevin, do you have any idea when this may come back?

21 **Mr. Schultz:** I would be hesitant to posit a guess, other than to say that if I haven't heard anything by
22 the end of the year, I'd be very politely knocking on the door. Really by early-mid December, I'm hoping
23 to at least have a conversation on whatever questions...We can continue that conversation.

24 **Mr. Barowitz:** That date we will insert will be the date that it comes back to us from the lawyer?

1 **Mr. Schultz:** No. The date that will be inserted will be the date after the public comment period. It's
2 certainly...

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

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

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

12 **Mr. Barowitz:** Well, it's too bad. I was going to bring a bottle of champagne today, but I didn't.

13 **Chairperson Hylton:** Can you just get to me privately, Mr. Barowitz. When you get off here, we'll just
14 find out where we're going to open that bottle. We don't want to put it to waste. All right. Any...

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

18 **Chairperson Hylton:** It probably would never be February, because then you need to meet on it and
19 then send it back to Law for further review and final approval. It comes back to you again. And then
20 you'd have a public hearing. Yes. I would say, really, the earliest now would be March. If everything is as
21 you said.

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

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

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

10 **Mr. DeLaney:** Sounds good.

11 **Mr. Schultz:** Thank you.

12 **Chairperson Hylton:** Any other questions? Any other comments? Okay, so before I conclude this
13 meeting, I'm going to turn it over to Mr. Schultz for some additional news to share with us. Mr. Schultz.

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

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

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

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

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

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

25 So, this will conclude our November 18th, 2021, Loft Board meeting. I want to say first of all, happy
26 Thanksgiving. You and your families, please stay safe. And our next public meeting will be scheduled to
27 be held on January 21st, 2022. The Governor's suspension of the in-person requirements of the Open

1 Meetings Law is in effect until January 15th, 2022. Therefore, at this time, we do not know if the meeting
2 will be held in person or virtually. Information will be updated on the Loft Board's website and also in
3 email updates to the Loft Board announcement Listserv. I would encourage the public, if you have not
4 yet signed up for the Listserv, that form and ability to do so is on the Loft Board's website, so you can
5 stay in touch with what's happening. Board members, please remember to sign and email in your
6 attendance sheets. I appreciate it. Guys, someone wants to say something. Yes, Mr. Roche.

7 **Mr. Roche:** Mr. Chairman, my calendar could possibly be wrong, but you said January 21st of 2022? I
8 show that as a Friday.

9 **Chairperson Hylton:** It will be January 20th. I stand corrected. Thank you, Mr. Roche. Our next public
10 meeting will be scheduled for January 20th. It's a leap year, so I just thought I'd add another day on.
11 Anyway, all the best to you, and actually, at this time also, I want to wish the Board a happy holiday and
12 also happy New Year, because I won't see you until then, at least. Unless the Law Department comes
13 back with this rule, and we need to get this done really quick. So, I appreciate your time, and happy
14 holidays. Take care.