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

February 20, 2020

The meeting began at: 2:11 PM

Attendees: Elliott Barowitz, Public Member; Richard Roche, Fire Department's *ex officio*; Robinson Hernandez, Manufacturers' Representative; Charles DeLaney, Tenants' Representative; Heather Roslund, Public Member; Renaldo Hylton, Chairperson Designee; and Helaine Balsam, Loft Board, Executive Director.

INTRODUCTION:

Chairperson Hylton welcomed those present to the February 20, 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:

January 16, 2020, Meeting Minutes

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

Mr. DeLaney first commented on his satisfaction with the meeting minutes, saying that anyone who is interested can definitely gain a solid understanding of what the Board is doing by reading them. He then suggested a format change in the Case presentation language. Instead of Mr. Hylton saying, Ms. Lee will present this case, he felt it would be more accurate to say, Ms. Lee presented this case, as it has already occurred. Ms. Balsam made note of that. Next, he also noted that the Board now states conclusions for the controverted cases on the Reconsideration and Master calendars, and he thought there should be a brief summary of the disposition of the Summary Calendar cases as well.

Ms. Balsam: You want us to add the conclusions on the Summary Calendar cases?

Mr. DeLaney: Not necessarily conclusions, but just some note as to outcome, i.e., the case was withdrawn pursuant to….

Ms. Balsam: If that's what the Board wants.

Mr. DeLaney: I'm thinking of a hundred years from now…

Ms. Balsam: They can always look at the Order.

Mr. Hylton clarified Mr. DeLaney's point, saying that as there is some conclusion provided for the other cases, there being nothing for the Summary cases seems incomplete.

Mr. DeLaney: Just something like, the tenant's application for protected occupancy was withdrawn.

Mr. Hylton asked the other Board members how they felt about this, and asked Ms. Balsam how much extra work would be required.

Ms. Balsam said it depends on how many cases are on the calendar; but, yes, it would be more work than the staff is currently doing.

Mr. Hylton asked if it would be a burden, and **Ms. Balsam** indicated it would not.

The Board agreed that a motion was not necessary, and that this practice should be adopted.

Mr. Hylton asked for a motion to accept the January 16, 2020, minutes, and for a second.

Mr. DeLaney moved to accept the January 16, 2020, minutes, and **Mr. Roche** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: Mr. Hernandez

Members absent: Mr. Carver, Ms. Torres

Members recused: 0

Mr. Hylton turned the floor over to Ms. Balsam for the Executive Director's Report.

EXECUTIVE DIRECTOR'S REPORT:

Ms. Balsam: The first thing is, I want to make everyone aware of the fact that we had a fire at 280 Broadway over the weekend. The Loft Board records suffered some water damage, but we believe we will be able to salvage almost everything. There was no fire damage. But as a result, we've had to move the Customer Service window. Formerly, you would get off the elevator, turn right, then right again. Now, you turn right and go straight until you can't go any further. You'll see a window, and that's where we now are. There will be signs to show you where to go.

Staffing: From the bad news to the good, we are very pleased to welcome our new Assistant General Counsel, Glen Argov, a graduate of Cardozo Law School and a former prosecutor for the Taxi and Limousine Commission. In addition to processing cases, which we all do, Glen is going to serve as the Loft Board's enforcement attorney, and we look forward to getting that program back on track as soon as Glen gets up to speed.

In other staffing news, two of our staff members attended the Public Interest Law Career Fair at NYU to recruit summer legal interns. We had an overwhelming response and interviewed thirty-two candidates. We have identified two candidates, and cannot wait for them to start.

Violations: The Loft Board issued five housing maintenance violations during January: two for no heat; one for no hot water; one for no gas; and one for no sanitary water.

Revenue: The unofficial revenue for January was $7,473 and change.

Litigation:

New Cases

We have two new court challenges filed against us. The first is *Amicus Associates versus New York City Loft Board,* in which the owner challenges a Loft Board Order which affirmed the decision of the Executive Director denying the owner a second extension of the code compliance deadlines. The owner alleges the Loft Board's interpretation of its rule is ultra vires (outside the scope of what the Board is allowed to do). The owner also requests a hearing to determine whether the owner is in compliance with MDL §284, which would, of course, allow the owner to collect rent from the tenants.

47 Brooklyn Loft, LLC versus New York City Loft Board: This is the case the Board decided where the tenants were claiming they were rent-stabilized, and the Appellate Division Second Department said they were entitled to rent regulation, citing the Loft Law and cases under the Loft Law. So we decided they could be covered under the Loft Law; that the owner's registration was proper. The tenants are now suing us, based on that decision, claiming that they are rent-regulated under the Rent Stabilization Law and should not be covered under the Loft Law. Maybe it will go back to the Second Department, and they'll be able to clarify what they meant when they made the first decision.

Decisions

We had a decision, which I believe I circulated to the Board. *Callen versus New York City Loft Board and Fiscina, Fiscina versus New York City Loft Board and Callen.* This was another one of these cases where the Board rejected a settlement agreement as against public policy, because it would have allowed the tenants to remain in place without Loft Law coverage. The previous case we had was in the Appellate Division Second Department, and they held that the Loft Board was correct; that Loft Law coverage cannot be waived. But the Appellate Division First Department disagreed with that. While they said it was OK for the Loft Board to reject the settlement on public policy grounds, they also said it's OK for everyone to withdraw, and the parties are allowed to obtain rent stabilization by other means without having a residential C of O. Needless to say, since there's a split in the Departments, the Law Department is applying for leave to appeal to the Court of Appeals. So very interesting, and we'll see where it goes.

Nazor and Mickle versus New York City Loft Board and Sydney Sol Group Ltd.: Here, the tenants brought a petition asking the court to annul a Loft Board Order denying coverage because only one person resided in the building during the Window Period. The Appellate Division First Department denied the petition, finding that the Loft Board's "well-reasoned" determination to deny coverage was supported by substantial evidence, and that

the Board providently exercised its discretion in denying tenants' reconsideration application. The petitioners have moved to reargue.

475 Kent Owner LLC v. New York City Loft Board and Ohanesian: You may remember this as the parking spot case. The Board found that the parking spot was, in fact, a required service, and the owner appealed and sought a declaratory judgment, saying that our regulation, which allowed for the maintenance of services previously provided, was ultra vires – again, that we went too far in promulgating it. The court held that the rule was not ultra vires; that the Board has broad rule-making authority and is not restricted "solely to establishing 'minimum housing maintenance standards,'" which is what the argument was; and that the Loft Board has the authority to define "basic" and "additional" services -- which is how the rule reads -- and to include parking spaces as an additional service. The court cited two cases from the First and Second Departments, which state that, when a parking space is included in the tenant's lease, that space is an ancillary right, which constitutes an essential service, which a landlord may not unilaterally terminate or modify. The owner is appealing.

Mr. DeLaney: First of all, congratulations on having so many people applying for summer internships. Considering the valuable work the interns have done in the past, is there a reason why you limit yourself to two?

Ms. Balsam: Funding. And space.

Mr. Hylton explained that the interns are paid something, but considering the caliber of the applicants and what they're paid here, they are, in effect, volunteering. They could earn much more elsewhere, but they are really public-service minded and outstanding individuals.

Mr. Hylton thanked Ms. Balsam and turned to the cases.

THE CASES:

Summary Calendar

Mr. Hylton: There are three cases on the Summary calendar. They are voted on as a group. The cases are:

	Applicant(s)	Address	Docket No.
1	Laurie Bartley	473-475 Kent Avenue, Brooklyn	PO-0054
2	Gregory Francis	473-475 Kent Avenue, Brooklyn	PO-0059 PO-0070
3	Katherine Owen and Samantha Shannon	250 Moore Street, Brooklyn	TA-0237

Ms. Roslund requested the third case be voted on separately.

Mr. Hylton asked for a motion to accept the first two cases, only, and for a second.

	Applicant(s)	Address	Docket No.
1	Laurie Bartley	473-475 Kent Avenue, Brooklyn	PO-0054

	Conclusion: Tenant's application seeking protected occupancy status is deemed withdrawn. The Loft Board neither accepts nor rejects the remaining terms of the Stipulation.		
2	Gregory Francis Conclusion: The Loft Board deems the application withdrawn with prejudice.	473-475 Kent Avenue, Brooklyn	PO-0059 PO-0070

Mr. Roche moved to accept these cases, and **Mr. Hernandez** seconded.

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

Mr. DeLaney: I'm going to vote in favor of both these cases; however, I continue to be troubled by situations where, in order to become a protected occupant, the individual is asked to waive the right to a Narrative Statement conference. It seems to me that you don't get that right until you become a protected occupant. This has become a common bargaining chip in negotiations between attorneys for tenants and owners. I don't believe we should be accepting those, but we do. In this case, I will express my thoughts separately in a written opinion.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Ms. Torres

Members recused: 0

Mr. Hylton introduced the third case

	Applicant(s)	Address	Docket No.
3	Katherine Owen and Samantha Shannon Conclusion: Tenants' rent dispute application is deemed withdrawn with prejudice. The Loft Board neither	250 Moore Street, Brooklyn	TA-0237

	accepts nor rejects the remaining terms of the Stipulation.		

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

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

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

The vote:

Members concurring: Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Chairperson Hylton

Members dissenting: 0

Members abstaining: Ms. Roslund

Members absent: Mr. Carver, Ms. Torres

Members recused: 0

The Master Calendar:

Mr. Hylton: The are four Proposed Orders on the Master Calendar. The first is:

	Applicant(s)	Address	Docket No.
4	Matter of Coventry	475 Kent Avenue, Brooklyn	PO-0060 TR-1193 TR-1348

Ms. Lin presented the case.

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

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

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

Ms. Roslund: The four-hundred-square-foot rule is generally accepted as the minimum amount required for livable space. While I will vote for this application, I think this warrants additional discussion in the rule-making session. Even if we don't change anything, this case raises some very interesting points. We had a case a couple months ago, where the square footage was tied to the amount of rent…The concept of size comes up in different aspects of our discussions and rule-making, so I just want to be sure we keep the conversation going.

Mr. Barowitz asked how square footage is determined, and noted that there are laser measuring meters today that are very precise. He felt that the Board should insure that measurements are taken in a manner that is as accurate as it can be.

Ms. Balsam: We do currently have a case pending where we've asked the parties to re-measure. They did, and they're working on a stipulation, which we'll probably see next month.

Mr. Barowitz: Wasn't that figure something like 398 square feet?

Ms. Balsam: Yes, and that one's coming back to you.

Mr. Hernandez: I think the determination between interior and exterior is important, and it's something the Loft Board should consider at some point in the future.

Mr. Hylton: My feeling on this is the building still has to be legalized, and they'll have to work out with the Department of Buildings how to get to 400 square feet. As a Board member mentioned, the space is there; it's not located at a different part of the building. So whatever has to be done to make it acceptable to the Department of Buildings will have to be done during the legalization process. And yes, we will have to address it in the rules at some point, because the law only says 400 square feet and doesn't elaborate upon that in any way. And the exterior space in this particular situation can become interior, with some renovation.

Ms. Roslund: I would speculate in some buildings, but I doubt that it can.

Mr. Hylton: We'll see.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Ms. Torres

Members recused: 0

> Conclusion: Based on the foregoing, the Loft Board finds that Tenant's exterior terrace/balcony space may be included in the definition of "Unit" for purposes of determining coverage pursuant to MDL § 281(5). The Loft Board remands the application to OATH to adjudicate the parties' dispute regarding the exclusive use of the exterior terrace/balcony space as provided for in the May 2, 2018 stipulation.

Mr. Hylton introduced the next case:

	Applicant(s)	Address	Docket No.
5	Kenneth Brandman	112-114 West 14th Street, Manhattan	TA-0205

Ms. Lee presented this case.

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

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

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

Mr. DeLaney: This case has a lot of interesting facets, but there are two I think are worthy of pointing out for the record. First, this case has one of the most remarkable, bogus, 286(12) sale attempts I've ever encountered. I'd advise students of § 286(12) to take a look at this case when it becomes a formal Order and is available to the public. The second is the rent and the issue of Mr. Brandman being the protected occupant of unit 4E stems from the fact that prior occupant, Margo Hoff, passed away at the age of 98. Her obituary, which is included in the backup, simply states, "Modernist artist, Margo Hoff, died Sunday, August 17,2008, in the Spartan Manhattan loft that served as both her painting studio and home. She was 98 years old."

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Ms. Torres

Members recused: 0

Conclusion: The Loft Board grants Mr. Brandman's rent overcharge claim. The Loft Board finds that the maximum permissible rent for Unit 4E is $833.04 per month. Mr. Brandman is entitled to $20,900.88 in rent overcharges paid from July 1, 2014 to September 30, 2014.

The Loft Board also finds that, as of the date of this Order, Owner is not entitled to the legalization milestone increase under MDL § 286(2)(ii)(C) because Owner has not yet achieved compliance with Article 7-B of the MDL. Owner must take all reasonable and necessary action to legalize the Building. Failure to do so may subject Owner to civil penalties in accordance with 29 RCNY § 2-11.1.

Mr. Hylton introduced the next case:

	Applicant(s)	Address	Docket No.
6	Zachary Sullivan and Rebecca Teixeira	216 Plymouth Street, Brooklyn	TR-1205 TR-1352

Mr. Clarke presented this case.

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

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

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

Mr. DeLaney: I think this is the first time I've ever seen an application for coverage where the building was found to be an IMD, but the applicant's unit was not found to be part of the IMD. Though the applicant came into occupancy in 2012, the ownership parties were able to present a very credible witness who testified that he used the fifth and sixth floors commercially during the Window Period. The judge found it to be credible, and it does seem to be credible. It's unfortunate that the applicant who brought this case will not derive benefit from the building becoming an IMD. That said, I think the Board is correct in reversing the OATH judge, who did not see the necessity of registering the three units that proved to be residential. This follows on a case we had last month where we took the same position. I think it's the right position, and I'll be voting in favor.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Ms. Torres

Members recused: 0

Conclusion: The Loft Board grants coverage of the Building for the second floor unit, the third floor unit and the fourth floor unit. The Loft Board denies coverage of the sixth floor unit.

The Loft Board directs Owner to register the Building as an IMD with units on the second, third and fourth floor within thirty (30) days of the mailing date of this order. The Board also directs Owner to pay applicable registration fees if any. If Owner fails to register the units and pay the applicable fees within thirty (30) days of the mailing date of this Order, the Loft Board directs the staff to:

- issue an IMD registration number for the Building;
- collect applicable registration fees and late fees.

Mr. Hylton: The last case on the Master Calendar is a removal case.

	Applicant(s)	Address	Docket No.
7	598 Broadway Realty Associates, Inc.	598 Broadway, Manhattan	LE-0686

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

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

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

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Ms. Torres

Members recused: 0

The Loft Board finds that Owner is in compliance with MDL § 284(1). Pursuant to 29 RCNY § 2-01(m), the Loft Board directs Owner to register:

1. The Building as a multiple dwelling with the New York City Department of Housing Preservation and Development ("HPD"), and
2. The 6E, 8W, 9E and 11E units as rent stabilized units with the New York State Homes and Community Renewal ("DHCR")[1] or any succeeding regulatory agency. *See*, MDL § 286(3).

The rent stabilized tenants and the initial legal regulated rents for the 6E, 8W, 9E and 11E units are as follows:

Unit	Tenant	Initial Regulated Rent	Initial Regulated Rent Period
6E	Russell Maltz	$355.62	1/1/2020 through 12/31/2021
8W	Carol Eckman	$417.81	1/1/2020 through 12/31/2021
9E	Sarah van Ouwerkerk	$591.51	1/1/2020 through 12/31/2021
11E	Pamela Rasso	$564.08	1/1/2020 through 12/31/2021

Further, Owner is directed to provide the occupants of the above units with residential leases subject to the provisions of this Order, the Emergency Tenant Protection Act of 1974, the Rent Stabilization Law and Code, except to the extent that the provisions of Article 7-C are inconsistent. *See*, MDL § 286(3) and 29 RCNY § 2-01(m).

Effective thirty-five (35) days from the mailing date of this Order, the Building is no longer an IMD and is no longer under the jurisdiction of the Loft Board.

Mr. Hylton turned the floor over to **Ms. Balsam** to lead the rule-making session.

RULE-MAKING:

Ms. Balsam: We are picking up on page 22, line 6. This deals with filing applications with the Loft Board. After the Board approved this language, I added to this line. Previously, it said, "all supporting documents and the application fee." But there are certain kinds of applications where we don't necessarily want all of the supporting documents attached at the outset. For example, for coverage applications the supporting documents could be quite voluminous. So what we did was put in the application form instructions whether or not supporting documentation is required. In this case, we added the phrase, "requested in the application form." So they need to include in their application packet all supporting documents requested on the application form. And we were very specific in our instructions as to when they have to attach or do not have to attach. I just wanted the Board to be aware that I added that.

Ms. Balsam asked if there were any questions about this, then advanced to page 23, lines 18 – 19: Here, a similar situation. We only want supporting documentation for applications or answers where they are required to attach supporting documents.

Ms. Balsam continued: Page 24, line 19, the Board had previously approved language about filing the answer "and all supporting documents;" and we should probably add, "if any." So they have to file

> "…one hard copy of the answer with original signature, one electronic copy of the answer in a format listed on the Loft Board's website, proof of service on the applicant, and all supporting documents, <u>if any</u>, with the Loft Board on or before the last day <u>and time</u> of the time period stated in paragraph (a) of this rule."

I added "and time" for clarity, as they can't file after close of business. We've had people send things in electronically after close of business.

Mr. Hylton: Why do we have to add "time"? Doesn't "close of business" indicate the time?

Ms. Balsam: There is an argument to be made that perhaps it's not. If it just says "day" – that can extend beyond the close of beyond close of business.

Mr. DeLaney suggested it say by 4:00PM, as that's when the staff department closes.

Ms. Balsam and Mr. Hylton explained that that would not be the best thing to do, because if the time changes, the rule and various cross-references would have to be changed. The rule currently states that the office is open until 4PM.

Ms. Roslund asked if the time could be noted on the application.

Ms. Balsam: I don't think so

Mr. Hylton: Can we just say, "on or before close of business on the last day"?

Ms. Balsam said she thought that was OK, and read the sentence again:

> The affected party must file one hard copy of the answer with original signature, one electronic copy of the answer in a format listed on the Loft Board's website, proof of service on the

applicant, and all supporting documents, if any, with the Loft Board on or before close of business on the last day of the time period stated in paragraph (a) of this rule.

Mr. DeLaney: Regarding, "one electronic copy in a format listed on the Loft Board's website." Do we currently have that on the site?

Ms. Balsam: No, because we haven't passed the rule yet. But, yes, we will, before the rule becomes law.

Ms. Balsam continued: Pages 25 – 26, Rule 1-23. We originally had one long paragraph, and I separated it into (a) and (b) for clarity. The language did not change; just the formatting.

Then, on page 29, line 28, Burden of Proof. The Board had discussed this, but had asked that I add "Unless otherwise stated in these rules, an applicant must present enough evidence at a hearing or inquest to prove that…etc." We couldn't say that the applicant always has the burden of proof, because based on the law, in incompatible uses cases, it's going to be the landlord who has the burden of proof. So we added that language.

Page 31, line 14. When a case is marked off the calendar, to restore it, the applicant has to submit a written request for reinstatement. And almost always throughout the rules, both sides receive notice. But this particular rule did not stipulate that the request had to be served on all affected parties. So I added, "The written request for reinstatement must be served on the affected parties…" because it seemed fair.

Mr. DeLaney noted the use of "calendar days," which Ms. Balsam had been removing, and also asked if the word, "all" could be added: "…must be served on all affected parties…"

Ms. Balsam agreed, and advanced to page 33, line 25" "The proposed order shall not be part of the record of the case." This is something I think Mr. Carver had proposed we add, and it's true. I don't know that we necessarily need to have it, but to the extent that people have argued in court that we had a Proposed Order that went one way, and the matter was tabled, and the redraft went the other way – we don't look very good in court. So it might be better to have in the rule that the Proposed Order is not actually part of the record. I need to know what the Board would like to do here. My feeling is that we should leave it in, but either way, I'm OK with it.

Mr. Hylton: I would go further and say that a draft of a Proposed Order is not part of the record.

There was some discussion among **the Board** members about the term "proposed" as opposed to "draft."

Ms. Balsam indicated that "proposed" is the term used for what is, essentially, a "draft" of the Order.

Mr. Hylton suggested the Board consider changing Proposed Order to Draft Order.

Mr. DeLaney: What are we talking about here? We've had cases where an Order has been drafted and withdrawn before it's discussed. We've had cases where an Order has been discussed and not adopted, or voted down and returned in an altered form. At what point…

Mr. Balsam and Mr. Hylton: We're talking about all of those.

Mr. Hylton: A draft means it's not a final Order. Instead of saying, a Proposed Order, we could say, a Draft Order.

Ms. Roslund: Would one small, technical difference be that if it's a Proposed Order and changes are made to it, then shouldn't it be called "re-proposed"?

Ms. Balsam: I think it depends on the extent of the change. There have been times we've made minor tweaks, and we try to announce them when we're presenting the case at the podium. But there are times when we've needed to do major revisions; then we come back with a new Proposed Order.

Mr. Hylton: But at that point, it's still a draft. In my experience, it seems that the word draft means that the document is not official yet. Is that right?

Ms. Roslund: Although often draft implies it's still in the process.

Mr. Hylton: And it is.

Ms. Roslund made the point that there is a subtle distinction. A Proposed Order is something more complete than a draft.

Mr. Hylton seemed to agree: I think the word draft makes clear to everyone that this is not yet official; whereas proposed suggests this is the way we want to go.

Mr. DeLaney: Is this the only section that speaks to the change in the way we're going to proceed making cases available to the public, by posting them on the website?

Ms. Balsam: Yes. Currently, we mail copies of the Proposed Orders, and then we mail copies of the final Orders. And I will say that it is a huge amount of work; particularly when you have a calendar like this one, where you have three cases that are our largest building, though not everyone in the building was an affected party. So after much debate, the Board had decided that we would post the Proposed Orders on the Board's website, and if we are asked for a snail-mail hard copy, we would, of course, send it to them. That's what this is all about; and because we had some challenges in court cases, where we had gone one way in the first Proposed Order, and then at the Board's direction, we re-drafted, and the actual Order went in a different direction. In one particular case, we were going to deny coverage of a unit, but the Board voted it down and wanted to cover it, so we re-drafted it. But then we faced a court challenge from the owner, saying, well, they changed their mind. The original Order would have denied coverage.

So Mr. Carver suggested we clarify that this is not, in fact, part of the record of the case. The record of the case consists of what the record is, and we have a rule that says what the record of the case is and when the record closes; and that doesn't include Proposed Orders.

Mr. DeLaney: But this won't prevent an aggrieved applicant from bringing it up in court anyway.

Ms. Balsam: Of course not, but it provides clarity for the court. That the Loft Board realized it could be an issue, and we wanted to make clear that this should not be considered part of the record.

Mr. Barowitz: I'm concerned about the words shall, will, may, is. Which would be the best term to use?

Ms. Balsam: We can change the shall, but actually, I think the Law Department will likely change it. We could make it "is." But the initial question is, are we including it or not? That's my question.

Mr. Hylton asked if it was controversial either way.

Ms. Balsam: I don't know.

Mr. Hylton: Well, it's clear that a Proposed Order is not part of the record. And I withdraw my suggestion about "draft."

Ms. Balsam read what seemed to be approved: "A proposed order is not part of the record of the case."

Mr. DeLaney: So looking at the paragraph again (page 33 line 21), as I understand it, the Board's current practice is to try to mail copies of the Proposed Order to the applicants and affected parties at around the same time the that the Board members get the cases. Is that right?

Ms. Balsam: Yes.

Mr. DeLaney: So under the current process, if Monday is not a holiday, the parties are likely to receive a postal mail copy around Tuesday or so?

Ms. Balsam: I would say yes.

Mr. DeLaney: And here, we're saying, "Prior to consideration by the Loft Board," which means that it could be posted an hour before the meeting?

Ms. Balsam: Yes, it could.

Mr. DeLaney: I would like to see some language in here that specifies a time period.

Ms. Balsam: No. And let me tell you why. As happened this month, we don't always get everything out at the same time. If the rule currently said, the Friday before the Board meeting, Mr. Brandman would still be waiting for his money. Because his Order did not go out until later. I don't think we want to pigeonhole ourselves like that.

Mr. Hylton noted that it's not necessary to tie the Board's hands, because the Board can delay a case. The Board can put it off to allow more time for review.

Mr. DeLaney: I still don't fully understand why cases come out leaving Board members such a limited amount of time for review. The current administration has done a much better job than the prior one, but when I think back to some of the more horrific periods in the Loft Board's history, I would like to see some sort of protection.

Seventy-two hours. Some provision. Because again, if the applicant really feels aggrieved and wants to be here, they should have a certain amount of time to prepare for attending the Board meeting.

Ms. Balsam: I think that was why we added, "… upon request, mail or electronically transmit a copy of a proposed order to any party." So if someone knows their case is pending, and they request a copy of the Proposed Order be sent to them by mail or email, then they will get it. They don't have to constantly check the website. They will be receiving a hard copy or electronic copy.

Mr. DeLaney: I would like to hear the opinion of the other Board members on this. Because the other problem is, as we know, the cases that come out later, tend to be the tougher ones.

Ms. Balsam: Yes, they're usually Master cases; I would agree with that.

Mr. DeLaney: So I think there should be a minimum time period.

Ms. Balsam: Whatever the Board wants.

Mr. Hylton: This is not similar to due process rights. It's not something protected by law. So why would we want to box ourselves into doing something that could affect tenants negatively by preventing their case from being put on the agenda? If you say five days, and it goes out Friday, but Monday's a holiday, then what happens? So what are you going to say? Three days?

Ms. Roslund: It does insure that everyone, including ourselves, has enough time to read through the document….

Mr. Hylton: I understand, but I've never seen this in government; locking yourself into a level of service by rule, by law. Unless you're talking about the due-process rights of the people. Do you understand? You're locking the operation down, by law. Meaning you cannot act, if you're not able to meet that service level.

Mr. Hernandez: You're referring to service levels which are assigned by agencies?

Mr. Hylton: Yes. Say you lost an attorney, or a staff member is out sick, which happens all the time in business, and you couldn't get that item mailed out. It's all ready, all prepared, but someone didn't come to work, or the computer broke down, or any number of things could happen. So it's Friday; you're not able to mail the document out; and Monday's a holiday. Now you've really set yourself back. We've worked very hard to get these documents to Board members an entire week in advance, and I would think that, as time goes on, things will only improve. They won't go backward.

Mr. Roche: I recall Mr. DeLaney and me speaking of the same concerns under previous administrations. How difficult it was to try to digest all of that information at the eleventh hour. (To Mr. DeLaney) Correct me if I'm wrong, but I think both of us feared that, yes, things are great now, but who's to say…

Mr. Hylton: Did you raise those concerns at the time?

Mr. Roche: That's why I agree. I think we have some other options.

Mr. DeLaney: I think these are two separate issues. If I get a case late, I can come here and ask my colleagues to put it off. If I'm the applicant, and I'm taking my elderly mother for an eye operation that day, I deserve a

certain amount of notice. There are all kinds of places where periods of time, giving notice, are stipulated. I don't think having something in here is onerous in terms of tying the Board's hands.

Ms. Balsam: Let me just say I think the idea of mailing the Proposed Orders was anachronistic to begin with, because under CAPA (City Administrative Procedure Act), you have to mail a copy of a report and recommendation. I think when the Board had its own hearing unit, it made sense to mail the hearing officer's decision out, and then have the Board rule on it. I think that's where it came from, because the current rule references the City Administrative Procedure Act (CAPA); and actually, there is no requirement under CAPA to mail a Proposed Order. There is a requirement under CAPA to mail a Decision. So I think the whole idea behind it no longer exists. What you're seeing isn't what the rule was meant to address. The idea that we have to do it at all….legally, we don't. So, yes, there are other rules and other venues where there are time limits, but here -- this was put in to address a need that no longer exists, because we no longer have a hearing unit, and OATH mails its reports and recommendations to the parties. So the parties have that information long before the Board is making a decision.

Mr. DeLaney: But then there are cases, as we saw on today's calendar, where the Board reverses OATH's opinion.

Ms. Balsam: Right, but I'm saying that the origin of the requirement to mail the Proposed Orders was about mailing the Loft Board hearing officer's decision.

Mr. Hylton to Mr. DeLaney: I get it completely, but I'm talking from an operational standpoint. The Board's actions could be seriously limited by an unforeseeable, but common, last-minute, operational glitch.

Mr. DeLaney: We meet once a month, with the exception of August and December. So if something goes wrong in November, the parties have to wait until January. In my mind, it's more important that they have notice that their case is coming up and what the Proposed Order is.

Ms. Roslund: It also sets an expectation. In our profession, we have contracts with timelines for everything, i.e., the turn-around time for a certain document is ten days. To me it's not onerous, because that's how we work. But it does set an expectation at the beginning of the process, so that at the time that that issue is in play, there isn't contentiousness around it.

Mr. Hernandez: It concerns me that we'd be codifying this. We can create parameters for the executive office to adhere to, but now you're codifying it in case some administration down the line might not provide the same service levels. I think that just binds everyone's hands and reduces the flexibly that allows us to develop the level of uniqueness that may be appropriate for certain cases. I do get the reason why you want to do it, but in the same vein, the lady who has to take her mother to do the doctor -- there's the reverse of that. She may say, I don't care. Don't delay it. I'm OK with not being there. I feel we'd be doing something that's not necessary, because the Board can determine service levels.

Mr. DeLaney: I wish I was in your shoes, where all I could think about is the potential bad-old-days of the future, instead of having a bad taste in my mouth from the not-so-great days of the past. If, theoretically, we're saying, why bother locking the barn, because the horses are never going to escape…I've seen it. I've been there. I've done that.

Mr. Hernandez: You can hold people accountable without codifying it in the rules.

Mr. Hylton: And the Board can address it…

Mr. DeLaney: I'm not worried about me. You can give me the Order ten minutes before the meeting starts, and if I want to raise hell, I will. And look, it's not as if we're the ECB (Environmental Control Board) issuing violations to my landlord, who gets four violations a month for not cleaning up the garbage area, which he just treats as a cost of doing business. There are people who come to hear these cases, and I think there should be some minimum guarantee.

Mr. Hylton: You don't notice that there's a decision coming down the pike on your case?

Ms. Roslund: But what that decision is.

Mr. Hylton: when you codify and put in a rule minimum standards that have to be met, I'm not even sure if that's not…

Ms. Balsam: It's not ultra vires.

Mr. Hylton: We're imposing an unnecessary burden on ourselves. You're looking back and saying, it was like that before. I'm looking forward and saying, it's getting better all the time. And it's certainly not a problem right now, so why go there?

Mr. DeLaney: But this is the age we're living in: As mind-boggling as it is that Trump pardoned Bernie Kerik, he also forgave the $100,000 in tax-payer money that Kerik was supposed to repay. So I just really feel strongly that there needs to be some protection for the period of time the public has to be made aware that their case is coming before the Board, or is not coming before the Board.

Mr. Hernandez: Can't that be done without codifying it?

Mr. Hylton: Yes. We're doing it right now. We're making that standard, getting these things out a week before. If at some point, the Board starts dragging its feet and becomes complacent, the Board can address it. (To Mr. DeLaney) By the way, what number would you suggest?

Mr. DeLaney: Seventy-two hours.

Ms. Roslund: It takes two days to mail. To Mr. DeLaney's point, the way it's written now, if everything was posted the morning of, including the hard copy being mailed, then the Proposed Order wouldn't arrive until after the meeting.

Ms. Balsam: Right.

Mr. Hylton: So what if, in the future, I have an executive director who is not as efficient as this lady here, and he/she says, seventy –two hours, that's my service level. I don't have to do anything before that. I wouldn't be able to do a thing. I couldn't say to that person, that's not acceptable. We need to do it sooner. Because it's in the rules.

Mr. DeLaney: Ok, five days.

Ms. Balsam: Why don't we leave it as for now? And if it becomes problem in the future, we could propose a rule change to add it.

Mr. DeLaney: I would be tempted to go along with that, if I had not heard so many times over the past couple of years, let's deal with the rules in front of us. I asked for one simple change two years ago and got scuffed off by the Chairman…

Ms. Balsam: No, don't go there. Let's stay here. We have to finish this.

Mr. Roche: What would be so unreasonable about five days?

Ms. Balsam: One of the Orders you voted on today would not have gone. Is that what you want? That's what you have to decide.

Mr. Hernandez repeated his point that this works against the person who cannot attend, but does not want the case delayed.

Mr. Roche: I wish I had felt comfortable taking a firm stance one way or the other, because I can see both sides of this.

Mr. DeLaney: The other factor that's important is that it's very unpredictable. I could go through this docket, and the cases that came from OATH might have come a year ago or two years ago. So as the applicant, I get a report and recommendation from OATH, and….We routinely see cases where the report and recommendation from OATH was issued three, four years ago.

Ms. Balsam: The way we put the cases on the calendar is, for the most part – because there could be administrative reasons or law suits that would bump things up –in the order in which the cases were filed. So you could, theoretically, have a case where the OATH report came back fairly quickly, but have another case where it came back much later, even though the second case was filed much earlier. So the second case goes first, even though the OATH report came second. It seems to me that going by the filing date is fairer, but we're getting off topic here, so….

Mr. Hylton: I would entertain a motion from you, Mr. DeLaney. But I would caution on going down that road, touching on operational aspects, because in government, you don't always have the resources and personnel at your fingertips. And delaying justice to folks because of that….You're tying your hands in a lot of ways if you lock yourself in like that.

Mr. DeLaney moved that the Board codify the posting of Proposed Orders on the Loft Board's website no less than five days before the scheduled meeting

Mr.Hylton clarified that the motion is the Loft Board's Proposed Orders be placed on the website no less than five calendar days before the Board meeting at which that case is scheduled to be discussed, and asked for a second.

Mr. Barowitz seconded.

Mr. Hylton: Can we have discussion now?

Mr. DeLaney: Sure.

Mr. Hylton reiterated that he would discourage Board members from going this route.

Mr. Roche wanted to state that he felt sometimes Board members needed more time to consider an issue before voting on it. But he appreciated the fact that the Board needed to move on and complete these open items.

Mr. Hernandez: This is the Fire Department saying, I don't know that I want to be held to this. And then there are people coming in saying, no you need to be held to this.

Mr. Roche: I sympathize with what Mr. DeLaney has expressed, but I also see the other side of it.

Mr. Barowitz was also of two-minds about it, but he thought he would vote for it.

Mr. DeLaney: I would just point out that one of the places the Board has chosen since its inception to give itself an operational standard that we haven't met for the most part, was getting a draft of the meeting minutes out within two weeks of a meeting.

Ms. Balsam: And that's a legal requirement.

Mr. DeLaney: But we don't always hit it.

Ms. Balsam: No.

Mr. DeLaney: Right. So this is not akin to saying, if the alarm isn't rung within twenty-four hours before the fire, the Fire Department doesn't have to come.

The vote:

Members concurring: Mr. Barowitz, Mr. DeLaney, Ms. Roslund

Members dissenting: Mr. Hernandez, Chairperson Hylton

Members abstaining: Mr. Roche

Members absent: Mr. Carver, Ms. Torres

Mr. Hylton: The motion has not passed.

Mr. DeLaney: Before we move on, I did want to say something about the next sentence: "The Loft Board may redact personal information…" (To Ms. Balsam) You gave me an explanation at one point. Can you repeat that? Because here it's "may" redact.

Ms. Balsam: I think we decided to leave it as "may redact." What we had in mind was the Removal Orders. It's one thing if you're snail-mailing it to people, but it's another if you're posting it on the web for the whole world to see. Although the orders are public records and they are actually posted on the website of the Center for New York City Law where people could find that information. But that's what we had in mind. I don't feel that strongly about it, so if you wanted to delete that sentence, I'd be OK with that.

Mr. Hylton to Mr. DeLaney: Is that what you're saying? That we should delete it?

Mr. DeLaney: I'm just trying to understand it. If I understand correctly, what you told me was that if we redacted things on the website, then we would somehow communicate to the actual affected parties…

Ms. Balsam: Yes, of course.

Mr. DeLaney: So is there any language that…

Mr. Hylton: The operative words are "…that are posted on the website." (page 33, lines 24-25).

Ms. Balsam to Mr. DeLaney: But I think your concern is that it should say in the rule that, if redacted Orders are posted, the Loft Board will transmit copies of unredacted Orders to the parties.

Mr. DeLaney: Right.

Mr. Hylton: Does this contemplate always redacting any names and apartment numbers from posted Orders?

Ms. Balsam: No. We were thinking of Removal Orders at the time. We could add a sentence just before, "A proposed Order shall not be part of the record of the case," that says, The Loft Board will transmit unredacted versions of posted redacted Orders to affected parties.

Ms. Roslund: Are you removing, "upon request"?

Ms. Balsam: No, we're still keeping that. Someone could ask us to email it to them anyway, even if it's not redacted. They don't want to have to check the calendar every month, and they have the right to request it from us. When you're going to be deciding this, please email me a copy of the Proposed Order, so I don't have to go look it up on the web.

So we will add: The Loft Board will transmit unredacted versions of these posted, redacted Orders to affected parties.

Ms. Roslund: Then it sounds like you're sending them automatically, without the request.

Ms. Balsam: We will, because we're redacting it. I think Mr. DeLaney's concern is….Let's say we're setting the rents like we did today at 598 Broadway. If we had posted that redacted, and the names and apartment numbers weren't there, someone who lives in the building wouldn't know how much rent we're going to be telling the landlord to charge them. And they should be able to know that.

Ms. Roslund: But the first sentence says you're only going to give them that information if they request it.

Ms. Balsam: Right. And so here we have an exception to that. If we are redacting the Order, we will send a full version of it to the affected parties.

Ms. Balsam repeated the new sentence, above.

Ms. Roslund: I guess my question is that we will have mostly redacted copies?

Ms. Balsam: No we won't. Only Removals. We could add Removal Orders in there if you want to.

Mr. DeLaney: No rent disputes or rent adjustments?

Ms. Balsam: I hadn't contemplated that. We were really just thinking of Removal Orders when we did this. I guess we could do it on rent adjustments….

Ms. Roslund: I guess where I was going with this is, at some point we would then be sending unredacted versions to all affected parties, so we might as well take out "upon request," because they're going to get it anyway.

Ms. Balsam: I don't know. We'll have to see how it works out.

Ms. Balsam continued: Page 34, line 14. This is actually a substantive change. I think the Board had discussed this previously, but I'm not sure, so I wanted to point it out. The current rule allows an affected party who defaulted and didn't appear to file for reconsideration anyway, if they're aggrieved by the Order. And we did have a case where that was an issue. Where they said they could file anyway. Let me see what the current rule says. [§ 1-07(a)(2)]:

> The Loft Board, upon the application of a party aggrieved by a determination of the Loft Board, may, in its sole discretion, reconsider its determination.

And then later in the current rule it says,

> …an affected party who has not moved for relief from a default determination and who is aggrieved by the default determination may move to reopen the proceeding by filing an application for reconsideration with the Loft Board within 30 calendar days following the mailing date of the order. Such reconsideration application will be granted only if the Loft Board finds that the affected party has established (i) extraordinary circumstances for the failure to file an answer and (ii) substantial likelihood of success on the merits.

Basically, you're saying to someone who hasn't appeared in the action and ignored the entire process, OK, you still get a chance to make an argument. That doesn't make a whole lot of sense to me. This proposal says that you have to have appeared in the action in order to file for reconsideration. We can leave it in or take it out; I leave it up to the Board. But that's what this is meant to address: you default, you're done.

Mr. DeLaney: How do you define , "appeared in the action"?

Ms. Balsam: They filed an answer.

Mr. DeLaney: What if I file an answer that just says I want to be kept informed?

Ms. Balsam: I would construe it to say that's good enough.

Mr. DeLaney: And you were reading from the current rule?

Ms. Balsam: Right.

Mr. DeLaney: Have we had this happen?

Ms. Balsam: Yes, we did. I'm trying to remember, because it was a few years ago. Someone had not appeared, and they thought it was OK to file the Reconsideration, but they hadn't actually followed the procedure. The applicant never said anything about "extraordinary circumstances" or "substantial likelihood of success on the merits." They just filed the Reconsideration application and said, we want reconsideration; it doesn't matter that we defaulted. And they put forth all the arguments they weren't allowed to argue. Then we said, no, we're not going to consider it. You never demonstrated extraordinary circumstances or substantial likelihood of success. They said, we don't have to do that. We said, yes, the rule says you have to do that. I think that's how it came up. So we would be adding, (An affected party) "who appeared in the action."

Mr. DeLaney: Just to be sure I understand: if it's a protected occupant application, and I'm another resident in the building, and I simply send in an answer saying I wish to be kept informed; then there are six days of trial at OATH, and I don't go to that. Would I be considered to have appeared in the action?

Ms. Balsam: Yes, because you filed an answer. I'm always troubled by that check box on the answer form. I don't really like it. But I don't see how, in that circumstance, you would be aggrieved. How would you be aggrieved by granting someone else protected occupancy? There is another condition. You have to disagree with it and possibly be affected by the Order of the Board. And you have to show how you would be affected. If you find the language too vague, we can make it more specific.

Mr. DeLaney: It's just that, "appeared in the actions"…..

Ms. Balsam: It's a legal phrase. But I'm OK with making it more specific.

Mr. DeLaney: I think it would be helpful to make it more specific.

Ms. Lin: "Who filed an answer" should be sufficient. You still have to meet other criteria.

Ms. Balsam: Perhaps, "who filed a substantive answer." If you're just checking a box on a form, you're not doing anything substantive. Or, "who filed an answer opposing the application"?

Mr. DeLaney: If the tenant above me is filing an application regarding alternate plans, and a deal was worked out between the landlord and that tenant which somehow involves my unit; even though the original alternate plan did not; and I may have only filed an answer saying I wanted to be kept informed; then, all of the sudden, a decision is made that does affect me, but there was no way I could have anticipated that….

Ms. Balsam: So let's just leave it, "An affected party who filed an answer and who disagrees with and may be affected (aggrieved) by an order…"

Mr. DeLaney: OK. So that means you can come in out of left field but you had to be in the ballpark?

Ms. Balsam: Yes. The next one, page 58, line 11, was not on the list, but Tina pointed it out to me. It's a clerical item regarding extensions. We have citations to MDL §§ 284(1)(i) and 284(1)(vi). We have to add, and (vii), because the law added a section.

Ms. Balsam advanced to page 100, lines 12 -14: Should we add the definition of Landlord in the harassment rule to definitions in 1-12 up front? That was the question. And though she's not here, I think I can say that Ms. Torres-Moskovitz would want it added up front. She's always in favor of that.

Mr. DeLaney: We have Owner, New Owner…

Ms. Balsam: That was actually to address the issue of the extensions. We had a case where one net-lessee gave up the lease and another net-lessee came in, and the latter was alleging they were a new owner, but they were all in the same family. It wasn't an arm's length transaction. It was the father to the son-in-law or something like that. And they challenged us, but we found they weren't new owners, because they were related entities. So creating the two different definitions was meant to clarify that.

Mr. Hylton: As landlord is defined here, it could be a tenant?

Ms. Balsam: It could be, yes.

Mr. Hylton: That's interesting.

Ms. Balsam: In Landlord? Landlord is "…the lessee of a whole building all or part of which contains IMD units, or the agent, executor, assignee of rents, receiver, trustee…" This contemplates the whole building. "…or other person having direct or indirect control of such building." There's another section in the harassment rule that deals with harassment of subtenants by prime tenants. We do have that somewhere else.

Mr. Roche asked why we would not include the definition of Landlord in the definitions sections.

Ms. Balsam: There's no reason. I just didn't want to do it by myself.

Ms. Roslund: Is the definition as written in this section the same throughout? Or does landlord mean something else in another part of the rules? That would be the only issue.

Ms. Balsam: I would have to check. I don't know that we have landlord anywhere else. But if we put it in the definitions, we could say, Landlord, unless otherwise stated in these rules, means….

Mr. Roche: That's what I would prefer. To support Julie, since she's not here.

Mr. Hylton: So whoever it is, the landlord has control of the entire building?

Ms. Balsam: Yes.

Mr. DeLaney: Case number 6 today…

Ms. Balsam: Mr. Snyder… He had control of the fourth floor.

Mr. DeLaney: …where we had a complicated ownership structure…

Ms. Balsam: But he was the person who had control of the fourth floor. I guess in that case, no one actually had control of the whole building, because they had split all the different floors.

Ms. Roslund: But they had created a co-op structure basically, right?

Ms. Balsam: Yes, it was one of those.

Mr. DeLaney: So what have we concluded?

Ms. Balsam: That we're going to move it to the definitions in front and say, Landlord, unless otherwise stated in these rules, means….

Ms. Balsam: I had a comment about page 114, lines 14 – 18, but I think the Board already addressed it, and decided in the negative. Correct me if I'm wrong. This concerns registration applications, and the issue was, should we add in this rule that listing an occupant on the registration form makes that person a protected occupant, absent a Board order stating otherwise? I believe the Board's general sense was, no, we don't want to do that. But I wasn't sure. On the new registration forms, we do actually say in the column, names of protected occupants. But we could change the form back.

Ms. Roslund: Would someone who is not listed as a protected occupant still be an affected party?

Ms. Balsam: Could they be an affected party? Yes, they could. And also, in terms of narrative statements, the rule currently says, all affected occupants. So even if they're not protected occupants, they're still supposed to be notified.

Ms. Balsam continued: We can leave it as is and move on, because I believe the general consensus was that we did not want to put into the rule that writing a name on the registration form makes that person a protected occupant. I think that's what the Board had to say. Does anyone feel differently?

The Board was fine with this, and Ms. Balsam advanced to Page 148, line 25.

Ms. Balsam: This is regarding the inherently incompatible use rule. The law says, "risk that cannot be reasonably mitigated," and one of the open issues was the meaning of that term and the time frame for when mitigation would occur. We're not defining that here. My feeling is that we should let it evolve through case law, and we already saw a case around this. It wasn't "creating an actual risk of harm that cannot be reasonably mitigated;" it was about "a use in legal operation." We've already had a case where we talked about what it means to be in legal operation. And we had a case about Use Group 18 that was only allowed in an M1 or M2 zone, and the building wasn't in either of those zones. So we're already starting to define these terms through cases. I'm not sure how much it's going to come up, so I think we should leave it as-is, and let it evolve. But it was an open issue, so what would the Board like to do?

Mr. Hylton: My opinion is to leave it. Was the issue about "in legal operation"?

Ms. Balsam: I think the issue was about, "creating an actual risk of harm that cannot be reasonably mitigated." But in terms of undefined terms, "in legal operation" was another one of those. I'm just using that as an example of how we've already started defining this through our cases; and there's no reason why we can't define the other terms through our cases, as well.

Mr. Hylton: Wasn't there a chart?

Ms. Balsam: For what constitutes an inherently incompatible use, yes, there was a chart. And yes, there was a reference to a DEP chart that was no longer relevant. That was removed. But the questions before the Board here are, what does "creating an actual risk of harm" mean? And what does "reasonably mitigated" mean?

Mr. Hylton: We'd better leave that alone, so that the Board has some discretion there.

Ms. Balsam: We may never see a case…

Ms. Roslund: It references RCNY…

Ms. Balsam: RCNY § 2-08(k) is about incompatible use. Moving on, page 159, lines 2-4. We had suggested deleting this language: "At the time of issuance of the final certificate of occupancy, the occupant of such a unit must be in compliance with the Zoning Resolution, or the unit must be vacant." This deals with the JLWQAs, if I recall correctly. We had suggested deleting that language, and we're asking the Board to confirm, because leaving it could cause problems for non-artists living in our units dedicated as JLWQAs on old Certificates of Occupancy.

Mr. DeLaney: I know I raised this issue, and have been remiss. I wanted to talk to some of the people in So-Ho about this, but I've been too busy. What's our plan going forward? We're close to completing your list of changes. Then I presume you're going to generate a fresh document for us?

Ms. Balsam: What I hope to accomplish is this: if we finish everything today, I'll generate a fresh document and send it to the Law Department. And to you, and to the Mayor's Office of Operations, so that they can start working on it also. Because remember, it's not final by any stretch of the imagination.

Mr. DeLaney: And we're scheduled to meet again in a couple of weeks?

Ms. Balsam: We are, but we may not need to, if we finish this list.

Mr. DeLaney: I don't have a definitive answer on this, but I'm happy to let it sit for the time being, and let it go to the Law Department.

Ms. Balsam: OK. Why don't we just leave it in, and after Mr. DeLaney talks to the people in So-Ho, if we want to delete it, we can do that before the public hearings. It's going to be a couple of months at the Law Department, at a minimum. This is a lot. So there's time.

Mr. Hylton agreed and asked Mr. DeLaney to make a note of that.

Mr. DeLaney: Yes, but I thought we'd have a chance to look at one final document before it goes to the Law Department.

Mr. Hylton: You'll have it for review at the same time. But you would want to have a meeting to review the whole document?

Mr. Roche: That makes sense. It's an important enough project to warrant that.

Mr. Hylton: So you would want the March 5th meeting to be devoted to a review of the entire document?

Mr. DeLaney: I haven't seen the truncated § 2-09, with pieces that got moved to § 2-08.

Mr. Roche: I'm trying to think of a scenario where I would release a document to someone outside this group before I myself have had a chance to….

Mr. Hylton: It's still within the Board…

Mr. Roche: But it's being released to other parties…

Ms. Balsam: The point is, if we haven't actually published it in the City Record, you can still make whatever changes you want, while the Law Department is reviewing it.

Mr. Hylton: There's nothing wrong with that.

Mr. Roche: I'm not saying there is. It's just that my personal preference would be to have some time to review it here amongst ourselves one final time before releasing it.

Mr. Hylton: I think we'd be unnecessarily pushing things back. If we want to get this done any time soon, we have to get this to the Law Department as soon as possible.

Mr. Roche: I think everyone understands that.

Mr. Hylton: No, I don't think everyone really does.

Mr. DeLaney: We're talking about putting together one final pass at this in a meeting two weeks from now, right? We've been asked to hold that date.

Mr. Barowitz: And we're going to go through a two-hundred-page document in one meeting?

Mr. Roche: I think we would go through it prior to that meeting. Perhaps to have the final package a week before, to read through it?

Mr. Hylton decided to call for a brief recess.

After the recess:

Mr. Hylton: What I propose is to finish the open items today; get a clean, digital copy of the rules to the Board members next week; and ask that you to send your comments to the Executive Director by March 5th. The

March 5th meeting will be canceled, and the Executive Director will incorporate your comments into the document before sending it to the Law Department.

Mr. DeLaney: It makes sense to be able to have a discussion. If I raise points….

Mr. Hylton: But what is there in these rules that we haven't already discussed at length and in depth? And you still have a few months before we get it back to make any changes that you want. We have to start the next phase.

Mr. Roche: I appreciate and like your plan, and I also look at the hour and wonder if we'll be able to finish this.

Ms. Balsam: Yes, we can. It's only a few minor points.

Ms. Balsam returned to the open items and said: Page 194 is all about penalties. We had talked about eliminating the Class C penalty, the Class B penalty, etc. On lines 28-29, it says "…the owner may be subject to a Class C civil penalty as follows;" and there were several other references to different Classes throughout. The question was whether we should keep them or not, and I had initially suggested deleting them; but we were told it could be helpful to have them in Housing Court, so we're going keep all those references. So in the various places on the next several pages where these Classes are referenced, we will leave those.

Ms. Balsam: Page 196 there was a question as to what "per occurrence" meant in the harassment rule. If you look in the table, you'll see it mentioned, for example $3000 to 6000 for each occurrence. Amy did some research, and we found that there is a lot of flexibility, depending on the circumstances. The tendency has been to group the occurrences by type. So if there were fifteen times the elevator didn't work, that would constitute one occurrence. Not having an elevator, constituted an occurrence. I think it's good to leave it vague, because it gives the judges and the Board flexibility in terms of where it's been more heinous. They've been able to use the per-occurrence standard to impose higher penalties. So I think we should leave it as-is. Is everyone OK with that?

The Board agreed.

Ms. Balsam: And the very last item, was actually an oversight on my part. On page 198, you'll see at the very top of the chart on the right-hand side, it says, "per violation of $17,500." That should be $25,000.

And that is it. We are finished.

Mr. Hylton repeated the direction he had described earlier, that Ms. Balsam would send the Board members a clean, updated document the following week, and they should return their comments to her by March 5th.

Ms. Balsam said that if anyone would prefer a hard copy, she would supply that.

Ms. Roslund: Can we agree that comments go to all Board members?

Mr. Hylton: Absolutely, that will happen.

Ms. Balsam proposed the following: If anyone has substantive comments (as opposed to clerical), only send those to me. If you want to circulate clerical comments to everyone, that's fine. And if there are substantive comments we need to discuss, then we'll discuss them at the March 19th meeting. But I hope you don't have any, because we have worked so hard on this. I really think we've accurately worked your wishes into the rules.

Mr. Hylton thanked the Board members for their efforts on this over the past two and a half years, and hoped it would be substantially complete by the summer.

Mr. DeLaney asked if the draft coming out is a public document.

Mr. Hylton: Yes.

Mr. Hylton ended with an expression of special thanks to Ms. Balsam and the staff for an outstanding job on the project, and the Board agreed.

Mr. Hylton: This will conclude our February 20, 2020, Loft Board meeting. Our next public meeting will be held on Thursday, March 19, 2020, at 2:00 PM at 22 Reade Street, Spector Hall.

The End