

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

July 18, 2019

The meeting began at: 2:25 pm

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

INTRODUCTION:

Chairperson Hylton welcomed those present to the July 18, 2019, 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.

MOTION TO ENTER EXECUTIVE SESSION:

Mr. Hylton asked for a motion for the Board to enter and executive session to discuss litigation.

Mr. DeLaney moved to accept the motion; and **Mr. Schachter** seconded.

The vote:

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

Members dissenting: 0

Members abstaining:

Members absent: Mr. Carver, Mr. Barowitz (for this vote), Mr. Hernandez (for this vote)

Members recused: 0

Mr. Hylton informed the public audience that the Board would be adjourning to another room for a short conference on litigation.

MOTION TO RETURN TO PUBLIC SESSION:

Mr. Hylton asked for a motion for the Board to return to public session.

Mr. Schachter moved to accept the motion; and **Mr. Roche** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver

Members recused: 0

APPROVAL OF MEETING MINUTES:

June 20, 2019 Meeting Minutes:

Mr. Hylton: At the Board's request, staff added conclusions for the Master Case to these minutes. Are there any additional comments on these minutes?

Mr. DeLaney: On page 4, Chairperson Hylton had asked Ms. Balsam if she would try to find out what the situation with voting would be if all the special interest positions weren't filled. I was just wondering if you'd had a chance to do that.

Ms. Balsam: I did actually ask, but I don't remember the answer. I'll forward that.

Mr. DeLaney: Fair enough.

Mr. DeLaney also pointed out a typo on page 13: gauging/ gouging.

Mr. Hylton asked for a motion to accept the June 20, 2019 minutes, with that correction.

Mr. DeLaney moved to accept the June 20, 2019 minutes, and **Mr. Roche** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: Mr. Barowitz, Mr. Schachter

Members absent: Mr. Carver

Members recused: 0

EXECUTIVE DIRECTOR'S REPORT:

Ms. Balsam:

New Forms: Particularly in light of the new Law, we are continuing to update forms on the Loft Board's website. We are working with the City's Department of Information Technology and Telecommunications to get the forms uploaded. We've had some snags, but if members of the public would like to see what they look like, I've brought some copies of registration applications under §281(5) and §281(6) and the new coverage application and general application. Once they're posted, we'd appreciate it if you use them. Eventually, they will all be PDFs that can be filled in on the website, and saved and sent electronically. We do have extra copies, in case anyone would like to take them with them.

Revenue: The unofficial revenue for June is \$173,930. That's due to the registrations, which keep pouring in, which is good.

Litigation: We have one discontinuance and several new cases.

The discontinuance is *Steinbauer et al. v. Loft Board*. These are tenants who filed an Article 78 petition, asking the court to annul, vacate, and reverse a Loft Board order which denied protected occupancy status to the petitioners, who are roommates of prime lessees. At the request of the petitioners, the case was discontinued with prejudice, with the petitioners reserving their right to re-file for protected occupancy status if the circumstances in the apartment change, which I take to mean that the prime lessees leave.

We have two new cases from 99 Sutton. In the first, the owner is challenging the Loft Board Order affirming staff's administrative determination which rejected thirty-two purported sales of rights. In the second case, the owner brought a mandamus proceeding, seeking to compel the Loft Board to decide whether additional sales of rights – for the same units -- filed with the Loft Board earlier this year, are valid.

One Double Nine Dashing v. New York City Loft Board is a mandamus proceeding seeking to compel the Loft Board to decide a coverage application.

In *470 Manhattan Ave. LLC, v. New York City Loft Board, et al.*, the owner filed a decoverage application with the Loft Board, claiming the building could not be legalized due to its construction classification. The building was in the middle of the Narrative Statement process when the application was filed. The Loft Board staff issued an administrative determination holding the decoverage application in abeyance and allowing the tenants to file an alternate plan. The owner wants the Loft Board to decide the decoverage application.

In *Ellen Robinson et al. v. New York City Loft Board*, the tenants are actually challenging coverage under the Loft Law. They claim that the building is covered under the Emergency Tenant Protection Act, and the Board had ruled that the building is covered under the Loft Law.

Michael Joseph Malach et al. v. New York City Loft Board and the Department of Buildings is a mandamus proceeding seeking to compel the Loft Board to decide a removal application.

Mr. DeLaney asked to receive copies of all the six new cases, and if 470 Manhattan Avenue was known by another address.

Ms. Balsam said she would send copies, and that the aka for 470 Manhattan Avenue is 18 – 20 Eckford Street.

Mr. Hylton asked if there were any additional questions for Ms. Balsam (None).

THE CASES:

Appeal and Reconsideration Calendar

Mr. Hylton: There are two cases on the Appeal and Reconsideration Calendar. The first case is:

	Applicant(s)	Address	Docket No.
1	Amicus Associates, Limited Partnership	83 Canal Street, Manhattan	R-0368

Mr. Kohn will present this case.

Mr. Hylton thanked Mr. Kohn and asked for a motion to accept the case.

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

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

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver

Members recused: 0

Mr. Hylton: The next case on the Appeal and Reconsideration Calendar

	Applicant(s)	Address	Docket No.
2	40 Dover LLC	34-40 Dover Street, Manhattan	R-0371

Mr. Chachura will present this case.

Mr. Hylton thanked Mr. Chachura and asked for a motion to accept the case.

Mr. DeLaney moved to accept these cases, and **Mr. Barowitz** seconded.

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

Ms. Roslund: It was not made clear what the new Proposed Order is.

Mr. Chachura: If you look at the Proposed Order, in the Conclusion section it says “This application is denied.” Then there are three paragraphs outlining the owner’s current status with the Loft Board. We struck all that, and wrote that on today’s date the Loft Board received a check from an agent for the owner for \$13,500.

Mr. Hylton: Apart from that, the Order remains the same?

Mr. Chachura: That’s right.

Mr. Hylton restated the wording of the amendment to the Order, clarifying it for the Board. He then thanked Mr. Chachura and asked if there were any additional comments (None).

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver

Members recused: 0

The Summary Calendar:

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

	Applicant(s)	Address	Docket No.
3	Katherine Hartling and Jaren Miller	151 Kent Avenue, Brooklyn	PO-0084
4	Ricardo Fernandez	255 McKibbin Street, Brooklyn	PO-0085
5	Various Tenants of 13-19 North Oxford Street	13-19 North Oxford Street, Brooklyn	TR-1207

Mr. Hylton asked for motion to accept the case.

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

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

Ms. Roslund: The first two cases have been carried over from the previous meeting, due to a lack of sufficient votes to pass, correct? And nothing has changed since then? The case and the Order are still the same? Now here they are together with a third case. We’ve had some discussion about this, but I would say that the concerns raised last month are still valid and open concerns.

Mr. Hylton confirmed this, and asked if Ms. Roslund was asking for a separate vote on those two cases.

Ms. Roslund said, yes, she would recommend that.

Mr. Barowitz: And according to the new rules, are we going to receive more information about these stipulation agreements?

Ms. Balsam: The new rules haven't passed yet, but I think what you're referring to is the sale of rights.

Mr. Hylton: To address Ms. Roslund's request, we will split these cases into two separate votes, so now we will vote on cases 3 and 4

	Applicant(s)	Address	Docket No.
3	Katherine Hartling and Jaren Miller	151 Kent Avenue, Brooklyn	PO-0084
4	Ricardo Fernandez	255 McKibbin Street, Brooklyn	PO-0085

Mr. Hylton asked for a motion to accept the case.

Mr. Schachter moved to accept these cases, and **Mr. Barowitz** seconded.

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

The vote:

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

Members dissenting: Mr. DeLaney, Ms. Torres, Ms. Roslund

Members abstaining: 0

Members absent: Mr. Carver

Members recused: 0

Mr. Hylton: Those cases have passed. The next case is

	Applicant(s)	Address	Docket No.
5	Various Tenants of 13-19 North Oxford Street	13-19 North Oxford Street, Brooklyn	TR-1207

Mr. Hylton asked for a motion to accept the case.

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

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

The vote:

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

Members dissenting: Mr. Barowitz, Mr. DeLaney, Ms. Torres

Members abstaining: 0

Members absent: Mr. Carver

Members recused: 0

The Master Calendar:

Mr. Hylton: There are three cases on the Mater Calendar. They are removal cases and are voted on as a group.

	Applicant(s)	Address	Docket No.
6	HH West 20 th LLC and 196 Nevins LLC	17 West 20 Street, Manhattan	LE-0709
7	MKF Realty Corporation	35 West 19 Street, Manhattan	LE-0710 and RG-0204
8	177 West 26 Realty, LLC	169-177 West 26 Street, Manhattan	LE-0711

Mr. Hylton asked for a motion to accept the case.

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

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

Ms. Torres-Moskovitz: I think I did this last time, but for the public’s information, I think when a building is leaving Loft Board jurisdiction, it would be good to keep track of how the units are now being categorized.

Ms. Balsam summarized the status of these three buildings: The three buildings involve thirty units altogether. Ten units have already converted to commercial. Eighteen are market-rate units, where the tenants were bought-out. Two are rent-regulated.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver

Members recused: 0

Mr. DeLaney: Before moving on to rules, I'd like to return a moment to the Executive Director's report. At the end, she referred to the new application forms. I'd like to ask that we set aside time at one of the September meetings to review and approve the forms.

Ms. Balsam explained that, while she's not opposed to that, the Board does have a lot of work to do, in terms of rule-making.

Mr. Hylton to Mr. DeLaney: Would you like to make comments on the applications?

Mr. DeLaney: Having just seen them now, I'm not in a position to do that. But I repeat an observation I've made several times. Back in 2014 or 15 – whenever it was that protected occupant and coverage applications were split apart – that was done by staff with no consultation with the Board, no public hearing, no discussion. And as Executive Director Balsam frequently reminds us, staff does what the Board wants it to do. So I think that spending fifteen or twenty minutes looking at the forms would be part of the Board's obligation. So I'm asking that it be put on the agenda.

Mr. Hylton: Can I just clarify what you're asking? We provide the forms to the Board, which we're doing now, then you will submit feedback, which will be addressed at a meeting in September? Would that be acceptable?

Mr. DeLaney: Sure.

Mr. Hylton: So the first meeting in September.

Ms. Balsam: Can we see if anyone has any comments before we put it on the agenda?

Mr. DeLaney: If we put it on the agenda, then the public's on notice. And if it ends up being a two-minute discussion...

Mr. Hylton: That's fine. We'll put it on the agenda.

Ms. Torres-Moskovitz asked if there was an update on the Project Management Guidelines.

Mr. Hylton explained that the Guidelines are finished, at least in draft, but with the change in leadership in the Building Department, the Commissioner's office had asked for a two-week review period for further review. One week has passed since then.

RULES:

Mr. Hylton: Ms. Balsam will lead this discussion.

Ms. Balsam: In terms of §2-08, which we discussed last time, the Board had given us a list of things to research and some homework to do, so I've given you a couple of documents. One is some notes, the other is part of the New York State codes, rules, and regulations, and the other is a table from a law that was repealed. It's a lot of material, and I just finished it this morning. I thought that next time we could talk about this material, but I wanted you to have it. I think it answers all the questions that were raised at the last meeting.

Mr. DeLaney asked for clarification, and Ms. Balsam noted the titles of them and said they would be sent to the Board members digitally. She advised beginning with the “Notes” pages, because they refer to the other documents.

Ms. Balsam: This now brings us to rule §2-01, which starts on page 38, and we have handouts for the members of the public. Let me just say that some of the proposed changes here are things the Board has already discussed and voted on, so I’m going to recommend that we skip those. That includes the strike-outs on pages 38 and 39, which are definitions, which were moved to the front.

Mr. DeLaney: As you doubtless recall, we discussed that in §2-08 we would have definitions in both places. But here, we’re going to get rid of them?

Ms. Balsam: Unless you want to keep them. It’s not a big issue.

Ms. Torres-Moskovitz reiterated what she had said last time. That she prefers the definitions be in the definition section. And being consistent about that would be important.

Ms. Balsam: Unless there’s reason to have them on both places.

Ms. Torres-Moskovitz: And Mr. Carver had suggested capitalizing the words to let the reader know they were in the definition section.

Ms. Balsam: OK. Again, the strike outs are old. So, that brings us to the bottom of page 39. The way the rules were structured, there are rules about code-compliance deadlines in §281(1) and §281(4) buildings. Then there were rules about code-compliance deadlines for §281(5) buildings, pursuant to the 2010 amendments. I don’t know if there were any separate ones for 2013 amendments; but, I added additional paragraphs to the rule to cover the 2015 amendments of §281(5), which should have been added in 2015, but were not; to cover 2019 amendments to §281(5); and to cover §281(6). So there are three new paragraphs – (11), (12), and (13) - that cover those particular sections. And on the bottom of page 39 is an introductory paragraph that says, this paragraph talks about this; this paragraph talks about this; and this paragraph talks about this. Then the substance is further down the line. Are there any questions on that?

Mr. DeLaney: You use the term “building or portion of a building.”

Ms. Balsam: I copied what was already there.

Mr. DeLaney: So by “portion of a building,” am I correct in what you are attempting to address is another group of units?

Ms. Balsam: You could have units in a building that are not residential. You could have a building that has only IMD units, and have a building that has three IMD units and fifteen commercial units. So a portion of the building in the second building would be the three IMD units.

Mr. DeLaney: And this question comes up again a later because, obviously, we have buildings that have a number of IMD units covered under §281(1), and then perhaps a unit or two covered under §281(5). And I’m quite confident we’ll see buildings where some units are or will be covered under §281(5) and others will be under §281(6). So that’s where I just wondered about the choice of the term “portion of a building,” versus something that refers to “units.”

Ms. Roslund: It's already in the language of the Building Code and Zoning Resolution, so I imagine that's where it came from.

Ms. Balsam: This is what it said before, so I just copied what was there. But I agree with your hypothetical. We have a building now where four units under §281(1) and one unit is covered under §281(5), and the latter has different code-compliance deadlines. Not that the owner has met any of them, but that's beside the point. So yes, I envision that you would have buildings in which some units are covered under both the earlier and later versions of §281(5), and some under §281(6).

Mr. DeLaney: Ok. I was just trying to see if there was some off-the-wall argument to be made about "portions of a building."

Ms. Balsam: There are always off-the-wall arguments to be made.

Mr. DeLaney: That's reassuring.

There was some consultation among the Board members and staff about this.

Mr. DeLaney: A "portion" is not necessarily contiguous. I guess that's what I was thinking of.

Ms. Balsam: That's true. Yes, I would agree with that. A portion doesn't have to be contiguous.

Ms. Roslund: A hypothetical example could say, if the building or a portion of the building is within twenty-five feet of a district boundary, etc. etc. (So as it reads here), it could mean any portion of the building. It could be the back corner; it could be the floor of the building, if a portion of the building below the curb line. The cellar is defined as the portion of the building below curb line, so...

Ms. Balsam: OK? Now we move forward ten pages (to page 49) to the new section (11). And again, this is something that was proposed two years ago, in terms of adding this section. This is for *Code compliance deadlines for buildings subject to Art. 7-C pursuant to MDL § 281(5) as a result of the 2015 amendments to the Loft Law*. So these would be code-compliance deadlines for §281(5) buildings as a result of the 2015 amendments. And this basically parrots the language in the statute.

On the next page is section (12), *Code compliance deadlines for buildings subject to Art. 7-C pursuant to MDL § 281(5) as a result of the 2019 amendments to the Loft Law*. And on page 51, you have section (13), *Code compliance deadlines for buildings subject to Art. 7-C pursuant to MDL § 281(6) as a result of the 2019 amendments to the Loft Law*. So on pages 50 and 51, it's new language. What's on page 49 and the top of 50 was there before. The Board had not discussed it, but it was there before.

Mr. DeLaney: I have a question regarding page 51, lines 8 through 11. It seems that sometimes we're talking about thirty months, and sometimes thirty-six months. Why is that?

Ms. Balsam: Because in 2013, the Legislature changed it from thirty-six to thirty, and now it went back to thirty-six.

Mr. Barowitz: So we have to be aware of whether it's 2019 or 2010?

Ms. Balsam: Correct. The overall deadline under the Loft Law to get your C of O had always been thirty-six months. For some reason, in 2013, the Legislature rolled it back. I don't know why; I wasn't here. They rolled the total time-frame back, from thirty-six months to thirty.

Mr. DeLaney: For the 2013 piece.

Ms. Balsam: For the 2013 piece.

Mr. DeLaney: And then we went back to thirty-six. Just now?

Ms. Balsam: No. In 2015 it's also thirty months. So just now it went back to thirty-six. Although...I want to confirm that.

Mr. DeLaney: In any case, now it's thirty-six, and it was (in all cases) due to the infinite wisdom of the Legislature?

Ms. Balsam: Right. We had nothing to do with it.

Mr. Barowitz: You have to put a big sign up in the office.

Ms. Balsam: We did actually used to have a chart on the web site that listed all of the code-compliance deadlines under the different Laws. I recently updated it to have it re-posted. I'll let you know when it's back.

Mr. DeLaney: Maybe you could send us that chart when it's ready.

Ms. Balsam: Ms. Cruz just looked it up, and it was in 2013 that it was rolled back to thirty months. But the new law is definitely thirty-six.

Mr. Barowitz: There's no way the Law Department could ask the Legislature to use the same number?

Ms. Roslund: I was wondering the same thing.

Mr. DeLaney: Do you really think the Legislature cares what the Law Department has to say?

Mr. Schachter. I was just going to say the same. Let's presume for the moment that the Law had been more optimal....

Ms. Balsam: What can I say? So that brings us through page 52. Page 52 is about the extension rule, the changes to it, which we had discussed extensively. So I don't think we need to discuss it again. Unless you want to.

Mr. DeLaney: Yes, I'd like to.

Ms. Balsam: OK.

Mr. DeLaney pointed out some terms in brackets on 52 and 53 to be noted with strike-outs, and then said: I had a general question posed to me by a diligent loft tenant who actually read this stuff. The general concept is, we're going to give people one chance to apply for an extension.

Ms. Balsam: No, the general concept was that we were going to allow additional extensions.

Mr. DeLaney: But for those who've missed a deadline...

Ms. Balsam: They have to apply before the deadline passes. If they're new owners or it's a newly covered building, then they can apply for an extension. Is that what you're referring to?

Mr. DeLaney: No. The language on page 52, starting on line 23: "...except that an owner or responsible party may file..."

Ms. Balsam: Oh, yes. I'm sorry. I'm mixing apples and oranges. We were going to give people with expired deadlines a thirty-day window during which to file for an additional extension. But we'll only grant the extensions if they meet the statutory standards.

Mr. DeLaney: Right. And the argument that was presented to me, which I thought worth raising, was that there are some owners who've been such bad actors, why should we even extend this opportunity to them?

Ms. Balsam: Because whether or not they're "bad actors," which I'm going to assume means they won't meet the statutory standards, is an issue of fact that needs to be determined on an application. Someone is presuming that an owner is a bad actor, but the owner might have a different view on that. Ultimately, it's for the Executive Director and/or the Board, depending on the number of extensions, to decide that. But someone who's done nothing isn't going to get an extension.

Mr. DeLaney: The question that was put to me was, what about the case of landlord who fell out of compliance; applied late for an extension; was denied; appealed; was denied; sued the Loft Board in an Article 78, which the Loft Board vigorously defended in State Supreme Court and won. Would such a landlord, who hasn't lifted a finger to comply and instead takes tenants to court incessantly, be eligible to apply for an extension during the thirty-day window? If so, why would the Loft Board contemplate that? Couldn't those landlords just bring the place up to code and be back in compliance? Or could landlords be enjoined from further lawsuits and harassments (as terms for) an extension?

Ms. Balsam: I don't think we have the authority to enjoin people from bringing lawsuits. I don't know that we are necessarily going to parcel all that out and go through all the three-hundred-and-forty-some-odd buildings we have at the moment and say, yes, you can apply; no, you can't. I think, administratively, it's just not possible.

Ms. Roslund: What is the purpose of the thirty-day window? To encourage owners who aren't in compliance to submit an extension application and resume working toward that?

Ms. Balsam: No. It's to encourage/allow owners who've been working all along, and who were not able to get multiple extensions, to get more extensions. But, because of the way it will work administratively, there may be owners who apply, even though they're not entitled and have done nothing. Theoretically, that owner could apply.

Ms. Roslund: So because the new Law allows owners to receive multiple extensions...

Ms. Balsam: This has nothing to do with the new Law. I think it was in 2006, there were a lot of abuses of the extension rule, so it was changed and tightened. But it was tightened to such a degree that the pendulum swung the other way. This is an attempt to put things back into the middle. To give owners who are working diligently an opportunity to get extensions of their code compliance deadlines. But they still have to work diligently.

Ms. Roslund: So it's a one-shot deal?

Ms. Balsam: No. The way the rule works now is you have to apply for an extension before your deadline passes. And for the most part, everybody is out of compliance now. This is an attempt to give the owners who are working diligently a thirty-day window to apply for an extension, because they couldn't have applied before. If they did, they were denied, because they couldn't get a second extension. So we're giving them this thirty-day window to file an application for an extension, which we will review to see if it should be granted. Previously, you could only get one extension. Now we're saying you could get more than one, if you meet the statutory standards. (This is meant to deal with the question), what do you do with the people who are already out of compliance? They can't meet any deadline, because they're already out of compliance.

Ms. Roslund: If an owner applied during this thirty-day window and is granted an extension, does he then now qualify for multiple extensions?

Ms. Balsam: They can ask me for extensions. But for each ask, they're going to have to demonstrate that they've been working. They have to meet the statutory standards: That the reason they couldn't finish is beyond their control, and that they have made good-faith efforts.

Mr. Schachter: So this is all about being able to apply?

Ms. Balsam: Yes.

Mr. Schachter: If they apply, you can turn them down?

Ms. Balsam: Yes.

Mr. Schachter: And who determines whether or not the extensions are granted?

Ms. Balsam: The first two are decided by the Executive Director; the third, and any more beyond that, go to the Board.

Ms. Torres-Moskovitz: Is this the passage you also wanted because you were going to start more enforcement?

Ms. Balsam: Hopefully, we will replace our staff and begin more enforcement. We have started more enforcement.

Ms. Torres-Moskovitz: So you'll start fining people who are out of compliance; but this is also a way to give that landlord who is working in good faith, but is off the calendar, a thirty-day chance. Because, ultimately, we want these buildings legalized.

Ms. Balsam: Right.

Ms. Torres-Moskovitz: Wasn't it hand-in-hand with enforcement?

Ms. Balsam: I don't specifically recall that, but I think that's a viable argument. That with additional enforcement, you should have additional chances to come back into compliance. Are there any additional comments about this?

Ms. Torres-Moskovitz asked about staffing, and **Ms. Balsam** confirmed that the department was working to fill the two vacancies.

Mr. DeLaney asked about the status of the enforcement project, and Ms. Balsam said that, unfortunately, it was at a total stand-still.

Mr. DeLaney: I have a question about the statutory standards (on page 54). Part of the problem is the way this is phrased, going back to a portion of the previous page, where it says, "...except that owner or responsible party may..." We start out the section saying *Extensions current deadlines*. Then we set out two general categories, defined in (i) and (ii). But before we start (ii), we slide in that language that provides the one-time opportunity for people who are out of compliance.

Ms. Balsam: You're on 52, talking about lines 23 to 26 again? This whole section talks about who is eligible to apply. That's what section (1) is about. We could change the title from *Extensions current deadlines* to something else if you'd like.

Mr. DeLaney: The reason I ask is that, when we discuss statutory standards, my question is, do statutory standards apply only (i) and (ii)? Or does it only apply to the one-time opportunity?

Ms. Balsam: It applies to everybody. The Law is very clear. You must meet the statutory standards to be eligible for an extension.

Mr. DeLaney: OK. So then we have language on page 54, lines 15 to 18. This is where it was pointed out to me by a reader that perhaps information obtained from Loft Board records – prior documentation of failure – should be part of the statutory standard, as it applies to the one-time opportunity.

Ms. Balsam: We can't add anything to the statutory standard. It's in the statute. We would be exceeding our authority to add something extra to the standards. But the rule contemplates looking at the totality of the owner's behavior. We had an issue about looking at Loft Board records, and once it's clarified, that, in making the determination, it's fine for us to look at Loft Board records, we can do that. But we can't add to the statutory standards. We can't elevate Loft Board records to the level of the statute, if that's what you're asking. Unless I misunderstood.

Mr. DeLaney: I'm trying to clarify what information contained in the Loft Board records would be pertinent to the person who says, wait a minute, my landlord hasn't done a damn thing; he has no grounds; but he's going to apply for it as just another way to run the clock. Why should he be allowed to do that? And I don't have an answer for that.

Ms. Balsam: But the clock doesn't toll when they apply for the extension. Someone who has an extension is in compliance, but that extension is going to expire. And if, on the eve of that extension expiring, the owner applies for another one, he will be out of compliance until the next extension is granted. Only if and when that

extension is granted will he be back in compliance. They're not in compliance for the time that extension request is pending.

Ms. Torres-Moskovitz: Is there a way for tenants to understand? We may have talked about this before, but let's say a case goes for ten years. A tenant forgets where they are in terms of legalization milestones. How does the tenant keep track? The owner knows, and the Loft Board staff knows, but how does the tenant know? Is it on the web site?

Ms. Balsam: It's not on our web site, but it is on the DOB website. You can see the status of the project.

Ms. Cruz: If the Alteration 1 application is filed, it will be listed there. If the subsequent permit has been issued, that will show there. If the TCO has been issued by the Department, that will be reflected there. The only thing the tenant might not know if they are 7-B compliant, because if the architect certified it via a submission to the Loft Board, it would not be reflected on the DOB website. That's the only time there could be something they would not be aware of.

Ms. Torres-Moskovitz: Weren't we going to take that out?

Ms. Cruz and Ms. Balsam: We talked about it.

Ms. Cruz: When the C of O is issued, that will also be reflected on the DOB web site. So all of the milestones are reflected on the DOB web site, with the possible exception of 7-B compliance, if it was certified by the architect. The expiration of these milestones is public information.

Ms. Torres-Moskovitz: So let's say a landlord applies for an extension, and it's granted. How would the tenants know about this?

Ms. Balsam: The tenants are affected parties on the application when the owner applies, and they have the right to answer, as with any other application. The decision is also sent them.

Ms. Torres-Moskovitz: Can we review the start date for the milestones?

Ms. Balsam: For granting an extension, it's the date the application is filed.

Ms. Torres-Moskovitz: And you're getting applications now?

Ms. Balsam: I think I have one on my desk that has to be decided.

Ms. Torres-Moskovitz: What is "ground zero" was for the milestones, specifically for 2019?

Ms. Balsam: The start date for the latest iteration of the Law is the effective date of the Law. We had one owner come in and register, so his deadlines are running. For the tenants who filed coverage applications, if the owners are contesting those and not registering the buildings, that time is still running. Now, the extension rule allows the owner of a newly covered building to apply for an extension once the building is covered. So if that were granted, they would get six months from the date the extension was granted.

Ms. Balsam asked if there were any additional questions about extensions.

Mr. DeLaney: On page 56, lines 5 through 10, where we say the application must include these various things. We don't really say what would happen if they don't include those things. Is it grounds for dismissal? With prejudice? Without prejudice?

Ms. Roslund: Does the application linger until all the requirements are met? Or is it rejected, and they have to start over?

Ms. Balsam: Page 21, item (e), says, "The Board will not process any Application unless the Application package is complete." And one of the things that is part of a complete application is, "all supporting documents requested in the application form."

Ms. Balsam explained the note she included there, and how she had clarified what had been there previously; that she had specifically added to "all supporting documents" the words, "requested in the application form." So they are required to submit all of the supporting documents, and staff won't process the application unless it's complete.

Ms. Roslund: So the Board then rejects it....

Ms. Balsam: I guess we would reach out to them and say, you're missing this. But they can't go past the deadline. Let's say they file it on day fifteen, and they don't have this statement. We can call them and tell them it's missing, but they still only have thirty days to submit it. Or whatever the deadline is for a newly covered unit.

Mr. DeLaney: That's what I'm trying to get a handle on here. I can appreciate if we're dealing with a new owner; someone new to the Loft Law, who is slow at understanding all this at first. But for the people for whom we're going to create this thirty-day window, I think if they file an incomplete application, it shouldn't just sit there for a year. How long do they have?

Ms. Balsam: You have to file a complete application package by the deadline. If they haven't done that, it won't be processed.

Mr. DeLaney: The deadline.

Ms. Roslund: Your question could apply to any application, couldn't it?

Mr. DeLaney: Extension application.

Ms. Balsam: There are very few applications that have filing deadlines. There are deadlines for filing answers. Reconsideration has a deadline. Appeal has a deadline. There aren't that many, but for the ones that do, they have to file a complete package by that deadline.

Mr. DeLaney: Reconsideration is a good example. If my application is missing something, it will be untimely if I don't perfect the application by the deadline.

Ms. Balsam: Yes. We've had cases that have said that.

Mr. DeLaney: So how does that play out with extensions?

Ms. Balsam: It would be the same.

Mr. DeLaney: As an owner, I apply for an extension under the thirty-day provision. But I don't provide a certain piece of material. After the thirty days, do we take action and reject it?

Ms. Cruz: No. We'll deny it. When you're required to file something, and you don't, then we deny it.

Ms. Roslund: Didn't we just have a case like that? The owner filed all the paperwork, but the check came after the deadline, so we denied it, based upon the fact that the entire application hadn't been submitted by the deadline?

Ms. Balsam: There was one we rejected and one we denied.

Mr. DeLaney: Because we took the check.

Ms. Cruz: And that was the one we denied. We reject when we give back the check.

Mr. DeLaney: So my question here is, for an extension application, whether it comes in under (i), (ii), or the thirty-day provision, what's the easiest way for us to dispose of it, if it's not perfected?

Ms. Balsam: Rejection would be the ideal way. It would certainly require the least administrative hassle.

Mr. DeLaney: So wouldn't it make sense to be clear on that here?

Ms. Cruz: To say that it will be denied if it fails to be completed?

Mr. DeLaney: If the application is not perfected by the deadline date, it will be rejected. Make it clear what the consequence is.

Ms. Balsam: It references 1-21, which has all the information about that.

Mr. DeLaney: It says "the Board will not process..." That means we're not going to swallow it, but I'm urging us to say we're going to spit it out.

Ms. Balsam: If the Board want's that, that's fine.

Ms. Cruz: I think that language on our process gives us flexibility, in that if we accept it, we docket it, and if later we realize there's something missing, we can deny it. Or, if the person at the window realizes that they haven't submitted a complete filing, they can give it back to them. I think that language gives us the flexibility to do both things.

Ms. Roslund: As soon as you docket it, that's not processing it? That sounds like processing it to me.

Ms. Cruz: It could be processing, but it could also be the next step. It could be that the attorney reviewing the folder realizes there isn't notice to the tenants.

Ms. Roslund: I like this language because it says it must not process. But it could still be rejected because it was erroneously processed.

Ms. Torres-Moskovitz: Right, because a concern would be, you want to be on guard to check when the person is there.

Ms. Cruz: While the person is standing in front of you.

Mr. DeLaney: But at the same time, you don't want a lot of incomplete things hanging around.

Ms. Balsam: Right.

Mr. DeLaney: So that's my question. When do we clear the shelves?

Ms. Roslund drew a comparison between this process and what people do all the time with other applications. You send it in, and if it's incomplete, it's returned to you. So you review it, see what's missing, add that material, and mail it back.

Ms. Balsam: As long as you haven't missed the deadline. So can we leave it the way it is?

Ms. Torres-Moskovitz: Yes, as long as... (to Mr. DeLaney): Are you concerned that there are people out there who don't understand the process?

Mr. DeLaney: My interest is in being as clear as possible. When you have language that says something "must" be this way, I think it would be helpful to be clear what the consequences are. It's one thing if you're applying for a driver's license, but another if you're applying for something that involves a deadline.

Ms. Balsam and Ms. Cruz consulted about when/ how applicants are informed if there application is not perfect.

Ms. Balsam: If someone files an application, and we docket it, we send them a notice saying your application has been docketed; here's the number; whenever you write to us about this, please include the docket number on the correspondence.

Mr. DeLaney: So I have proof that I've applied. And I guess my questions are based, rightly or wrongly, on having seen so many scenarios where foot-dragging on the part of landlords is monumental. Where there's a chance to make clear, that if you don't get this done by X time, it's going to be denied, rejected, returned, you've lost your opportunity -- whatever it is, I'm in favor of making that clear.

Ms. Balsam: Do you want to add language to that effect?

Mr. DeLaney: I think something....It's just like when your child says, you didn't tell me I couldn't do that! Well, no, I didn't tell you because it's so obvious....It'll be "I thought...;" Oh, I didn't realize..." If we can be clearer, it may help staff, every now and then, to have less to do.

Ms. Balsam: OK.

Ms. Roslund: Shouldn't it be the same language?

Ms. Balsam: Yes. It's just bringing over the same language.

Ms. Balsam to Mr. DeLaney: Re page 56, line 10. That's what you're proposing, correct?

Mr. DeLaney: Yes.

Ms. Balsam: So we will add to that. How about: The Board will not process an application that does not include this statement?

Mr. DeLaney: Fine.

Ms. Roslund: You're talking specifically about that statement, not about the whole list?

Mr. DeLaney: Yes. The statement of the estimate of the work and the time needed.

Ms. Balsam: I don't think you have to worry about the rest of it, because that's covered by 1-21.

Ms. Balsam clarified/ summarized what had just been decided, and then asked if there were any other comments on page 56, 57, and the top of 58.

Mr. DeLaney: In (iii) at the end (page 58). We've set up the scenario where, depending on how many times the request has been made, it may be decided by the Executive Director or the Board. Then the second sentence says the Executive Director's administrative determination may be appealed; then an appeal of the administrative determination must be filed. Does that also apply if the Loft Board makes the decision?

Ms. Balsam: No, the Loft Board decision would be subject to the reconsideration rule or an Article 78. We can add a sentence there that says that.

Mr. DeLaney: That would be helpful.

Mr. Hylton: If there are no additional comments, we'll stop here.

Ms. Torres-Moskovitz asked for some final clarification on the number and length of extensions.

Ms. Balsam: The extensions are usually for nine months, eighteen months--whatever the code-compliance deadlines are. The maximum is thirty-six months. But if they've already obtained compliance with 7-B, they're entitled to two one-year extensions to get the final C of O. That's in the Law.

Ms. Balsam also explained that she was updating the rules document the Board is working on as they progress, and they will receive updates, and said:

Ms. Balsam: I think that next time, we should return to §2-08, once you've had a chance to review the documents I just gave you. I'll send it electronically. And we'll pick up on page 58 with the Narrative Statement.

Ms. Torres-Moskovitz asked that if extensions are granted and promises are broken, if these become cases, will the Board know how many extensions were granted?

Ms. Balsam: Yes. For example, if someone had been granted two extensions and was now asking for a third, it would be in the Proposed Order that they had been granted previous extensions. Much like when you read an appeal from a denial of an administrative determination, where I deny an extension application, and that person appeals that to the Board. The entire procedural history is given in the Proposed Order.

Ms. Torres-Moskovitz: Yes, I'd like to see if these extensions are helping keep people on track.

Ms. Balsam: I think that's a good point.

Mr. Hytton: This will conclude our July 18, 2019, Loft Board meeting. Our next public meeting will be held on Thursday, September 5, 2019, at 10:30 am at 22 Reade Street, Spector Hall. That meeting will be devoted to rules, and any comments you may have on the forms.

The End