

MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

July 16, 2020

The meeting began at: 2:12PM

Attendees: Elliott Barowitz, Public Member; Richard Roche, Fire Department's *ex officio*; Robinson Hernandez, Manufacturers' Representative; Charles DeLaney, Tenants' Representative; Heather Roslund, Public Member; Julie Torres-Moskovitz, Public Member; Renaldo Hylton, Chairperson Designee.

INTRODUCTION:

Chairperson Hylton welcomed those present to the July 16, 2020, public meeting of the New York City Loft Board, and explained that the meeting was being held via teleconference due to the coronavirus emergency, pursuant to the Governor Executive Order 202.1. 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.

Mr. Hylton announced that before turning to a vote on the minutes, he wanted to update the Board on two matters that were raised during the last Board meeting; specifically, self-certification and modifying the building information system to indicate buildings that had formerly been under Loft Board jurisdiction. Regarding the former, he stated that he had made inquiries, but as of yet, has not received a response. (The latter, he would return to later). He then turned to a vote on the minutes of the June 18, 2020 Loft Board meeting.

VOTE ON MEETING MINUTES:

June 18, 2020, Meeting Minutes

Mr. Hylton asked if there were any corrections or comments on the minutes. As there were none, he then asked for a motion to accept the minutes, and for a second.

Mr. Hernandez moved to accept the June 18, 2020, meeting minutes.

Mr. Roche interjected that Mr. DeLaney had been dropped from the call. After restoring him...

Mr. Hylton asked Mr. DeLaney if had any comments on the minutes; which he did.

Mr. Hylton then asked Mr. Hernandez to withdraw his motion to accept the minutes, which he did, and then invited Mr. DeLaney to make his comments.

Mr. DeLaney: I heard your comment with regard to the self-certification question. Thank you very much. I did send in some typos and other things that I noted were taken care of and addressed with regard to various parts of the very clear, and excellent-as-always recent minutes. But, whether we do it as part of the minutes or later in the meeting, I do want to review in some detail where we are with the various Executive Orders: the Emergency Order we adopted; exactly what activities the Loft Board is currently accepting; how people can file; etc.

Mr. Hylton: Can I reserve that for Ms. Lin's report? At which time, you can question her about these things. Would that be alright?

Mr. DeLaney agreed, but also continued: And I would just also note that, on pages 10 and 11, there was discussion about our efforts to coordinate with DHCR and HPD for IMD buildings that are removed, and the question of how to get Certificates of Occupancy to more clearly reflect the status of buildings as former IMDs. I presume that's still ongoing?

Mr. Hylton returned to the question of modifying the building information system, which he had not completed in his earlier comments: That request has been made to IT, and they're yet to get back to me. It does take some programming, so we're waiting on that. As far as the Certificates of Occupancy, I don't believe we have any promises to do anything on the C of O, itself.

Ms. Lin: No.

Mr. Hylton: I'll bring it up again. We'll note that we need to talk to someone about how to accurately reflect on the C of O IMDs or former IMD buildings -- if they can standardize the language on that.

Mr. DeLaney: OK, thanks.

Mr. Hylton: We'll put that on the Agenda for our next meeting. Hopefully, by then I'll have the other update as well regarding self-certification. Ms. Moskowitz, I'm sorry this is taking so long; it's due to other priorities since the onset of COVID. I've revived that request since the last meeting, but we're still waiting.

Ms. Torres-Moskovitz: Thank you.

Mr. Hylton: Are there any other comments on the minutes? (None). Mr. Hernandez, are you going to make that motion again to accept?

Mr. Hernandez: Yes.

Mr. Hylton: Do I have a second?

Mr. Roche seconded.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

NEW BOARD MEMBER

Mr. Hylton: Before Ms. Lin gives the Executive Director's report, I would like to announce to the Board members and members of the public that Mayor Bill de Blasio has appointed Ms. Samira Rajan to fill the public member vacancy on the Loft Board. She will join us at our next official Board meeting. Currently, Ms. Rajan is the Chief Executive Officer of the Brooklyn Cooperative Federal Credit Union and has a deep background and extensive experience in the financial sector. We are excited about the relevant expertise that she will bring to the future Loft Board meetings and her ability to further our mission to serve the Loft Board's community. We look forward to welcoming Ms. Rajan when she joins us for our next meeting. I will now turn over to Ms. Lin, who will give the Executive Director's report.

EXECUTIVE DIRECTOR'S REPORT

The Governor's Orders and the Emergency Rule

Ms. Lin: On July 6th, the Governor issued Executive Order number 202.48, which extended the toll on statutory deadlines to August 5th, 2020. So, in accordance with this Executive Order, initiatory filing for the Loft Board is tolled until August 5th, 2020. This Executive Order also extended the Governor's suspension of in-person meeting requirements of Open Meetings Law until August 5th. That's all the information we have on that portion for the moment. We don't know whether the Governor will extend it again. So, as of right now, we're not sure what format the September 17th Board meeting will take, but we will update the Board members and the public as soon as we know.

Mr. Hylton: In other words, we cannot hold these remote hearings unless the Governor extends the Order, is that correct?

Ms. Lin: Yes.

Mr. Hylton: In the past, at other meetings, we were able to tell you that we would have our next meeting by teleconference like this. But this time, we'll have to wait until August 5th, and since we don't have a meeting in August, we can't tell you the venue or the method for the September meeting. What about Mr. DeLaney's question about filings?

Ms. Lin: So, the Emergency Rule that we passed to account for electronic service and filing has lapsed, and as we discussed at the last Board meeting, we decided not to go ahead with a public hearing to renew it. In order to renew that Emergency Rule, we would have to hold a public hearing, and we thought staff effort was better spent on trying to pass the proposed rules – the draft rules that we have in place -- which would provide for electronic service and filing.

Mr. DeLaney: So, what does that mean in terms of what petitioners have to do at this point in time?

Ms. Lin: It would be business as usual; the same way they've been filing the Loft Board applications. They would have to come into DOB and submit it to a drop-off box. Or mail it.

Mr. Hylton: The Loft Board has staff here every day until 2 PM. There's a 2 PM cut-off for the public.

Mr. DeLaney: Is there a way for the public to know of that cut-off?

Mr. Hylton and Ms. Lin said they believed that information was on the Loft Board web site, but they would check. Mr. Hylton thanked Mr. DeLaney for asking that question.

Mr. DeLaney: The entire Department of Buildings closes at 2 PM?

Mr. Hylton: Yes, the offices. The public offices. The public cannot enter the building after 2 PM.

Mr. DeLaney: OK. So, the deadlines have not resumed that are now tied to the Governor's extension to August 5th.

Ms. Lin: The initiatory filings deadlines, yes. That's tied to the Governor's Executive Orders.

Mr. DeLaney: OK. Thank you.

Revenue

Ms. Lin: The unofficial revenue for the Loft Board for June was \$7,470.75.

Litigation

New Cases:

Ms. Lin: In terms of litigation, we have one new case. *Teixeira and Sullivan versus New York City Loft Board - 511233-2020*. This is an Article 78, challenging Loft Board Order Number 4945, filed by the sixth-floor occupants of 216 Plymouth Street, Brooklyn, New York. Order 4945 granted Loft Law coverage for the second, third, and fourth floor units, but not the sixth-floor unit, because the evidence showed that the sixth-floor unit was used for a construction business during the Window Period. Occupants of the sixth floor now filed this Article 78, claiming that portion of the Order denying coverage for the sixth floor was in error.

Decisions:

Ms. Lin: We have one decision: *99 Sutton LLC versus New York City Loft Board*, index number 160011-19. This was a mandamus action asking the court to compel the Loft Board to review and decide filings of sales record forms and agreements made on July 18, 2019, and August 14, 2019. The court found that the petitioner had failed to adequately allege that a reasonable period of time has passed and that the Board has taken action on the applications. So, the Article 78 petition is denied and proceeding dismissed.

Mr. Hylton: Thank you, Ms. Lin. Are there any questions for Ms. Lin?

As there were no questions, the Board advanced to the cases.

THE CASES:

Appeals and Reconsiderations Calendar

Mr. Hylton: There are three cases on the Appeals and Reconsideration calendar. The first case is:

	Applicant(s)	Address	Docket No.
1	One Double Nine Dashing LLC	199-201 North 8 th St., Brooklyn, NY	R-0378

Summary: Owner sought reconsideration of Loft Board Order 4898 which found that the second floor of the subject building was subject to Loft Law coverage and that its occupants are protected occupants. Owner’s reconsideration is denied. Occupants’ tax filings do not preclude them from claiming that unit was residentially used and occupants have offered sufficient evidence to use residential use of the unit. Order also finds that the IMD unit consist of the entire second floor, owner’s arguments were thoroughly reviewed and rejected by the ALJ and there is no reason to disturb the underlying order based upon the ALJ’s findings.

Ms. Lin presented this case.

Mr. Hylton thanked Ms. Lin, then 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 the case. (None).

The vote:

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

Members dissenting: Ms. Roslund

Members abstaining: 0

Members absent: 0

Members recused: 0

Mr. Hylton introduced the next case on the Appeals and Reconsiderations Calendar.

	Applicant(s)	Address	Docket No.
2	39 Ainslie LLC	39 Ainslie St., Brooklyn, NY	R-0379

Summary: The owner is seeking review of Loft Board Order No. 4926, in which the Loft Board held that the owner failed to timely renew the annual registration of the Building for Fiscal Year 2020 and failed to pay

applicable fees. The proposed order grants the owner's reconsideration application because the Loft Board staff erroneously initiated an enforcement proceeding against the owner after the Building was removed from the Loft Board's jurisdiction.

Ms. Lee presented this case.

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

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

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

Mr. DeLaney: I would just comment that it seems to me that reconsideration is granted because the owner was able to complete the process and deal with the various issues by a whisker. In my opinion – and this is something I've mentioned in the past – the Board moves forward a bit too slowly on failure-of-owner-to-register cases. In this case, that window of time allowed this particular owner to just get in under the wire. Lucky owner. I hope the owner puts as much effort into working with the building going forward as it did in fighting this five-thousand-dollar fine.

Mr. Hylton: Thank you, Mr. DeLaney. Are there any additional comments on this case?

Ms. Roslund: I just wanted to echo what we discussed about this case, which is that you took it on the technicalities. It's sort of on the fence, this \$5000, right? As Chuck just said. Like, a whisker. So, it could almost have gone either way.

Mr. Hylton: Thank you, Ms. Roslund. Do we have any other comments? (None).

The vote:

Members concurring: Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Roslund, Ms. Torres-Moskovitz,
Chairperson Hylton

Members dissenting: 0

Members abstaining: Mr. Barowitz

Members absent: 0

Members recused: 0

Mr. Hylton introduced the last case on the Appeals and Reconsiderations Calendar.

	Applicant(s)	Address	Docket No.
3	Sani Properties Corp.	169 Spencer St., Brooklyn, NY	R-0380

Summary: Owner seeks review of Loft Board Order 4924 which imposed a \$5,000 fine on owner for failure to timely file its annual registration. Owner’s reconsideration is denied. Owner was not denied due process and Owner had failed to provide documents to substantiate its allegations.

Ms. Lin presented this case.

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

Mr. Barowitz moved to accept this case, and Mr. Hernandez seconded.

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

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Summary Calendar

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

	Applicant(s)	Address	Docket No.
4	Paul Aaron	87-95 Dobbin St., Brooklyn, NY	PO-0118, TA-0265
Conclusion: owner and tenant settled, tenant is recognized as protected occupant			
5	Turtle Island Corp.	79-81 Leonard St., New York, NY	LE-0685
Conclusion: owner withdrew removal application			

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

Mr. Hernandez moved to accept these cases, and Ms. Roslund seconded.

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

Mr. DeLaney: I would just comment that case number 5 is the first time, possibly the second, that I've ever seen a building apply for Removal and then not move forward; and ultimately have decided, I guess at least for the time being, not to move forward. So, we are finding that, in this case, the Removal application is being withdrawn. But hopefully, at some point in time, the building, which is a co-op, will move forward, apply for Removal, and exit the system.

Mr. Hylton: Thank you, Mr. DeLaney. Are there any other comments?

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Master Calendar

Mr. Hylton: There are two proposed cases on the Master Calendar. The first case is:

	Applicant(s)	Address	Docket No.
6	Hailey Desjardins & Samuel Richer	476 Jefferson St., Brooklyn	PO-0056

Summary: Tenants had filed for protected occupancy. The owner of the building claimed that the unit was previously deregulated in April 2012 due to sales of rights by the prior tenants. However, the prior tenants' sales were found to be invalid. Accordingly, the unit was not deregulated, and the current tenants are found to be the protected occupants of the Unit.

Mr. Argov presented this case.

Mr. Hylton thanked Mr. Argov, then 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 the case.

Mr. DeLaney: I would just comment that, in the last year or so, we've seen a number of cases come over from OATH where different ALJs have kind of blocked the type of argument that was made in this case. So, I'm glad to see that this instance of – Oh, I'm refunding your deposit and I'm giving you ten dollars. Please sign this piece of paper that says you sold your right – isn't being accepted by the OATH ALJ; and I think this is a good decision.

Mr. Hylton: Thank you, Mr. DeLaney. Are there any other comments on this case? (None).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

Mr. Hylton introduced the last case on the Master Calendar.

	Applicant(s)	Address	Docket No.
7	Chi Jung Chiang	266 Bowery, New York, NY	LE-0698, RA-0013

Ms. Lee: I apologize. I did not prepare a summary for this Removal case. However, I can tell you that this building contains three IMD units. The fourth-floor unit is not subject to rent regulation, pursuant to Article 7C, because a sale of the improvements and rights was executed for this unit in 2011. The second- and third-floor units remain subject to rent regulation, and initial, legal regulated rents have been set for these two units.

Mr. Hylton: Thank you, Ms. Lee. I didn't mean to put you on the spot. We don't provide summaries on Removal cases. I'm sorry; this is our first post-Balsam meeting, and so... Do we have a motion to accept this case?

Mr. Hernandez moved to accept this case, and Ms. Torres-Moskovitz seconded.

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

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

RULE-MAKING

Mr. Hylton: This ends our cases, and we're now going into the next phase of this meeting. Board members, do you need a break? OK. So, we'll continue on with our next agenda item: a discussion of rule-making and related updates. I turn your attention to the draft rules that you have in your possession. Mr. Clarke will be leading this discussion.

Mr. Clarke thanked the Board and began: We're going to try to move forward with the rules a little bit. We received some comments back from the Law Department, as well as OATH, and while we don't have time to address everything right now, we would like to utilize the time as best we can to make some progress. We wanted to start with a discussion of the comments we received from OATH.

Mr. DeLaney: Excuse me, Mr. Clarke.

Mr. Clarke: Yes?

Mr. DeLaney: Before we dive into the specifics of the comments we have thus far from the Law Department, and surprisingly to me, from OATH, I think it would be helpful if you could give us a little bit of an overview, so we can put this in context. I gather there are still more comments expected from the Law Department and the Mayor's -- I never get their name straight; I just call them the plain-language police. Have we heard from them?

And since we're not going to vote these out today, and we're not meeting in August, I guess this means that everything sits until September?

Mr. Hylton replied: Let me answer that, Mr. DeLaney, and let me know if I miss anything before we continue. So, yes, we are expecting more comments from the Law Department. They've not finished their review, but we want to go through what they have sent back to us. And the Mayor's Office of Operations – what you call the plain-language police – have completed their review but won't give us any certification until the Law Department has done so.

Regarding OATH's comments: these rules were sent from the Mayor's office to OATH, because some of the material in our rules touches on OATH procedures; so, they're asked to comment. They're not granting approval; they're just giving comments. Some of those comments were valid, so we're going to address those now. We're hoping the Board can come to some agreement today, as much as possible, on some of the comments from both the Law Department and OATH.

We would like to get some agreement now, but we're not moving this rule forward until we have a complete review from the Law Department. And most likely, that will be in the September meeting, as there's no meeting in August; unless the Chair finds it necessary to move the rules along. But so far, it is a September Board meeting; that's the next time. And hopefully, at that time, we'll be finished with our comments, and we can vote on sending this back for initial publication. For comments.

Mr. DeLaney: Thank you.

Mr. Hylton: Thank you. Mr. Clarke?

Mr. Clarke: All the Board members should have received a page that starts with §1-12 Definitions, and there is some red text there, which indicates language that's been removed or added. These are the comments from OATH. We're going to go over the comments that we received from OATH first. I want to make sure that all the Board members have that in front of them; so, can any of the Board members confirm that they have this print-out in front of them – the comments from OATH?

Ms. Torres-Moskovitz and Ms. Roslund confirmed that they had the document.

Mr. Clarke: Alright, so if you have the actual rules, all of the rules together, the first comment should be found on page 182. On the sheet we got back from OATH with their comments, the first comment is going to be found on page 5 of our rules. It's under §1-12, the definition of adjudicator.

Ms. Roslund: Can you just explain how the mark-up is done? The red underline is new, and what's in parenthesis is being removed?

Mr. Clarke: That's correct.

Ms. Roslund: Alright, thank you.

Mr. Clarke: So, the language OATH would like us to use for the definition of adjudicator is:

Adjudicator means an administrative law judge or hearing officer of the Office of Administrative Trials and Hearings for matters before that tribunal.

They wanted to add that language, "for matters before that tribunal." We'll get to that later on, but basically, OATH wants us to use their procedures. Whenever we send a matter over to OATH, they want OATH procedures to govern with respect to how they adjudicate the case. So, this language that they want to add touches on that, in that it specifically says, "for matters before that tribunal."

In the past, the Loft Board had hearing officers, so the Loft Board staff, Loft Board hearing officers, would actually conduct the hearing. This language leaves the door open for that practice to resume in the event the Loft Board ever starts to conduct their own hearings again. So, wherever the matter appears, that's who's going to be the adjudicator. In other words, "for matters that appear before that tribunal." It could be the Loft Board, or it could be OATH.

In the second part, it talks specifically about the Loft Board adjudicator and removes, "staff member."

Mr. Hylton: So, we agree with their changes, because they're just making clear who you're speaking to in the rules. Because, as you know, at one time, the Loft Board had an adjudicator. Presently, we use OATH to adjudicate our hearings, but we want to reserve the right to revert back at any time. So, we don't want to remove it from our rules. And all OATH is doing is clarifying whom the rule are addressing. Is that fair?

Mr. DeLaney: I would really like to object from the standpoint that I think, if we go in this order and start with the definitions – to use a term that Heather sometimes uses – it starts to take us down a slippery slope. Because later on in this page, there's more significant things to say about what OATH is going to look at. Like everybody else, I only got this at four o'clock yesterday, but it smells a little like OATH trying to grab a bit more power for itself. So, it's more than a matter of a definition.

As many people are aware, and as Mr. Clarke touched on, until about 1995, the Loft Board had its own hearing staff. In roughly 1995, under the Giuliani administration, OATH was created, and in its early days, we had a lot of issues with them. Just a couple of months ago, I mentioned that maybe we could meet with OATH and have a chat with them on some things that they seem to get wrong on a consistent basis, but Helaine said it would be inappropriate. Now, all of the sudden, they're re-writing our rules for us.

So, I think this should be discussed in a larger format than just starting with §1-12 and dividing up the adjudicator. To my mind, it doesn't really take into full consideration what we do. The Loft Board's rules should cover the Loft Board proceedings, even at OATH. Particularly in some specific areas, like amending pleadings, defaults, and the like.

Mr. Clarke: I understand your point, Mr. DeLaney. So, it might be better to skip to the next issue on your page. I think that addresses pretty much the heart and soul of everything that OATH wanted to change -- or address -- in our rules. That is the hearings, and that's found on page 23 in the rules. It's §1-27(E) in the hearings.

Mr. DeLaney and Mr. Barowitz asked what page that was on.

Mr. Clarke: It's on page 23. It starts with OATH hearings.

Mr. DeLaney: Before we dive into this, I would just also like to note for the record that the document the Law Department is working from was a revised version. No substantive changes, but the layout is different than the draft rules that had been distributed to the public over the past year during our meetings. So, if there are members of the public listening to this call, who are sufficiently interested in this and organized enough to have the printouts that were distributed by the Loft Board, the page numbers don't coincide.

Mr. Barowitz asked for clarification of a certain passage: "If Loft Board rules are silent with respect to a procedural but substantial issue, OATH rules or practice applies." What does it mean, if Loft Board rules are silent? What does the word silent mean in there?

Mr. Clarke: So, when it says it's silent, it means that the Loft Board rules don't address it. It's not mentioned in the rules at all. And that part, we're proposing to remove. That's inside the brackets, so we're proposing to take that out. The actual sentence would read:

Where OATH conducts a hearing and Loft Board rules conflict with OATH procedural rules, OATH's procedural rules or practices will apply, unless otherwise provided by state law.

That's how that first sentence would read.

Mr. Barowitz: Alright, that makes more sense to me.

Mr. Clarke: So, are there any comments from the Board members with respect to this language? It says now what we're proposing, which is that OATH would like their procedural rules to apply whenever we send matters before OATH.

Mr. DeLaney: I think it's very hard for people to conceive of what that means without some examples.

Mr. Clarke: OK.

Ms. Roslund: Yes. How many conflicts are there?

Mr. Clarke: During the time that I've been here, there haven't been any real conflicts with respect to procedure. Whenever we send a case over to OATH, the Loft Board defers to them in terms of the procedural aspects. For example, if OATH judges want to reopen a case or extend a deadline. We haven't clashed with OATH in terms of us saying that a procedure they have, that they've established, that they have in their rules and that they follow, conflicts with what we feel is appropriate, procedurally.

Mr. Hylton: I would also add that we've looked at other agencies for which OATH adjudicates, that are similar to the Loft Board in terms of previously having adjudicated by themselves, like the Taxi and Limousine Commission; and this language is similar, is almost identical to, what they have in their rules.

Mr. Clarke confirmed what Mr. Hylton just said: that other agencies with rules similar to Loft Board rules defer to OATH in the procedural aspects of a hearing

Mr. Barowitz: So that's the reason why we have all of these additions here? Because of what other agencies do with regard to OATH? Things have been working well in terms of OATH decisions and our decisions, so when I started reading this, I couldn't help wondering if it wasn't just going to complicate things.

Mr. Hylton: No, Mr. Barowitz, we're not saying that. We're saying that anyone can comment on our rules, and the Mayor's office involved OATH, because these rules touch on OATH procedures. So, now that we're there, OATH gave us some comments. Moreover, OATH can certainly make comments, like anyone else can. What we're also saying is that the comments are actually just clarifying current procedures.

Ms. Torres-Moskovitz: Stephan, you mentioned procedural, and I understand that. That makes sense to me. But when you say substantive issue -- are they interchangeable? Are they different?

Mr. Clarke: Yes, that's a good question. We like to think of the procedural aspects as, basically, the rules governing how the hearing is going to take place. The substantive issues are the actual law that's being applied to the facts. And the substantive issues will be the Loft Board's rules and the Loft Law. So, any adjudicator that's adjudicating -- whether it be in the future a Loft Board hearing officer or any adjudicator at OATH -- they have to apply the Loft Law, and the laws that are in Article 7C, and our rules. Does that make sense?

Ms. Torres-Moskovitz: I think so. Is there an example of where Loft Board rules are silent or not mentioned on a substantive issue? Do you have an example of when that's ever happened?

Mr. Clarke: The substantive issues have to be governed by the Loft Law and the Loft Board rules. The part that's silent -- the language they're referring to in terms of silence -- is for procedural issues only. They have to follow the Loft Law and the Loft Board rules with regards to all substantive issues.

Ms. Torres-Moskovitz: Maybe that should be written differently then. So that silence is applied to procedural issues, but in substantive issues, the Loft Board rules take precedence over OATH's ruling. Why does it have to say procedural or substantive issues? Couldn't it just say procedural issues?

Mr. Hylton, Mr. Clarke, and Ms. Lin established that Ms. Torres-Moskovitz was referring to the bracketed, deleted language. There was also confusion about the relationship between the Law Department and OATH documents.

Ms. Lin: To clarify, for this section, we should be looking at the one-page OATH excerpts. There are two separate documents. One is from the Law Department and one is from OATH that summarizes. And the changes from OATH are not reflected in the Law Department document.

Mr. Clarke: Did everybody hear that?

Mr. Hylton: So, right now, we're not looking at the Law Department's big document. We're looking at OATH's document, because those are changes we're proposing now, for your approval. They're not yet reflected in the Law Department's big document. So, we're only looking at that one-pager. Or three-pager.

Mr. Clarke: Right. So, it would probably be more helpful if you didn't look at the big Law Department document. But I just wanted everyone to be able to refer to where what we're discussing is in the actual rules. But as far as what's being changed, it's that one-page paper from OATH we're looking at.

Ms. Torres-Moskovitz: OK, thank you for clarifying. Now I get it. If we ignore the seven brackets – that’s something the Loft Board staff decided on its own and is presenting to us.

Mr. Hylton: Yes. Those are OATH comments and what the staff agreed -- what we thought was acceptable -- and so presented for your approval. It’s still up to you. The comments came in from OATH, and we made some changes we thought were acceptable to both parties. They agreed, and so we’re asking you to accept it.

Ms. Torres-Moskovitz stated her understanding of what Mr. Hylton just explained.

Mr. Hylton confirmed that what Ms. Torres-Moskovitz had recounted was correct, and added: But if you see something that you think isn’t right, the lawyers will be happy to explain it, clarify it, or revisit it, if you think that it’s not acceptable.

Mr. DeLaney: First of all, the distinction between procedure and substance. Sometimes it’s less clear than the way I feel it’s being presented now. I’m reminded of former senator and astronaut, Jake Garn, from Utah’s comment that, at least in the Senate, you argue substance; I’ll argue procedure; and I’ll beat you every time. So, as a reminder to some of the newer Board members, for a number of years, OATH had the temerity and the hutzpah to take the position that if one OATH judge had made a decision that had not yet even been seen by the Loft Board, other OATH judges could rely on that decision and apply it to their cases.

In OATH’s grandiose view of things at that time, OATH thought they were the court, and that the Loft Board – and they stated this – was an upper appellate court, so that we only got to challenge a holding that OATH made in circumstances when it came to the Board. So, you could have an OATH judge make a ruling that the Loft Board would never buy, and another judge would read that and apply it to his or her case. And there were even cases where OATH judges made interim rulings that were relied on even though the tenants folded their hand after the interim ruling, and the case never came to the Loft Board. So, the notion that, oh, this is just a substantive thing – this is just a process and procedure, so it’s no big deal – I don’t buy that.

And second point: we’ve operated over the past year or so under the understanding that Board members get two weeks to look at new, proposed language before they’re asked to vote on it. So, there is no way I am acting on any of this today. As far as I’m concerned, this can sit around until September or August, if we meet in August. And I’d also like to see some written opinion from staff summarizing this for the Board.

Mr. Clarke: Thank you for that Mr. DeLaney. With respect to your first comment, although the OATH judges will write reports and recommendations, ultimately, it's the Loft Board's decision. It's the Board members that are going to decide the outcome of the case. And that decision is going to set the precedent going forward, with both issues. So, if OATH judges write something that the Board members don't agree with, we would simply reject it in our Proposed Orders.

Mr. DeLaney: Yes, as we do, quite often. I agree. But Mr. Clarke, in your couple of years (at the Loft Board), you have experienced an OATH that is much better behaved than previously. But, believe me when I tell you that there were cases when the first we heard of a decision was via something an OATH judge was relying on that had been rendered in an opinion -- in a report and recommendation of a different OATH judge -- that we hadn't even seen. And as you know, even these days, OATH reports and recommendations are sometimes two-years old before they come before the Board.

Mr. Clarke: Yes, that is true. But I think we have an outstanding group of Board members, that is very vigilant. They look over all the staff's Proposed Orders. They comb through all the information. They read everything. And if there's something they don't agree with, you all are very vocal in letting us know it; that it's not something you're going to vote in favor of. And you make us go back and change the Order so that it's something you all agree with and will vote on.

Mr. DeLaney: I agree with that. And I am always reminded of now-retired, former executive director Balsam making very clear that it is the Board that makes decisions. So that when I would write, staff is doing this, she would say, oh no, no, everything is done by the Board. And I agree that we have a great Board, and we're very conscientious and go over things. And that's why I want my two weeks on this.

Mr. Clarke: Oh, absolutely. We're definitely not forcing you to...

The meeting was briefly interrupted while Mr. Hernandez, who had been dropped from the call, was reconnected. When it resumed...

Mr. Hylton asked Mr. DeLaney if he had anything else to add. He did not, so **Mr. Hylton** continued:

Mr. DeLaney, we're not trying to violate our own procedures here, but we worked feverishly to try to get all this information to you as quickly as possible. As you know, the Law Department gave us their comments last Friday, and OATH this week. While we were also working on cases. When we finally had an agreement, instead of

waiting another month and half before presenting it to you, we decided to give you an opportunity to look it over.

We don't have to make a decision today, but let's go over some of these issues, and then of course, since we're still waiting on other rules to come back from the Law Department, we're not going to do anything on a vote until September. So, can we at least just review the comments? If you need more time for anything, we can certainly move on. But at least let us go over what we can until four o'clock. I promise, this is not going to go past four.

There's a lot of the urgency to get these rules passed, simply based on the fact that we've been doing this for two and a half years now. And I think at some point, we need to just move on and get something out. So, forgive us for breaking our own procedures in some way, but we're in an emergency. The Law Department had other pressing issues; our work was not a top priority. So, we take these comments when we can get them, and we give them to you.

I would have loved to have waited until August, but there's no meeting in August. At least for now. Which is why we want to get as much feedback as we can on these, now. We're not voting; we're just discussing. That's all. And certainly, if you want to voice an opinion, come back with something in September. That is still a possibility.

That said, I want to put everyone on notice that, depending on the direction we get, we may need to add more meetings for rules, you know. But hopefully, that will not be in August. But it's certainly up in the air for September, because you just simply want to get ahead of this backlog we have. So, if anyone has some comments on that, I just want to see what you think.

Ms. Torres-Moskovitz: Let's finish this page. We're not deciding anything today; we're just learning more from the staff in the public hearing.

Mr. Hylton: Yes, absolutely.

Mr. Clarke: So, are there any additional comments to this particular section OATH wanted to make some change to?

Ms. Roslund: I don't know if this is a question, comment, or opinion, but while we were talking, I went to OATH's web site, and on the front page it says that "OATH is an administrative tribunal that provides hearings

on notices of violations issued by city agencies.” So, to Chuck’s point, the violation comes from the Loft Board, and they’re supposed to rule on that violation.

Mr. Hylton: Ms. Roslund, OATH does that, but there’s also a hearings division that provides trials. You’re looking at hearings; there’s a trials division.

Ms. Roslund: (One is trials); one is hearings. So, it’s the same thing.

Mr. Hylton: Well, it’s the same agency, but they have two divisions. One is hearings and one is trials.

Mr. Hylton and Ms. Lin conferred about which division the Loft Board uses.

Mr. Clarke: This is more for the trials. And while Heather is reviewing the web site for OATH’s trials department, does anyone have any questions on this particular section? Anything we can clarify? If not, then, Ms. Roslund, when you’re ready, you can jump back in. But I think it might be a better use of the little time we have left to go back up to the top of the page to the definition of adjudicator. It might make more sense now. And look at the comments that OATH made for adjudicator. Specifically, they want to add “the hearing officer.” I’ll read the whole sentence:

Adjudicator means an administrative law judge or hearing officer of the Office of Administrative Trials and Hearings for the matters before that tribunal; or a Loft Board adjudicator, assigned to conference, or hear, and decide an application for matters before the Loft Board.

So, as Chairperson Hylton said earlier, OATH just wants to make it very clear who the adjudicator is in this specific situation. If it’s going to OATH, then OATH is the adjudicator. And if the Loft Board ever does their own hearings again, then the adjudicator is going to be the Loft Board. Does anybody have any comments on that definition of adjudicator?

Ms. Roslund: What about when it goes to a different court?

Ms. Lin: There is no different court.

Mr. Hylton: There would be no other court.

Mr. Hylton: Right now, we use OATH for fact-finding. And at one point, as we said, there was a Loft Board adjudicative unit, and it's still in our rules. We don't want to take it out. We reserve the right to go back there at any time.

Ms. Torres-Moskovitz: I'm willing to listen to what's being presented – this one page. But then I agree with Chuck that we need two-weeks' notice and more research to actually make any suggestion or changes or anything. I can't make a decision at the same time I'm introduced to it. So, when you're asking us for further comments, you're just really asking for questions. We're not agreeing to change things?

Mr. Clarke: No. We're basically just asking you to think out loud for us.

Ms. Torres-Moskovitz: OK. I suggest that maybe we go to §§1-30 and 1-31 together, and then read the definition.

Mr. Clarke: OK, so §1-30 concerns the settlement agreements, which end up being the summary cases that the Board votes on. I'll read the sentence for §1-30(A), that expresses the changes OATH wants to make.

A Summary Report of such matters including the type of application, the issues presented, and the resolution reached must be made to the Loft Board by the Loft Board staff.

When we discussed this with OATH, they wanted to specifically add, "by the Loft Board staff." OATH was very clear that they usually don't write a report with respect to their settlements. So, we agreed that, if there was going to be a report made and presented to the Loft Board, then it should be by the Loft Board staff. So, we agreed to add that language. That any report on settlements would be made by the Loft Board staff to the Loft Board.

Ms. Torres-Moskovitz: I have one question about that. At first, I thought they were making it more official by adding adjudicator instead of staff member. Staff member now sounds very generic. So, now we have Loft Board adjudicator added in their suggestions. But then we're going back to Loft Board staff. How is the staff there, in §1-30(A), different from Loft Board adjudicator?

Ms. Lin: So, the adjudicator is someone who's doing the fact-finding. And this doesn't limit the summary report to having to come from a Loft Board adjudicator, which we don't have, because we don't have a hearing unit. It authorizes us to have a summary report prepared by any member of the Loft Board staff. It's broader for us, so now we have people who can fill that role.

Ms. Torres-Moskovitz: Does that suggest that it doesn't have to be a lawyer? That it could be anyone? Is there any nuance to that?

Ms. Lin: I suppose it could be prepared by a non-attorney, which I think would be fine for some of these summary reports. Not that we're doing them right now, but if we did do them, it could be done by any member of the staff.

Mr. Hylton: And we still have an Executive Director and General Counsel, who are attorneys, to review those reports, right?

Ms. Roslund: To continue with §1-30, by adding, by the Loft Board staff, it's emphasizing that OATH is not going to represent any agreements that are made outside of their jurisdiction?

Mr. Clarke: That's correct. They're not going to write a report about it. They're not going to prepare any additional reports on any agreements made before OATH. It would have to be by the Loft Board staff.

Ms. Roslund: OK.

Mr. DeLaney: So, in your opinion, does this represent any kind of change? Or is this just elegant drafting?

Ms. Lin and Mr. Clarke confirmed that it was just rewording.

Ms. Lin: Nothing changes with any of these.

Mr. Hylton: None of what we're doing here represents any change from what we do now.

Mr. DeLaney: I'm not sure I buy that one hundred percent.

Mr. Clarke: I think it's more for clarification for everybody. Going back to the word, procedurally, with respect to what's been going on all of this time, I don't think anything is going to change. It's just written down for clarification, so everybody knows their roles and responsibilities.

Mr. Barowitz: Well, I understand that completely. I'm not a language expert by any means, and I'm not saying that all of this is now gobbledygook, but the more you begin to add to this, the more questions come up. So, while, presumably, this was put in to simplify it, it hasn't simplified it; it's made things a little bit more complicated. And I must say that when I first read this, I didn't even know how to respond. I wondered what in the world it was all about. Maybe I'm absolutely wrong about this, but this is my feeling. The more language you add, the more complicated it gets.

Mr. Hylton: I understand what you're saying, but I think what OATH is saying is that the original draft of these rules was not clear. Especially as it was made when there was no OATH. So, it was only made for the Loft Board. These rules are only being changed now because now we go to OATH. Mr. DeLaney, maybe you can tell us how long these rules have existed. And now that OATH is in the middle of this, they're trying to make very clear whom we're talking about when we talk about adjudicate. And whose rules we're following when we go to a hearing. And where are we having the hearings. And it's their right to do that -- to comment and clarify -- because our rules are affecting them. Our rules direct hearings to them.

So it is, in a way, just clarifying everything. And their changes have been reviewed by our legal staff and found to be acceptable. So, if you have any objections, we'll just reserve it until September. If you don't like something, propose something else. That's all. But it's not making it more complicated. It's actually clarifying.

Mr. Barowitz: One of the definitions of adjudicator is judge. That's what I mean when I say that when more words are put in there, it gets to be more complicated. What exactly is the adjudicator? Is it a judge? What is it?

Mr. Clarke: Before the rules were changed? If we sent it to OATH, the adjudicator was the Administrative Law Judge. But in short, the adjudicator is anybody that's conducting the trial. Previously, as we stated, the Loft Board staff had a hearing division, so we would take all the information; we would review the facts and make a determination ourselves; we would be the adjudicator in that situation. But as time went on, we started to send out our trials to OATH. So, OATH did all of the fact-finding. They went through all of the information, and they wrote reports and recommendations. So, once OATH took over that responsibility, they were the adjudicators for that matter.

Ms. Torres-Moskovitz: Now I look at §1-12, adjudicator, and I think it's a little confusing. It seems to split hairs between Loft Board staff and Loft Board adjudicator. And then to have in definitions, adjudicator as being defined by the same word, adjudicator. As a lay person, I need to understand, as Elliott is saying, is it a judge? Is it a referee? I understand that what you and OATH are trying to do is important, but I think it's a little confusing to use the word in the definition.

Mr. Clarke: I think that's a very good point.

Ms. Torres-Moskovitz: That's it, basically. And the splitting hairs between a staff member and adjudicator of the Loft Board. I want to make sure that doesn't hurt the Loft Board staff in some way. I don't understand the difference. If it's not about a licensed lawyer versus a non....As an architect, I think about how they don't let us

call ourselves architects until we have a license, even though we have a masters. Is that what it's getting into? I'll stop there, but you kind of get the point.

Mr. Clarke: Yes, I do, and I think that's a very good point. Not to have the word that you're defining also as part of the definition. So, originally, as you can see on the sheet, we had, staff member. But we decided to take it out and put in adjudicator. But we can revisit that. It might make sense just to have it as a Loft Board staff member assigned to a conference or hearing and deciding the application. If that makes it clearer.

Mr. Hylton and Ms. Lin agreed.

Ms. Rolsund: Or Loft Board representative?

Mr. Hylton: Staff.

Ms. Roslund: So, anyone who's making the decision, right? It's whoever is appointed to make the decision. Whosever job it is, and whether that's by judicial appointment or administrative appointment, or whatever, it's the person making the decision. So, the question is, what is important about defining who the adjudicator is in reference to Loft Board matters?

Mr. Clarke: Well, I think that, regardless, when it's in the context of the Loft Board making the decision, as opposed to OATH listening to or conducting the hearing, it's always going to be a Loft Board staff member.

Mr. Hylton: It can only be a Loft Board staff member. Are you saying we should take out the word, Loft Board adjudicator, and just make it staff member? We can't just have a representative from the Loft Board. It just has to be a staff member.

Ms. Roslund: That's what it was.

Mr. Hylton and Mr. Clarke: Yes.

Ms. Roslund: The argument then is going towards leaving the language as it was; not changing it?

Mr. Clarke: Right.

Mr. Hylton: With respect to the Loft Board adjudicator/ staff member piece, yes. Unless anyone else has any comment. I think that was a great catch by Julie.

Mr. DeLaney: When we look at the first part of §1-12 -- which was not changed -- or the first part of the sentence, it regards OATH the way it's phrased. We're recognizing both Administrative Law Judge or hearing

officer. Now, in my experience, in the trials division of OATH, those are all Administrative Law Judges. So, what would constitute a situation where an OATH hearing officer would be involved?

Mr. Hylton: A hearing officer at OATH has to be an attorney.

Mr. DeLaney: Right, and those hearing officers are part of ECB? Or what was formerly ECB, which got folded into OATH; which was done very nicely over its roughly twenty-five-year history.

Mr. Hylton: Right, so ECB is now the hearing division, and OATH always had this trial division, separately, that was called OATH. But ECB is now rolled into OATH, and so you hear about hearing divisions also called OATH. OATH is just the big department, and they have two divisions. One called hearings – which is old ECB – and trials, which is the old OATH, I guess. Yes, I got you. But it's not ECB. ECB is just a part of OATH now.

Mr. DeLaney: Right.

Mr. Hylton: If you recall, ECB used to be a part of DEP. Remember?

Mr. Clarke: That would be a situation where a hearing officer would be considered the adjudicator. Are there any other thoughts on this definition for adjudicator? OK, so we can move on to the next section, which I don't think is overly complex. It's §1-27 (B), for hearings, and it says,

The Loft Board, instead of adjudicator, will provide at least fifteen-days' notice of a scheduled hearing to the applicant in all affected parties who have filed an answer.

So, this change would effectively make the Loft Board responsible for providing the notices for the hearings.

Mr. Hylton: That's not necessarily a change; that's how the rules are, currently.

Mr. Clarke: Exactly. This is how the rules are already. So, we said the adjudicator should be responsible, and OATH said to keep the rule as-is, with the Loft Board being responsible for providing the notices. Obviously, OATH has been doing that all of this time. We've been fortunate that they've been able to help us out with that. We have a very small staff, as you all know, and we have our hands full already just providing notices for Proposed Orders. Providing hearing notices to all affected parties, especially for buildings that have over a hundred units, would be a tremendous burden on the Loft Board. OATH recognizes our situation. They understand that our administrative staff is, at most, three people right now. When we spoke with them, they

said it's also a strain for them, but to just keep the language as it is, and they would provide the Loft Board with the support they've always provided.

Ms. Lin: For now.

Mr. Clarke: For now.

Mr. Hylton: The bottom line is that we couldn't force this change, because that is our current rule. However, they're saying, status quo. Just keep your rule; and we reserve the right (to stop doing it). But obviously, if it comes down to it, we can't force them to do it, so we'd have to find the staff to do it. But I don't think it's something we have to worry about right now.

Mr. DeLaney: I'm sorry...I just...you know, again, subtle changes and promises.

Mr. Hylton: There's no change here, Mr. DeLaney. This is our current rule.

Mr. DeLaney: I just want to understand, because again, my understanding is that when the Loft Board transfers a case to OATH, it is first assigned to an ALJ, who is considered the settlement judge, who tries to hold discussions with the parties without it having to go to what OATH calls a trial, correct?

Mr. Clarke: I'm sorry. Can you say that one more time?

Mr. DeLaney: Sure. It is my understanding that when the Loft Board assigns a case to OATH – it's come into the Loft Board; we've stamped it; we've cashed the check; we've read it; we've determined that the application's complete – we then transfer that case to OATH. When it arrives at OATH, it's assigned to a judge who's considered the settlement judge, who attempts to reach an understanding between the parties and settle the case without it going to what OATH calls a trial. If it goes to a trial, it is assigned to a different judge, so that any discussions that have been held in front of the settlement judge, or any proposed agreements, or any concessions stay with the settlement judge. The hearing judge gets the case with no prior knowledge of what's been discussed. With me so far?

Mr. Clarke: Yes. We're all with you, and you're correct so far. So, you can keep going.

Mr. DeLaney: Right. So under this language, if OATH stopped doing its scheduling at some point in time because of budget cuts or anything else, it could conceivably put the Loft Board in the position of being the go-between between the settlement judge and the need for the Loft Board to notify the parties that there's going

to be a trial at OATH; that someone wants an extension and needs to reschedule. This could conceivably put us in the position of becoming, basically, the clerical arm of OATH for Loft-Board-related cases.

Ms. Lin: Yes, but Mr. DeLaney, the rules already say that. Our current rules say this. This is pretty much word-for-word what §1-06 says.

Mr. Clarke: Everything that you just said is the situation that we're currently in.

Ms. Roslund: Right. And to continue with what Chuck is saying, actually, the adjudicator's a good replacement, because it could be OATH, or it could be the Loft Board staff, per the definition above it.

Mr. Clarke and Mr. Hylton: No, no, Heather...

Ms. Roslund: Yes, I know, but by taking the whole discussion to a logical conclusion, by replacing §1-27, Loft Board with adjudicator, it leaves it open to be whomever the case is going before. Whoever is making the decision is then responsible for providing the notice.

Mr. Clarke: Correct.

Ms. Roslund: Which makes sense.

Mr. Clarke: Yes, that's what we thought, too.

Ms. Lin: We agree. That's why we tried to put adjudicator in. But OATH does not agree, and they don't want to do that, because we are the only agency that makes them do something like this.

Mr. Clarke: And they were concerned. They said that they did it as a favor, initially, because we had smaller buildings. But now, they're starting to see buildings with hundreds of units, and all of these people need notice. And they're saying they're being flooded by notices from the Loft Board.

Mr. Hylton: And again, they're not saying they won't continue to do it, but the bottom line is, if it comes down to it, the Loft Board has to do it. We have to provide those notices. We can't force it down their throat. But they'll continue to do it. And they just want to make it clear...

Ms. Roslund: So, does it work the way that Chuck said? We, the Loft Board staff, get notice, and then you have to turn around and give notice?

Ms. Lin: No, we don't give notice right now. OATH does everything for us. They send out the notices scheduling these hearings.

Mr. Hylton: But by rule, we're obligated to do that, though it's not practiced right now.

Ms. Roslund: I know, but if it was practiced...

Mr. Hylton: Yes.

Ms. Roslund: OATH schedules the hearing. They inform you of the hearing date, or ask you, the staff, the Loft Board. And then the Loft Board – if it happened this way – then the Loft Board would have to turn around and provide notice to the applicants and affected parties?

Mr. Clarke: Well, I'll just answer this last question, because it's four o'clock now, and I know everybody wants to stay on a little bit longer, but we just have to end it here. But I'll answer the question. Once OATH sends out that notice to the affected parties, the Loft Board really doesn't step in at all during that entire proceeding. We don't comment on what OATH is doing, and that goes to what we were saying earlier. We pretty much let OATH handle the procedural aspects of the trial without us interfering. So, they send out the notices; the parties respond; dates are set; the parties will participate in the hearing; they come with their attorneys. The Loft Board is not involved...right now...with that.

Ms. Roslund: OK, can I ask this quick, substantive question?

Mr. Clarke: Sure.

Ms. Roslund: So, in §1-30, under settlements, it says, "The Loft Board may direct the staff to reopen a matter for further investigation or have its staff seek a remand." Is that, reopen a matter before OATH? Or are we...we're in the procedures governing hearings section, right?

Mr. Clarke: Correct. So...

Ms. Roslund: What's being reopened by whom?

Mr. Clarke: OK, so that, actually, would probably require a deeper discussion. But right now, OATH doesn't feel the Loft Board has the authority to mandate them to reopen a case on remand. They think the Loft Board staff

should petition them and ask them to re-open or remand a case. So that's basically what the language is getting at. OATH doesn't feel the Loft Board can just say, you have to accept this remand from us.

Mr. Hylton: On that note, I know another topic has just opened, but this is a discussion that could go on and on. I think it would be better if the Board members just digest this a little bit. It's obvious that, with all these questions, not much is going to be resolved. So, we'll take it up fresh, alright? We're going to stop here. Of course, any of you can call with questions.

Mr. DeLaney: I'd just like to make one quick request, which is this. The language in these sections sometimes jumps back and forth between trial and hearing. And I would just like the staff to take a look at that and help guide us next time we meet as to whether there's a significance to, or differentiation between, those two terms.

Mr. Hylton: Absolutely. And I was also going to say if any Board member would like to email Mr. Clarke or Tina for clarification, or if you have suggestions, they can set up a discussion, off-line, during the break. I want to remind you that the document from the Law Department is not a public document. That's privileged. And with that, yes, I got you, Mr. DeLaney. I think you had another request about research. What was it?

Mr. DeLaney: Not that I recall at this moment.

Mr. Roche: Mr. Chairman, this is director Roche.

Mr. Hylton: Yes?

Mr. Roche: I just want to commend Mr. Clarke for the way he stepped up to the plate here with the loss of Helaine. I think he did a fantastic job, immediately picking up the ball, and getting us back in the game, in the right direction. I'm very encouraged that it's all in good hands, and I look forward to working with Mr. Clarke to resolve all these questions.

Mr. Clarke: Thank you very much. I appreciate it, Mr. Roche, but it's definitely a team effort. Tina totally stepped up in this situation. I know that she got way more than she bargained for when she decided to join the Loft Board, but I'm sure she would not disagree with me when I say that it's been a very interesting time. And also, Renaldo has been very instrumental in helping to facilitate these discussions and get these rules going. So, total team effort. I give them a lot of credit as well. But, thank you. I thank all the Board members for being

willing to share their thoughts with us right now. We encourage you to continue to revise the rules and give us important feedback, so that we can try to get this as clear and as accurate as possible.

Mr. Hylton: Thank you. I have been promised an honorary law degree from the Loft Board when I'm done here. So, that's it. Listen, I promised to end this meeting at four, partly because I have another urgent commitment, myself, and partly because I think we are worn out, in a way, with this. It goes to Chuck's point that we need to have these ahead of time. But please understand where we're coming from. We needed to get these to you as quickly as possible. That's when we got them, and we thought this an opportunity to at least introduce it to you. Now you have it, and it's more than two weeks until the next meeting. Is there any other comment before I go into concluding the meeting?

As there were none, **Mr. Hylton** closed the meeting:

This will conclude our July 16th, 2020, Loft Board meeting. Our next public meeting will be held on Thursday, September 17th, 2020, at 2 PM. The Governor's suspension of the in-person meetings requirement of the Open Meetings Law is in effect until August 5th, 2020, so at this point, we do not know whether the next Board meeting will be in person or via teleconference. Board members, we will update you and the public as well, as soon as we know the format of our next meeting. And we will also post the information on the Loft Board website for members of the public. Board members, we encourage you to sign and email your attendance sheets as soon as possible, and I want to wish everyone a healthy and safe summer. Thank you.

The End

