MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting
Held at 22 Reade Street, Main Floor, Spector Hall

January 16, 2020

The meeting began at: 2:20PM

Attendees: Elliott Barowtiz, Public Member; Richard Roche, Fire Department's *ex officio*; Charles DeLaney, Tenants' Representative; Julie Torres-Moskovitz, Public Member; Heather Roslund, Public Member; Renaldo Hylton, Chairperson Designee; and Helaine Balsam, Loft Board, Executive Director.

INTRODUCTION:

Chairperson Hylton welcomed those present to the January 16, 2020, 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:

November 21, 2019 Meeting Minutes

Mr. Hylton asked if there were any questions or comments on the minutes.

Mr. DeLaney: On page 3, we discussed the web site, and I gather there's some positive news?

Mr. Hylton confirmed that there was.

Mr. DeLaney: On page 5, we discussed self-certification. Has there been any progress on that?

Mr. Hylton replied that he has made the request at the appropriate level, but has yet to receive a response.

Mr. DeLaney noted a typo in the transcript of his dialogue on page 7, where the word "know" should be "note."

Mr. Hylton asked if there were any further questions (none); and for a motion to accept the minutes, and for a second.

Mr. DeLaney moved to accept the November 21, 2019, meeting minutes.

Ms. Torres-Moskovitz seconded.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Mr. Hernandez

Members recused: 0

December 5, 2019 Meeting Minutes

Mr. Hylton asked if there were any questions or comments on the minutes.

Mr. DeLaney noted that Mr. Hernandez should be included in the attendees list, as he arrived later, during the Board Meeting.

Mr. Hylton asked if there were any further questions (none); and for a motion to accept the minutes, and for a second.

Mr. Barowitz moved to accept the December 5, 2019, meeting minutes.

Ms. Torres-Moskovitz seconded.

The vote:

Members concurring: Mr. Barowitz, Mr. Roche, Mr. DeLaney, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: Ms. Roslund

Members absent: Mr. Carver, Mr. Hernandez

Members recused: 0

LOFT BOARD WEB SITE:

Mr. Hylton reported that there was to be a presentation today about the web site, but due to technical difficulty with internet access, it was being postponed. He noted that the site was about the go live, but he wanted the Board to see it first.

EXECUTIVE DIRECTOR'S REPORT:

Ms. Balsam:

Staffing: Our new Deputy General Counsel will be starting before the end of the month. We have also identified a candidate for the Assistant General Counsel position, and that paperwork is in process. I would also like to

introduce our new HPD inspector, Curtis Lewis, who has many years of experience with HPD. For those in the loft community who have complaints, this is who will be responding.

Revenue: The Loft Board unofficially collected $139, 922.25 in November and $61,595 in December.

Jurisdiction: As of today, we have 330 buildings under our jurisdiction. I've given you a chart, which is not as specific as some we've had in the past. I'm sorry, but we just have so much to do, and so few people. The chart shows the different milestone categories and how many buildings are in those categories, and then a breakdown by the different Window Periods. As you can see, we still have the most buildings from the first Window Period; but I think they are, finally, starting to move. We are getting there. Slowly.

Litigation: I've emailed and distributed copies of a couple of decisions that have come down in cases where we were sued by 99 Sutton.

In *99 Sutton LLC v. New York City Loft Board*, the owner challenged a Loft Board decision that denied the owner's request for removal from the Loft Board's jurisdiction and invalidated sales of rights. The court found the challenge to the denial of the removal application was a non-final order, so it was not subject to review in the proceeding. As to the Board's rejection of the sales of rights, the court rejected the owner's arguments and found the owner failed to rebut the Board's findings or cast doubt on the Loft Board's conclusion that the staff had a rational basis when it issued its determination rejecting all of the sales. It's a very interesting decision. It's very clearly written, and I think it will provide us guidance in rule-making. Hopefully, we'll work on that rule later today.

The other (99 Sutton) case is one of the mandamus cases. There are several of them outstanding. The owner wanted us to very quickly review their sales of rights, before the people who had filed before them. The court dismissed the petition, finding that the Loft Board had proceeded in good faith in deciding their applications.

New Cases:

In *475 Kent Owner LLC v. New York City Loft Board,* the owner is requesting an order of mandamus to compel the Loft Board to decide four separate coverage applications that are pending.

Mr. Hylton asked how old the applications were.

Ms. Balsam explained that they are usually taken in order of the filing date, but these had come back in 2018. They're making their way up the list, but some of the cases before them are much older.

Before starting the cases, **Mr. Hylton** asked, if the web site presentation issue were resolved, whether the Board would mind stopping at the end of whatever case was in progress, viewing the presentation, then resuming the case. The Board agreed to do so.

THE CASES:

Appeal and Reconsideration Calendar:

Mr. Hylton: There is one case on the Appeal and Reconsideration calendar. The case is:

	Applicant(s)	Address	Docket No.
1	F.J.H. Realty Inc.	79 Lorimer Street, Brooklyn	AD-0097

Ms. Lee will present this case.

Mr. Hylton thanked Ms. Lee and asked for a motion to accept this case, and for a second.

Mr. DeLaney moved to accept the case, and **Mr. Roche** seconded.

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

Mr. DeLaney said it was very well written.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Mr. Hernandez

Members recused: 0

CONCLUSION

The Loft Board holds that the facts found by the Executive Director in the Administrative Determination are supported by substantial evidence in the record and that the Executive Director correctly applied the law. Owner failed to make good faith efforts to achieve code compliance.

Summary Calendar:

Mr. Hylton: There are two cases on the Summary Calendar, and they are voted on as a group. They are:

	Applicant(s)	Address	Docket No.
2	Christina Mañas	54 Knickerbocker Ave, Brooklyn	TA-0258
3	Jeff Larvia, et al	223 15th Street, Brooklyn	TR-1244

Mr. Hylton asked for a motion to accept these cases, and for a second.

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

Mr. Hylton asked if there were any comments on the cases.

Mr. DeLaney: I do have a comment on 223 15th Street, Brooklyn. This case was tentatively scheduled for November, and it was tabled at that time. The revised Order we have before us today is a significant improvement. What happened here is the following. It's a four-unit building, and either during the pendency of the case or before, three of the applicants had sold their rights under § 286(12). Last November, the Loft Board was on the verge of making this a one-unit multiple dwelling, which would have allowed the owner to rent the other three units at market rent and no longer be obliged to legalize the units under the Loft Board's supervision. The Order before us today orders the owner to register all four units as IMD dwellings and to legalize all four units.

This is an important step toward ensuring that the Board can confirm that units that qualify for coverage do, in fact, get registered; as opposed to allowing an owner to evade the very purpose of the Loft Law by purchasing a sale of rights. It also avoids the conundrum of saying, you sold your rights under the Loft Law, but you weren't covered under the Loft Law, so how could it be a valid sale of rights? So these are IMD units, and they will be legalized under the Loft Board's oversight. And that's a good thing.

Mr. Hylton: Thank you Mr. DeLaney.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Mr. Hernandez

Members recused: 0

The Master Calendar:

Mr. Hylton: There are six Proposed Orders on the Master Calendar. The first case is:

	Applicant(s)	Address	Docket No.
4	99 Sutton, LLC	99 Sutton Street, Brooklyn	FO-0826

Ms. Lee will present this case.

Mr. Hylton thanked Ms. Lee and asked for a motion to accept this case, and for a second.

Ms. Roslund moved to accept the case, and **Ms. Torres** seconded.

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

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Mr. Hernandez

Members recused: 0

CONCLUSION

For the foregoing reasons, the Loft Board finds Owner in violation of MDL § 284(2) and 29 RCNY § 2-11(b)(1)(i)(A) for failing to timely and properly renew the IMD registration for the Building for Fiscal Year 2020. Pursuant to 29 RCNY § 2-11.1(b)(3), a fine of $5,000.00 is hereby imposed against Owner for its failure to timely complete its annual registration for the Building for one year.

Owner is directed to pay this fine to the Loft Board and to renew the IMD registration for the Building with the Loft Board within thirty-five (35) calendar days of the mailing date of this Order. Failure to do so may result in additional proceedings, additional late fees and additional fines.

Mr. Hylton introduced the next case.

	Applicant(s)	Address	Docket No.
5	Tenants of 85 North 6th Street	85 North 6th Street, Brooklyn	PO-0013 PO-0015 TR-1103

Ms. Lee will present this case.

Mr. Hylton thanked Ms. Lee and asked for a motion to accept this case, and for a second.

Mr. Barowitz moved to accept the case, and **Mr. Roche** seconded.

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

Mr. DeLaney: Mr. De Goede moved into the unit in 2001, and married Ms. Ebinger in July 2010, ten years ago. One month after the Loft Law passed. In my opinion, Judge Zorgniotti properly found both Ms. Ebinger and Mr. De Goede to be protected occupants. The Loft Board continues to take the position that, if there is a lease, whoever signed the lease is the protected occupant, and that the spouse, no matter how long he/she has lived there or the role they played in the creation of the loft, is not a protected occupant, but "may" have rights to

succession. This is something we're looking at in the rules. I plan to vote for this Order, despite taking issue with this one point, which I will note in an opinion. But this really can't continue, and in fact, under the draft rules, which we will hopefully adopt sometime in 2020, this may indeed change. I still believe that the Loft Board's analysis on this and many other protected occupancy issues is wrong. In 2014, it started to deviate from what had been the practice of the Loft Board since it was formed in 1982. I note this for the record.

The vote:

Members concurring: Mr. Barowitz, Mr. Roche, Mr. DeLaney, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Mr. Hernandez

Members recused: Ms. Roslund

CONCLUSION

The Loft Board grants the application for coverage. The Loft Board finds that the Building is an IMD building and that the following units and tenants are covered and protected, respectively:

Covered Unit(s)	Protected Occupant(s)
2A	Marianna Dutra and Sven Bengt Peter Karlsson
2B	Mark Manriquez and Felisia Tandiono
2C	Anthony Sneed
3	Frauke Ebinger

The Loft Board finds that Leendert DeGoede is not an occupant entitled to Article 7-C protection.

The Loft Board directs Owner to register the Building as an IMD building, the four units as IMD units covered pursuant to MDL § 281(5), and the six tenants as protected occupants in accordance with this Order, as well as to pay the applicable registration fees, within 30 days of the mailing date of this Order. If Owner fails to register and to pay the applicable fees within 30 days of the mailing date, the Loft Board directs the staff to:

- issue an IMD registration number for the Building;
- list the four units as IMD units covered pursuant to MDL § 281(5);
- list the six tenants as protected occupants; and,
- collect applicable registration fees and late fees.

Mr. Hylton introduced the next case.

	Applicant(s)	Address	Docket No.
6	Tenants of 538 Johnson Avenue aka 75 Stewart Avenue	538 Johnson Avenue, Brooklyn	TR-1042 TR-1065

			TR-1260 TR-1304 TR-1346

Mr. Clarke will present this case.

Mr. Hylton thanked Mr. Clarke and asked for a motion to accept this case, and for a second.

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

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

Mr. DeLaney: Fortunately, I guess, in this case, the circumstances are such that there weren't an inordinate number of trial days devoted to the incompatible use issue. We had a building before us, that's now covered, that spent twenty days on this issue. Here, the tenants would have lost but for the legislature changing its position on incompatible use, limiting it to Use Group 18. So the coverage application filed by the tenants goes back to OATH for what I fear, in most circumstances, would be a lengthy discussion of every single unit and whether or not it's being used as a primary residence, by a protected occupant, who may have gotten married, and all that I spoke about before. However, the owner, realizing his gambit was not going to succeed, has run in and registered under the new section of the law, § 281(6). Which was very clever of him, because if that were found to be the provision of the law under which the owner's registration was accepted, the established rents for the IMDs would be the 2019 rents, rather than the 2010 rents, that will apply when the building is found to be covered under § 281(5). Fortunately, when the owner filed to register the building under § 281(6), he also listed many people as protected occupants. So hopefully that information can be presented to Judge Spooner to limit the number of days and billable hours that attorneys will expend haggling over who will be protected occupants. It used to be so simple, during the first two to two-and-a-half decades of the Loft Law's existence; but it's now become so muddied. Hopefully, the owner's gambit will result in the tenants being covered under § 281(5), and the registration information will limit the amount of time devoted to figuring out who is a protected occupant.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Mr. Hernandez

Members recused: 0

CONCLUSION

The Loft Board remands the applications for further adjudication to determine whether the Building and units meet the additional requirements contained in MDL § 281(5) as well as who should be the protected occupants of the units eligible for coverage.

Mr. Hylton: The last three cases on the Master Calendar are removal cases and are voted on as a group. They are:

	Applicant(s)	Address	Docket No.
7	Triad Capital, LLC	15 East 17 Street, Manhattan	LE-0583 LE-0702
8	Triad Capital, LLC	13 East 17 Street, Manhattan	LE-0584 LE-0703
9	73 Washington LLC	73 Washington Avenue, Brooklyn	LE-0673

Mr. Hylton asked for a motion to accept these cases, and for a second.

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

Mr. Hylton asked if there were any comments on these cases.

Mr. DeLaney: I think the people in the audience, who have sat through almost an hour of this, should at least be advised that cases 7 and 8 both involve units found to be covered even though the original occupant is no longer present. We are setting a rent based on the legalization, which took quite a while and which probably results in a legal rent significantly under what the current occupant of that space may be paying. This owner did some interesting things, so all the units in these two buildings, which are side-by-side but not a horizontal multiple dwelling have the benefit of choosing between a one- or two-year first lease. However, the owner is not entitled to any rent increases for that period, because the owner failed to make a proper filing. They are very interesting cases from a technical standpoint, and the Board spent quite a bit of time discussing them in private session.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Mr. Hernandez

Members recused: 0

Mr. Hylton announced that the Board would take a short break, then resume with either rule-making or a web site presentation.

RULE-MAKING:

After the break, **Mr. Hylton** turned the floor over to **Ms. Balsam** for the continuation of the discussion of proposed rule-changes.

Ms. Balsam: I sent the Board a new package that incorporates all the revisions we've decided upon so far, except for § 2-10, because I wasn't sure what we had agreed on, and we said we were going to start with that today. That proposed rule, which is regarding sales of rights, is on page 191.

But before starting, I want to mention that we had had a big discussion about using the terms Board and Staff in the rules. I've deleted all of those, because I realized that, since we're not changing other rules, this would just cause confusion. So everything is back to Loft Board now. If you see anything that hasn't been changed back, please let me know.

I think sales of rights is a very important rule. The Board has seen many issues over the past few years regarding sales of rights. Staff is proposing more than just ministerial changes, though some are, and we'll start with those. The first is on page 191 of the draft document books. We do have some copies for the public, if anyone wants to follow along. The first is to add references to § 281(6) where needed, so at the bottom of page 191, line 18:

> (i) No sale or agreement made prior to the following dates in which an occupant purported to waive rights under the Article 7-C will be given any force or effect:

Then, on line 25:

> (D) June 25, 2019 for units covered by MDL §§ 281(5) or 281(6) that became subject to Article 7-C pursuant to Chapter 41 of the Laws of 2019.

The rest of that is being deleted.

Ms. Balsam continued: On page 192, line 5, I'm adding the number (1) to "For a sale of rights in a unit subject to Article 7-C pursuant to…" Then skipping to line 10, I'm adding, "(iv) MDL § 281(6), which occurs on or after {insert date,} the effective date of this rule." The effective date of the rule will be inserted there. They have thirty days to file the sale with the Loft Board. Then we're adding a second section (line 15)

> (2) The owner or authorized representative must include documentation supporting the sale. Supporting documentation should include a fully executed sales agreement and proof of payment of the sales price (if applicable). The sales agreement must include a full description of the consideration, including the amount of monetary compensation, if any, supporting the sale.

We never had a rule that said owners were allowed to redact the sale price. In the instructions for the sales form, we did have something that said that the owners were allowed to redact the sale price, but we deleted that instruction when it appeared that some sales really were not sales; that there was not valid consideration or there were other issues of some kind. So we deleted that instruction, but some owners continue to redact the amount of the consideration. From a policy perspective, I can understand why they would want to do that -- someone might want to raise the price of another unit – but on the other hand, I think the Board has an obligation to make sure the sales are valid. I'm not really sure that a ten-dollar sale is a valid sale; and we do have some case law on this.

The only way to compel people to tell us what the dollar amount or other consideration is – because it doesn't have to be money; it could be something like allowing the person to live in another unit rent-free for a period of time –

Mr. Hylton: Is that what you mean by "if applicable"?

Ms. Balsam: Yes, right.

Mr. Hylton: And they have to describe that consideration?

Ms. Balsam: Yes. "…must include a full description of the consideration, including the amount of monetary compensation…" We have to compel them. My personal opinion, based on what I've seen over the years, is that we have to keep this in there. If the Board feels otherwise, that's fine. They're your rules. But I think it's important.

Mr. DeLaney: As you know, I support this approach. My question is, this says, "the sales agreement must include," but what is the "or else"? I think what you're saying is, to be accepted, it must include.

Ms. Balsam pointed out the next line: "Staff must reject any sale of rights that does not include a full statement of the consideration supporting the sale."

Ms. Torres-Moskovitz noted that "Staff" should be changed to Loft Board (line 20).

Ms. Balsam: The other item I included, because we had several questions about it, is the next sentence. "The refund of a security deposit or a portion thereof, is not consideration to support a sale." Last time, we had discussed changing "inadequate" (as it still says here) to "not." People may be legally entitled to a security deposit refund anyway, so that can't support a sale.

Mr. Hylton suggested adding the word acceptable. "The refund of a security deposit or a portion thereof is not acceptable consideration to support a sale."

Ms. Balsam and **the Board** agreed.

Mr. DeLaney: On line 20: "Staff must reject any sale of rights…" They're not really rejecting the sale of rights; they're rejecting the filing. For example, Eliot sold his rights, and he's gone. The owner doesn't want to disclose the sale price in his filing, so we're rejecting it. But we're not rejecting the sale of rights; that's already happened. We're rejecting the filing of it.

Ms. Balsam: The question is, does it de-regulate the unit?

Mr. Hylton asked if the sale was still valid, even if the filing is rejected.

Ms. Balsam: Yes it is. There is case law on that. The name is Thorgeirsdottir. People cite it all the time. The court said the sale is effective at the time it takes place. But I think it has to be a sale. The issue is whether or not it really is a sale. The court said we couldn't graft on an additional requirement to make the sale effective. So the sale is effective as of the date it takes place; but you don't necessarily get to that if it's not a sale. What we're trying to figure out here is, was this really a sale? And that involves an arm's length transaction; a knowing

waiver of your rights. We have a lot of Appellate Division cases that that talk about that. Judge Edmead, in her decision on 99 Sutton, actually mentions some of those cases.

Mr. DeLaney: Maybe it should read, "Staff may reject any purported sale of rights."

Ms. Balsam: Yes, that's a good way of saying it, although the Law Department and Mayor's Office of Operations may want to change "purported" to a simpler word. We'll see.

Mr. Barowitz raised a few points of grammar and punctuation, the former being about the uses of "its," and "his or her."

Ms. Balsam explained that the rules generally use "its" when referencing owners, because the owner can be a corporation, while occupants are people.

Mr. Barowitz also asked, referring to line 24, "… the occupant and his or her authorized representative…" who an authorized representative would be.

Ms. Balsam noted that tenants can have anyone represent them. A tenant doesn't have to be there in person; they could have an authorized representative, but that it's most often the applicant and their attorney. She continued: I think we have that covered, because it says, "…the occupant and his or her authorized representative, if any…"

Mr. DeLaney: It could be an estate.

Ms. Balsam: It could be.

Mr. Barowitz: So if it's "an" authorized representative, then it could be the estate.

Ms. Balsam: OK. And the occupant's authorized representative, right?

Mr. DeLaney: If it's an estate, you'd only have the authorized representative.

Mr. Barowitz: And perhaps children.

Ms. Roslund: Then wouldn't it be "or"?

Ms. Balsam: That's what Mr. Barowitz is saying. I'm OK with making it "or," as long as the representation is clear.

Mr. DeLaney: So it's going to be "…and the occupant or…"?

Ms. Roslund/ Ms. Balsam: "…an authorized representative…" But I still think we should include occupant. "…or an occupant's authorized representative, if any."

Mr. Hylton asked why "if any" was needed, and it was agreed that it was no longer necessary.

Ms. Balsam read the proposed new text:

> The Loft Board's approved form must be signed by the owner or its authorized representative and the occupant or an occupant's authorized representative, who sold rights to the unit. The occupant must be residing in the unit at the time of the sale.

Ms. Balsam noted here: I think this was made clear. We're codifying what Judge Edmead wrote in her decision. And continued:

> Sales occurring after an occupant has vacated the unit are invalid.

Ms. Balsam: I don't know that we necessarily still need that, but I think in terms of transparency, it's good to have it there. And **the Board** agreed.

Mr. DeLaney: But in the case of an estate, the occupant would not be residing…

Ms. Balsam: That's true. We could say, unless the occupant has died.

Mr. DeLaney: Unless the owner is effectuating the sale with an estate. Maybe that's the start of the sentence.

Ms. Balsam read line 25 with the proposed new opening: Except for sales between an owner and an estate representative, the occupant must be residing in the unit at the time of the sale.

Ms. Balsam continued: This is where we left off last time. I had deleted the next two sentences, and I think it was Mr. Carver who said we should keep the first sentence:

> If the occupant refuses to sign the form, the owner or its authorized representative must file with the form a sworn statement identifying the occupant, the reasons given by such occupant for refusing to execute the form and proof of the sale of rights, including supporting documentation.

I believe Mr. Carver wanted to keep it, and there was opposition to that. I can see a situation where someone wouldn't want to sign the form, but then the answer to that is they don't get the money. So they better sign the form. What would you like to do?

Mr. DeLaney: I'm fine with taking it out, but if you want to leave the first sentence in, then the second sentence, that outlines what the owner has to do to back-up that allegation, should probably be in as well.

Ms. Roslund: But aren't they two different circumstances?

Ms. Balsam: I think the second sentence was there to encompass the sales that occurred before the rules were drafted. I've read early cases where the Board had not yet drafted the rules regarding sales of rights, but sales were taking place. But if we're requiring an occupant to be a resident at the time of the sale, there's no reason why anyone should be reaching out to a prior occupant now. I think the second sentence is an anachronism, and the first sentence is a policy issue for the Board to decide.

Mr. DeLaney: I think they should both go.

The Board agreed.

Ms. Balsam advanced to page 193, line 8: (c) *Filing requirement for sales which occurred prior to the effective date of these rules*, and explained: I'm adding (line 25) "For a unit covered by §§ 281(5) and 281(6) that became subject to Article 7-C…" And, as we did with the earlier amendments, we're going to give ninety days (line 28), "which is 90 days following the effective date of this section."

Mr. DeLaney: In terms of filing deadlines. If they don't meet that deadline, but file it later, and we still take it; it's valid, but they're subject to a fine?

Ms. Balsam: Yes. It's still a sale, but we can fine them.

Ms. Balsam advanced to page 194, § 21. Section 2-11.1(b), the penalty schedule, and said: We had limited changes under the old document, but now, under the new law, we needed to make additional changes. I removed references to Class A, B, and C penalties. I'm not a Housing Court attorney, but I assume they have something to do with that. I know HPD categorizes violations that way. To me they're meaningless. They're not our penalties; they're HPD penalties. I don't think they add anything. To the extent that they might provide some guidance to Housing Court, maybe we should leave them…. I don't know.

The Board decided to leave that open for the time being.

Ms. Balsam advanced to page 195 and said: Wherever we had maximum penalties of $17,500, we raised those to $25,000 in accordance with the amendment. These two particular fines are for "Failure to Take Reasonable and Necessary Action to Obtain a Final Certificate of Occupancy" and "Failure to Take Reasonable and Necessary Action: Failure to Timely Clear DOB objections for Owner's Alteration Application." That's $1,000 per day, up to $25,000.

Mr. DeLaney asked for clarification regarding the first two items in the chart, in terms of the difference between the violations and fines of $1,000 for the first and $5,000 for the second.

Ms. Balsam explained: § 2-01(a)(1) are "Code compliance timetables for buildings in which all residential units are as of right." (page 40, line 12). And § 2-01(a)(8): "Notwithstanding the provisions of subdivisions (a)(1) through (a)(7) of this section, the owner of an IMD who has not complied with the requirements of M.D.L. § 284(1)(i), (ii), (iii) or (iv) by June 21, 2010 must: (i) File an alteration application by September 1, 1999…."(page 47, line26) etc., etc. So, I assume that, historically, the amount of money that could be charged changed, and that's why.

Mr. DeLaney thought that, at this point in time, that distinction seems somewhat arbitrary.

Ms. Balsam: I'd have to do some research on it. It was existing language, so I wasn't focusing on it, but we can research it; see what the distinction is; and perhaps figure out why it was done that way. But my guess is it had to do with what penalties can be imposed at certain times; because the law department is very sensitive to that, and they have us insert carve-outs. That could be the reason.

Mr. DeLaney: It seems to me that at this point in time, particularly regarding older buildings that violate the time table, the penalty should be the same.

Ms. Roslund: The same as the other one?

Mr. DeLaney: Yes. And as Ms. Balsam pointed out, we still have buildings under are jurisdiction that are from §§ 281(1) and (4). So to say, if you violate the timetable, it's a $1,000, but for you newer people, it's $5,000…

Ms. Balsam: So you would want to raise the top line to $5,000?

Mr. DeLaney: Yes.

Ms. Balsam: OK, we will propose that.

Mr. Hylton wondered why she felt she couldn't just make the change.

Ms. Balsam: I don't know the historical reason for the difference, and I'm wondering whether or not there was a legal reason why it wasn't changed. You would think that if you were adding something that would make it a five-thousand-dollar penalty at a later date, you would have made the earlier one $5,000 also. I want to see if there was a legal reason why they didn't do that. Or if they just missed it.

Mr. Hylton: Regarding, **"**Failure to Take Reasonable and Necessary Action." I suppose twenty-five days is the maximum time period allowed for taking that action?

Ms. Balsam: Yes.

Mr. Hylton: Is there anything that would prevent the Loft Board from initiating another Order, after the first twenty-five-day period?

Ms. Balsam: Some of these violations require trials, and some of them don't. If you read § 2-01.1, it's all explained there – when we can, and when we can't. Assuming there is nothing preventing it, on the 26th day, yes, we can issue another violation.

Ms. Torres-Moskovitz: What about § 281(6) fines? Do we align with § 281(5), or is this our chance to charge more?

Ms. Balsam: So you want to add another one?

Mr. DeLaney: At the moment, we don't have a fine for § 281(6).

Ms. Balsam: That's true. So let's add it.

Mr. Hylton noted that, if there is no legal reason preventing it, all could be combined on one line, under failure to meet code compliance deadlines.

Ms. Torres-Moskovitz: But I do think that the § 281(1) people should be fined more.

Ms. Balsam: We'll do the research about the $1,000, and depending on how that goes, we'll either shorten this to Failure to Meet Code Compliance Deadlines, and cite all the sections of 29 RCNY § 2-01; or we'll add something for § 281(6), which will be up to $5,000 for missed deadlines.

Mr. Barowitz: I don't see why you'd have any problem raising it to $5,000. When it went from $50 to $1,000, there was no question.

Ms. Balsam: I agree with you. I don't think it's a problem, but I want to be sure.

Ms. Balsam continued: The next changes are on the bottom of page 196 (line 5): *Failure to Renew IMD Registration Pursuant to 29 RCNY § 2-05.* This was something Mr. DeLaney had mentioned last time. They're not the exact amounts you had wanted, but we would raise it to $7500 for one year, $15,000 for two years, and $25,000 for three or more years. That's up from $5,000, $10,000 and $17,500.

Mr. DeLaney: On the top part of page 196, did you give any thought to the fines for harassment applications?

Ms. Balsam: I did not. A Harassment Application Filed in Bad Faith is now up to $4,000.

Mr. Hylton: Is this a change?

Mr. DeLaney: It was originally $1,000, and was changed to this about ten years ago.

Ms. Balsam: What are you proposing?

Mr. DeLaney: I just wanted to know if you looked at them.

Mr. Hylton: This seems like a false filing. Is it similar?

Ms. Balsam: The first one is. But the others are not. The first one is a tenant saying, I've been harassed, and they're doing it again; when they are not, in fact, being harassed. So it's a disincentive for tenants to just file for harassment. The other two are fines against owners or prime lessees.

Mr. Hylton: The first one is against the tenant?

Ms. Balsam: Yes. That's when a tenant files a complaint against the owner; the owner files an answer saying none of it is true and I want OATH to impose a fine on tenant. Then it would go to OATH; there'd be a trial; and theoretically, we could fine the tenant.

Mr. Hylton: So in the second, $3,000 to $6,000 for each occurrence, is that at the Board's discretion?

Ms. Balsam: Yes.

Mr. Hylton: Why the range?

Ms. Balsam: It probably depends on how bad it is. For example, having no hot water is one thing, and it's not good. But having no water at all is another, and much worse.

Mr. Hylton: And if both conditions exist together, is each a separate finding of harassment?

Ms. Balsam: Yes, they could be.

Mr. Hylton: And that would be the Board's call, how to proceed?

Ms. Balsam: We haven't had any harassment cases come to the Board while I've been here, so I'm not that familiar with how the penalties work. But I assume that in the report the OATH ALJ makes a recommendation for the penalty, and then the Board decides whether it's too much or not enough. This gives the Board some discretion. Given that all of our buildings are unique, maybe we want to have some discretion. I've always been a fan of flat penalties, because it seems fairer. But in the Loft Law, I'm not sure that works as well.

Mr. DeLaney: In the case of 13 East 17th Street, the tenants alleged three or four grounds for harassment. The Board found two to be harassment, and I remember the circumstance of one them. The owner failed to maintain the front door lock, and someone in another loft building a block away had been severely beaten by someone lurking in the vestibule. So I don't know if here "occurrence" means you're harassed by not fixing the leaks and not fixing the door; or you're harassed by not fixing the door six times. I would ask that you treat this as an open question for the moment, and take a look at it.

Ms. Balsam: You want to know more about what the phrase, "for each occurrence" means?

Mr. DeLaney: Yes.

Ms. Roslund suggested that in terms of a flat fee, perhaps the accumulation of the number of different violations that issue from the primary one should be considered. So a broken pipe would be the pipe, plus the damage to the floor, plus the lack of hot water, plus the unsanitary conditions, etc. The more egregious the problem, the larger the number of violations the penalty would cover.

Ms. Balsam: You have to understand that what the Board is finding here is harassment. That's separate and apart from the things that constitute the harassment. Under the housing and maintenance rule, we have a separate penalty schedule. If you're not providing heat, you can be fined X amount of dollars for that. If you're not providing carbon monoxide detectors, you can be fined X amount for that. Theoretically, I would assume that violations were already issued under § 2-04 for the underlying situation. But it's the aggregate of all that that constitutes harassment, because there's so much going on. Look at 13 East 17th Street. There were five or six different things. The elevator working, then not working. The roof leaking, then not leaking. This is over that.

Mr. DeLaney: I haven't looked at the harassment rule lately, because, fortunately, we haven't had that many cases in front of us. Originally, the tenant alleging harassment had to file a certain number of paragraphs outlining what constituted each act of harassment. I think we've modified that, but as we all know there are times when owners don't do things because the fines are acceptable as the cost of doing business. At the same time, we all remember that poor architect who was hit by a piece of terracotta. In my opinion, the numbers for refusing to make repairs or hazardous violations should be serious. So I ask you to take a look at it.

Ms. Balsam: DOB has Class 1, Class 2, Class 3, so perhaps we could perhaps do something like that.

Ms. Torres-Moskovitz wondered why there is harassment for health and safety and harassment for quality of life, but there's only a $1,000 difference between them.

Ms. Balsam/ Mr. Hylton said it was a long time ago; and they probably thought that the safety violations were more important.

Mr. DeLaney: I don't recall when it was, but the last time we dealt with this, the Board members got very interested in the numbers – in a way that seemed a bit weird.

Ms. Balsam: We'll look at that; we'll see what DOB does; and come back to you with something. And we'll try to figure out what "each occurrence" means. My guess is it's fleshed-out in case law.

Mr. Hylton: Even if it is fleshed-out in case law, can we still change the rule?

Ms. Balsam: Of course it can be changed. But we need to figure out if we need to change it. We need to know the definition of the term before we can decide. If it's a good definition, and it's a term that's been construed a lot in cases, you don't necessarily want to change it, because people have a conception of what it means.

Mr. DeLaney: Finally, on this point, if a finding of harassment can lead to a penalty of $3-6,000, then aggravated harassment – by someone who's done it previously – should be more than $10,000.

Ms. Balsam: Yes, we can make that $25,000. Is the Board OK with that? Making the aggregates up to $25,000?

Mr. Hylton emphasized that this would be up to, as opposed to a definite, fixed fine of $25,000. Because it's aggravated, the Board has the discretion to go up to the maximum.

Ms. Balsam: I will also say that, regarding the penalty on the first line for a harassment application in bad faith, if we are going to treat that as a false filing, I am proposing raising another penalty for false filing to $5,000, because that's what DOB charges for false filings. So the Board should consider raising this one to $5,000.

The Board agreed with making this penalty $5,000.

Ms. Balsam: Returning to the bottom of page 196, the proposal for the penalties for failure to renew annual registration in a timely manner is to raise the first year from $5,000 to $7,500; the second year from $10,000 to $15,000; and three or more years from $17,500 to $25,000. Is everyone OK with that?

Ms. Torres-Moskovitz asked if Ms. Balsam could review the terms for the fines.

Ms. Balsam: They have until July first to pay; then they have a thirty-day grace period. We don't start charging the late fees until August, and they look-back. So if you didn't pay for July, $25 per unit. If you didn't pay for

August, another $5 per unit. That's separate and apart from this. This is when we bring the FO cases, like we did in December. This is over and above the registration fees and late fees. This penalty is charged because you didn't get your act together. And what Mr. DeLaney was arguing for was that we should start that process earlier, and we agreed we would do that – try to bring those cases to the Board earlier.

Ms. Torres-Moskovitz: Because people are waiting until the last minute to pay…

Mr. DeLaney: I once had an interesting conversation with a realtor, who bought a lot of properties on the cheap with the goal of selling them later. And he told me he only paid the property taxes at the last minute, and took the penalty. If it was one percent for sixty-days late and two percent for ninety-days late, he'd pay it at ninety days and just view it as a low-interest loan. Similarly, we had that one FO owner with two or three properties, who would pay what were basically chump-change fines at the last minute, thereby escaping the significant fine. To me, this is gaming the system and not giving us the registration information, so I've made the argument that the late fees be more significant

Ms. Balsam: We are exploring this, and as I said, fees are different than fines. Fees are looked at very closely, because we're government. So, is everyone OK with these numbers?

The Board agreed with the numbers presented.

Mr. Hylton: Before moving on, I have a question about "curing." Is that defined anywhere?

Ms. Balsam said yes, it's defined in the underlying rules, just like in DOB. She explained where it could be found, and then advanced to page 197.

Ms. Balsam: We are changing the monthly reports to quarterly or requested reports. We're changing the language in the penalties (line 9) to indicate that they will be quarterly or requested reports, and the same in the table on page 198. Below that, the change we're asking for in the penalty for filing false information in these reports is an increase from $4,000 to $5,000. This will make it the same as DOB charges for false filings.

Ms. Torres-Moskovitz asked for clarification of the term, "requested."

Ms. Balsam: When the Board discussed the language for that rule, it decided on that term, because we want to retain the option to request a report in between quarters, if we need that information for some reason, such as when they request a LONO.

Mr. Hylton asked if they would be fined if they did not provide it.

Ms. Balsam said no, but if they file a false statement, they'll be fined. She then advanced to page 199.

Ms. Balsam: I'm not proposing changes to any of these penalties, but if the Board wants to raise them, let me know. But I don't know why failure to post the IMD Notice shouldn't be curable. The cure is posting the notice, which we want them to do.

Mr. DeLaney: Is the curability in our rules or just in schedule of fines?

Ms. Balsam: It should be in the rules.

Mr. Hylton and **Ms. Roslund** reasoned that saying no for curable means that, even if they post the sign, they still have to pay the fine – for not putting it up.

Ms. Balsam: Starting at line 8 on page 199 are new penalties for proposed sections that we will be adding. They are related to violating a Loft Board Order or filing a false statement with the Loft Board, pursuant to § 1-15(d). This would be a false statement that's different from one in a quarterly report, because people file all kinds of things with us. The introductory language follows the format of all the others.

> Any person who is found to have violated a Loft Board order pursuant to § 1-13(b) or to have filed a document containing a material false statement pursuant to § 1-15(d) may be subject to a civil penalty as follows:

And as false statements, the fine is $5,000.

Mr. Hylton asked for clarification that the five-thousand-dollar fine for violating a Loft Board Order applies equally to both owners and tenants.

Ms. Balsam confirmed that it did.

Mr. Hylton asked: Should we break up the penalty and make it different for tenant and owner? I would want to do that, only because…

Ms. Balsam: Because tenants may be in an inferior financial position?

Mr. Hylton: Correct.

Mr. Barowitz: Do you mean different fines?

Ms. Balsam: Yes.

Mr. Hylton asked the Board how they would feel about splitting this: Violation of a Loft Board Order, Tenant, and Violation of a Loft Board Order, Owner. $5,000 and $7500, respectively.

Ms. Torres-Moskovitz asked for an example of a tenant violation, and **Ms. Balsam** said denying access.

Mr. Hylton: To me, it's more egregious when an owner violates an Order, because it probably affects many more people than a tenant violation does.

Ms. Balsam: Just to put on Mr. Carver's hat for a moment, first of all, an argument would be made – and I'm not saying it's right or wrong – that not all owners are fabulously wealthy. There are small-building owners and small buildings, and it's difficult. That's one argument. Sometimes the tenants aren't paying their rent. That's another argument. Not that that's an excuse for violating a Loft Board Order, but in terms of having a tenant hold up other people, theoretically, you could. If you have a tenant that isn't allowing access, and the owner needs that access to do the legalization work, the owner's not going to be able to complete the work and get a C of O. That's how the owner argument would go.

Ms. Torres-Moskovitz mentioned that a tenant's work might keep them away from the unit from very early morning….

Ms. Balsam said that the rule allows the tenant to give their keys to another tenant, and tell the owner to go to that person to gain access. She added that most tenants do allow access; it's an offense for which the tenant can be evicted. She continued: If you're going to say, well, it's just one tenant…What if you needed access to turn the gas back on for everyone in the line, and you can't do it, because that one person isn't there?

Mr. Hylton said he still felt the same; that an owner's violation would or could affect more people.

Ms. Balsam said if the Board wants to do that, they can put it in and see what the Law Department says.

Mr. Roche suggested that describing the fine as "up to" whatever the new proposed amount is would give the Board flexibility.

Mr. Barowitz agreed, noting that a tenant might be ignorant of the fact that he had to allow the landlord access.

Ms. Roslund reminded Mr. Barowitz that the tenant would have received a Loft Board Order about this, that also allows them thirty days to comply.

Ms. Balsam and Mr. Hylton noted that there is no cure here, as the fine is imposed after they've violated the Order.

Ms. Torres-Moskovitz added that she hears often from architects and engineers that this is a problem.

Mr. DeLaney recalled that denial of access was at the heart of the event that caused the death of an architect.

Mr. Hylton asked if the Board was in favor of splitting it, or having a range, or both.

Most **Board members** felt that splitting it was fine and that adding "up to" was a good idea.

Ms. Balsam: So, violation of a Loft Board Order up to $7,500 per violation?

Ms. Torres-Moskovitz asked why there was no cure.

Mr. Hylton said it's because this is after you've violated the Order.

Ms. Balsam: To give you an example: The Loft Board says to the owner, coverage is granted, and you are to file registration within thirty days. If he fails to do so, the Board assigns an IMD number. But the owner still has to register. We have at least one owner who has never filed a registration.

Mr. Hylton: No cure doesn't mean you don't have to do it.

Ms. Torres-Moskovitz: So if a tenant doesn't realize how serious it is, and they're not allowing access, if they receive a scary warning, telling them they have thirty days… I would do it.

Mr. Hylton: The Order will say you must do it within a certain period of time, and if you don't do it…

Ms. Roslund clarified: But you haven't reached the violation yet, because you're still within the thirty days.

Ms. Balsam: Right. You don't issue the violation until they've violated the Order. If the Order says they have to provide access within thirty days, and they don't provide access during that period, then you issue a violation for violating the Loft Board Order. And to be perfectly honest, my experience has been that the access applications always settle. The owner files; they go to OATH; they have a conference; and it's settled.

Mr. Hylton and Ms. Balsam recapped what the Board agreed upon: The fine would not be split; that is, different for owner and tenant; and would be a range of $5,000 to $7,500 per violation.

Ms. Balsam advanced to page 200, line 3, § 2-12: These are just changes adding things for § 281(6). This deals with rent adjustments for code compliance, so we're just adding the references to § 281(6) and the new interim rent guidelines for § 281(6), which are in 29 RCNY § 2-06.3. And we've already discussed that, the underlying section, so we're just adding those references. That's on page 201, line 7. § 281(6) is being added on line 21, page 201. Nothing on page 202. On page 203, lines 9 and 10, we're adding a reference to § 2-06.3.

Ms. Torres-Moskovitz: I have a question about the sale of rights part, back on page 191. When we were talking about redacting, etc. I thought I heard somewhere that there was a baseline for sales of rights? Maybe $30,000?

Ms. Balsam: I'm not familiar with anything like that. My personal opinion is there's nothing wrong with a ten-dollar sale, as long as the tenant understands that their rights could be worth a lot more. There's nothing wrong with someone saying, you know what, I don't care. I don't need the hassle; I don't need the money; I'm just going. I don't think there's a problem with that. The question is, if it's a ten-dollar sale, does the tenant really understand? That's where you get into the issue.

Ms. Roslund: Instead of redacting, sometimes the bill of sale does say $10.

Ms. Balsam: It usually says, "Ten dollars and other good and valuable consideration."

Ms. Roslund: Right. So the assumption is the $20,000 in cash that no one saw, which is what you were getting at in terms of proving it…

Ms. Balsam: Right. When we have doubts, we ask them to provide us copies of the cancelled checks. We do that a lot.

Ms. Torres-Moskovitz noted that in real estate, prices are set by comparables; but in this case, when it's always private…

Ms. Balsam: No, it's going to depend on the situation. I've seen sales for hundreds of dollars; I've seen a couple of sales for over one million dollars. Location, location, location.

Ms. Torres-Moskovitz asked if the public can obtain sales of rights information.

Ms. Balsam: If it's redacted, they'll get a copy of the redacted information. If it's not redacted, we asked the Law Department if we could redact it, if someone requested it. And under FOIL, there is no basis for the redaction of that information. So if someone filed a document with us that says, I gave Joe in unit 3 a million dollars; and Jane in unit 4 FOILed that sale– because the owner offered her $50,000 – Jane might have a different perspective on what her counter offer should be.

Ms. Torres-Moskovitz: Unless the first offer said ten dollars and extra goods?

Ms. Balsam: Then in that situation, you'd have to figure out if they really only paid $10 or if there was other valuable consideration. That's why the rule would require them to provide a full description of the consideration.

Ms. Torres-Moskovitz noted that in regular real estate, the sale price can be known by looking up the address.

Ms. Balsam: That's because you can look up the transfer taxes and then compute the sale price from that.

Ms. Roslund: But if there's still a way around it…

Ms. Balsam: People will always try to find a way around it. But that doesn't mean we can't make a rule that will try to prevent it.

Ms. Torres-Moskovitz: The more information the better, I think. Open source is what I'm going for, because it seems really murky right now.

Ms. Balsam: I'm sure in the public hearing we'll gain more perspective on this.

Mr. DeLaney asked, as the meeting will soon be closing, if Ms. Balsam could review the upcoming scheduled meetings and their focus.

Ms. Balsam: I think the only thing we have left, aside from some minor open issues, is § 2-09. And I think the Board should be prepared to discuss that and make a decision. And if we can't make a decision, in my opinion – and you should all think about this – what we should do is to leave it as it is and add the spouse clause. If we can't come to a conclusion on the language, we shouldn't hold this up any longer. It's been two years; we have a new law; we need to make these changes.

Mr. DeLaney: So the focus for the next meeting is § 2-09. And at some point we'll do a quick over-view of all the other open issues?

Ms. Balsam: Yes. Then, we should address the open issues. Maybe we should set a time limit for how much time we devote to the discussion of § 2-09 at our next meeting; and then make sure we tie-up the loop holes. Because one of them is the definition in § 2-09 of a prime lessee when a lease is not in effect. And I know you (Mr. DeLaney) were concerned about, whether you want to leave it that way or not, depending on how § 2-09 goes. Those two are intertwined. We also have to discuss the rent over-charge.

Ms. Torres-Moskovitz: Is there a list of the other issues?

Ms. Balsam: They should be highlighted. But I'll put together a list and circulate it. My goal is to walk out of here on January 30th with something I can send to the Law Department to say, here are our proposed rules.

Ms. Torres-Moskovitz asked, if the Board met the January 30th completion date, how long it would be before it's published.

Ms. Balsam, Mr. Hylton, and Mr. DeLaney explained that it would be at least eight weeks at the Law Department. Then it has to come back to the Board. Then it would be published and at least two public hearings would be held.

Ms. Balsam and Mr. Hylton projected it would be the summer.

Mr. Roche asked if he could make an announcement in the interest of public safety: We had a very serious fire in the city within the last week, and again, there would have been much less of an impact on the building and the occupants had the person who had the fire pulled the door shut when they left. So please, please, close the door, close the door, close the door.

Mr. DeLaney noted that locking the door is not a good idea, as the firemen then have to chop it down.

Mr. Roche and Ms. Roslund noted that this is why exit doors are supposed to be self-closing, though in some older buildings, they are not.

Mr. Roche: If you believe your door should be a self-closing door, and it is not, please contact HPD, who can take a look at it and issue a violation to the owner.

Mr. Hylton thanked Mr. Roche, and also congratulated him on being promoted to Deputy Chief Inspector.

Mr. Hylton: This will conclude our January 16, 2020, Loft Board meeting. Our next public meeting will be held on Thursday, January 30, 2020, at 1:00 PM at 22 Reade Street, Spector Hall.

The End