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

November 21, 2019

The meeting began at: 2:58 PM

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

INTRODUCTION:

Chairperson Hylton welcomed those present to the November 21, 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.

APPROVAL OF MEETING MINUTES:

September 5, 2019, Meeting Minutes:

Mr. Hylton asked if there were any corrections or comments.

Mr. DeLaney noted an error in the list of attendees. Mr. Carver's name had been removed, but not his designation.

Mr. Hylton asked for a motion to accept the September 5, 2019, meeting minutes, with that correction.

Mr. Roche moved to accept the September 5, 2019, minutes, and **Mr. DeLaney** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: Mr. Carver

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

September 19, 2019, Meeting Minutes:

Mr. Hylton asked if there were any corrections or comments (none).

Mr. Hylton asked for a motion to accept the September 19, 2019, meeting minutes, and for a second.

Mr. Barowitz moved to accept the September 5, 2019, minutes, and **Ms. Roslund** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: Mr. Carver

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

October 17, 2019, Meeting Minutes:

Mr. Hylton asked if there were any corrections or comments (none).

Mr. Hylton asked for a motion to accept the October 17, 2019, meeting minutes, and for a second.

Mr. Barowitz moved to accept the October 17, 2019, minutes, and **Ms. Roslund** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: Mr. Carver, Mr. Roche

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

EXECUTIVE DIRECTOR'S REPORT:

Ms. Balsam:

The first thing is that we've received word from Mr. Schachter that he is tendering his resignation. There's some paperwork to be filed, but we will have a vacancy on the Board.

The web site: DOB's Communications staff is coordinating with the Department of Information Technology and Telecommunications on fine-tuning the web site at this point. So we're hoping it will be done by the end of the year.

Mr. DeLaney: Is that DOITT?

Ms. Balsam: Yes.

Staffing: We have finished interviewing for the Deputy General Counsel position and have identified a candidate.

Revenue: The Loft Board unofficially collected $41,135.25 in October.

Roster of Buildings: We have 331 buildings under our jurisdiction. We sent out notices of enforcement proceedings against owners of 45 buildings who have not renewed. Some have subsequently registered as a result of that, but I don't know those exact figures. We will be bringing the enforcement cases for failing to renew to the December 5th Board meeting.

Litigation:

Decisions:

The Appellate Division Second Department issued a decision in *Dom Ben Realty Corp. v. NYCLB, et al*. The owner and tenants agreed to settle a coverage case. In the settlement, the tenants waived their right to Loft Law coverage, and the owner agreed to legalize while the tenants stayed in place. The owner also agreed to give the tenants rent-stabilized leases. In its Decision and Order, the Loft Board did not allow the tenants to withdraw their coverage application and rejected the settlement as against public policy. The owner and tenants filed an Article 78 petition, and in a decision dated March 18, 2016, the Supreme Court annulled the Loft Board's decision and held that the decisions were without a rational basis and were arbitrary and capricious, because parties have the right to withdraw administrative applications. The Loft Board appealed.

In a decision and order dated November 13, 2019, the Appellate Division, Second Department modified the Supreme Court's order and held that the Loft Board rationally rejected the tenants' proposed withdrawal of their coverage applications. The court agreed that "the settlement agreement purported to perpetuate an illegality because the tenants would remain in the building without Loft Law coverage." The court also held that the Loft Law is not subject to waiver by the tenant.

However, the court found that the Loft Board erred when it rejected the other portions of the settlement agreement, stating that the Loft Board should have deemed only those portions of the settlement agreement that required the tenants to withdraw their coverage applications to be unenforceable. The court also held that there is no impediment to the Loft Law and the Rent Stabilization Law applying simultaneously. But I note that the owner had refused to provide the Loft Board with a copy of the settlement agreement until it filed a reconsideration application. So when the Board decided the underlying case, it did not have the settlement agreement to refer to.

New Cases:

In *99 Sutton LLC v. New York City Loft Board*, the owner asks the court to order the Loft Board to decide on the adequacy of sales of rights forms filed within the past three months. This is the fourth such proceeding Owner has brought.

In *470 Manhattan Ave. LLC v. New York City Loft Board*, the owner challenges Loft Board Order 4891. That Order sustained the Executive Director's administrative determination holding owner's decoverage application in abeyance until the parties completed the Narrative Statement process. The order also denied the owner's request to immediately send the decoverage application to the Board for a determination.

Saifi v. New York City Loft Board and Amicus Associates, LLP, is a tenant challenge to a Loft Board Order that denied an owner's request for reconsideration. In the underlying Order concerning withdrawal of a coverage application, the tenant had signed a stipulation agreeing to, among other things, the sale of his Article 7C rights. However, the owner failed to register the unit and record the sale. The Board ordered the owner to register the unit and the tenant. The Board further stated the Loft Board's records would show the unit as rent-regulated until the owner filed an acceptable sales record and sales agreement. After the owner filed a request for reconsideration, the tenant filed an answer in which the tenant requested the landlord's reconsideration application be denied in its entirety and the underlying Order affirmed. In the reconsideration Order, the Loft Board did just that.

In the litigation, the tenant challenges the Loft Board's Orders, alleging that the Loft Board failed to address the validity of the tenant's settlement agreement and the adequacy of the consideration provided to the petitioner. The tenant claims the Loft Board should have rejected this tenant's settlement agreement as against public policy, because the agreement allowed the tenant to live in the space without Loft Law protection. The tenant also claims that the Loft Board erroneously approved a settlement agreement that offered the tenant no consideration for the sale of his rights.

Mr. Hylton: Thank you Ms. Balsam. Are there any questions?

Mr. DeLaney: I have a couple. Thank you for the update on the web site. I'm sure it's as frustrating for you as it is for everyone else. Back in September, I raised the issue of concerns about buildings without heat and with gas-related issues. I was wondering if you have any updates on that situation, now that the weather is getting colder. Have there been any inspections?

Ms. Balsam: We've had a couple of inspections, and we have a couple of more scheduled. For the most part, I think they've been about no hot water. I don't think we've registered any no heat yet.

Mr. DeLaney: In terms of efforts to sort through these issues in various buildings, has there been any progress?

Ms. Balsam: No. But the for the most part, the owners and tenants are talking. And we've issued some 40 or 45 day clocks.

Mr. DeLaney: Ok. Lastly, is there any update on the training sessions for the Project Guidelines?

Ms. Balsam: There have been two training sessions.

Ms. Torres-Moskovitz asked how that training – of the Department of Buildings plan examiners dedicated to loft buildings – was going, in terms of the Project Guidelines.

Ms. Balsam: As far as I know, everything is going fine. I haven't had any feedback. I've registered on a web site where feedback would be posted if there was any, but haven't received any emails from that.

Ms. Torres-Moskovitz also asked about the issue of self-certification that had been discussed a while back; and about which she had composed a letter in the spring (to the Department of Buildings), expressing her opinion that loft buildings should not be allowed to self-certify. She noted that there may not be a simple solution, but she hasn't received a response yet.

Mr. Hylton: Yes, it was I who was going to take the question to a higher level, and I have, but have not followed up for a response. I believe your reasoning for that was concerns about corruption, was that it?

Ms. Torres-Moskovitz: That's what triggered my letter, but also the complex nature of the Loft Law. As an architect, I don't understand an architect self-certifying a building so complex.

Mr. Hylton: And are you talking about different types of Alts, or just one particular type? For example, why would an architect be excluded from filing an Alt 2 self-cert? I think a distinction has to be made. But I will go back and revisit it.

Ms. Torres-Moskovitz: Right. Even if they come back and say what the distinction is, or say it was addressed ten years ago, or…

Mr. Hylton: I don't think it's been addressed. I think the opposite view is that not allowing self-certification presents another issue: delays. Delaying work that could be crucial during certain seasons. I think that's what they're trying to work out. And bear in mind that there have been changes at the highest levels of the Department of Buildings, so…But I will follow up.

Mr. Barowitz asked if this was the same as when, for example, a plumber can self- certify work, if an inspector can't get to the job.

Mr. Hylton said that it was, but noted that what Ms. Torres-Moskovitz is proposing would prevent a lot of that work from going forward.

Ms. Roslund clarified, though, that what Ms. Torres-Moskovitz is talking about is more comprehensive, and there needs to be clarity about what is and is not allowed to be self-certified.

Mr. Hylton said he would attempt to arrange a meeting between Board members who are interested and certain technical staff at the Department of Buildings.

Mr. DeLaney: One more quick question. My understanding is that an architect can self-cert to TCO and 7B standards, is that correct?

Ms. Balsam: Not TCO, but yes, 7B. We have a form for them to fill out, sign, and seal. But receiving TCO indicates 7B compliance.

THE CASES:

Mr. Hylton: Before we go to the cases, I want to advise the public, in case this will affect them, we've agreed to table two cases on today's calendar. The two cases that will not be voted on today are:

Appeal and Reconsideration Calendar:

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

The Summary Calendar:

	Applicant(s)	Address	Docket No.
5	Jeff Larvia, et al	223 15th Street, Brooklyn	TR-1244

The Summary Calendar:

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

	Applicant(s)	Address	Docket No.
2	Emily Gardner and Richard Petrucci	54 Knickerbocker Avenue, Brooklyn	PO-0043
3	Mary McGee, Mario Bosquez, Carl Goldhagen and Mary Schultz	388 Broadway, Manhattan	TA-0195 TM-0074
4	Aaron Matusow	125 Green Street, Brooklyn	TR-1307

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

Ms. Roslund motioned to accept these cases, and **Mr. Carver** seconded.

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

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

The Master Calendar:

Mr. Hylton: There are three cases on the Master Calendar. The first is:

	Applicant(s)	Address	Docket No.
6	110 Bridge Street Tenants	110 Bridge Street, Brooklyn	TR-1077

Ms. Balsam will present this case.

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

Mr. DeLaney motioned to accept this case, and **Ms. Torres-Moskovitz** seconded.

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

Mr. DeLaney: I would just state, as I did last month, my concern over the finding of unit 4B. In my view, when you have a married couple living in the unit through the Window Period, both should be covered without looking to the specifics of who was on the lease. This is a point I've disagreed with the Board on going back to the first case where this came up, which was Schuss. So I note my objection to that part of the decision, but I plan to vote in favor of the Order.

The vote:

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

Members dissenting: Mr. Carver

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton introduced the next case:

	Applicant(s)	Address	Docket No.
7	281 North 7th Street Tenants	281 North 7th Street, Brooklyn	TR-1180

Ms. Lee will present this case.

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

Mr. Carver motioned to accept this case, and **Mr. DeLaney** seconded.

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

Mr. Barowitz asked if we knew the height of the ceilings in this building, and **Ms. Lee** replied we do not. He went on to note that, if the ceilings are high enough, another level can be added,

Mr. Hylton pointed out that square footage is only counted horizontally.

Mr. Barowitz continued, noting that an additional level serving as a bedroom, for example, created additional, usable floor space/ square footage. He also said that measurements are often inaccurate, so it didn't seem right that unit 15 should be excluded from coverage because it's two square feet shy of the minimum requirement.

Mr. DeLaney: I appreciate Mr. Barowitz's concerns, and for that reason, I plan to vote no on this case. I'd also like to say that this really shows the absurdity in the line of reasoning in the Schuss case. In this building, we have two married couples, where one individual is deemed protected and the other may have succession rights, particularly unit 11. I'd like to read from Judge Spooner's report: "Mr. Arkin testified that he and his wife, Amelia, have lived in the unit since 2000. Mr. Lunetta, a long-time friend, told him about the unit, and Mr. Arkin took a tour of it before signing the lease. On September 19, 2000, Mr. Arkin entered into a one-year lease with New York City Construction. He received no other lease for the unit. The lease indicates the premises are to be used as an 'art studio.' Mr. Arkin and his wife lived exclusively in the unit during the Window Period, January 2, 2008, through June 21, 2010--Mr. DeLaney noted that the judge had not given the correct Window Period dates, which here should be January 1, 2008, through December 31, 2009--and have had no other residence since." So we're saying that a one-year lease, which denominated the space as an art studio, is the reason why, of a married couple, only the individual who signed the lease ten years prior to the unit being covered is recognized as a protected occupant. I think that's wrong.

Mr. Hylton: Any other comments?

Mr. Carver: I have a comment on the measurements for unit 15. I compliment the staff for following our precedent of deriving the number by using the centerline at the center of the wall inside a building. It's reasonable, logical, is standard practice in the marketplace, and is consistent with our own case law. I think the Board would be wrong to vote no and override what I think was the proper conclusion by the staff on this issue.

Mr. Barowitz: The question I have is, without breaking through the wall, how do you know how thick it is?

Mr. Hylton: Maybe one of the architects can answer that.

Mr. Barowitz: I know what's standard, but in the space where I live, the party wall has been doubled to reduce noise, and there's about 4" between the two party walls. So we really don't know the depth of these walls. For example, if the party wall is fifteen feet, and it's off by an inch or two…That's as accurate as you can possibly be.

Ms. Roslund explained that, re the first question if you're measuring the whole building, then you would compare the spaces to the overall dimensions of the floors of the building and extrapolate the wall sizes from there. But it is true that, more often than not, walls are not plumb or square, and if you take measurements from different points along the wall, you can gain or lose a square foot or two throughout the apartment.

Mr. Carver: That's why we have experts at trials. That kind of analysis is not for us to decide.

Mr. Hylton: What we have decided, though, is where we took the measurement from, right? Any other comments?

Ms. Torres-Moskovitz: I was reviewing the plans to see where the measurement was taken from, and first, want to clarify the difference between a party wall and a demising wall. A party wall is between buildings; a demising wall is between apartments. But there's also a wall between the apartment and the hallway, and think that the square footage of that wall should be included in its entirety (in the square footage of the apartment), which would be more than two square feet.

Mr. Hylton: The hallway wall is not considered a party wall or demising wall?

Ms. Torres-Moskovitz: It goes back to what Eliot was saying. It's a fire-rated wall, so it's quite thick.

Mr. DeLaney: To be clear, the plan you're looking at is part of the record?

Ms. Torres-Moskovitz: Yes, they submitted four plans, calculating square footage in different ways.

Mr. Hylton asked if there were any other comments (none).

The vote:

Members concurring: Mr. Carver, Mr. Roche

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

Members abstaining: Chairperson Hylton

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton: This motion did not pass. I'm going to direct the Loft Board staff to redraft this in a way that is favorable to the Board. We'll bring this back before the Board in January.

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

	Applicant(s)	Address	Docket No.
8	W28 Street Holding LLC	40 West 28th Street, Manhattan	LE-0653 and RA-0015

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

Mr. Carver motioned to accept this case, and **Mr. DeLaney** seconded.

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

Mr. DeLaney: Yes. This case has been on the agenda for a number of months; perhaps since May? It's a very significant case; possibly, right now, it is a rare bird; a case of first impression. This is the first time an owner has sought not only the pass-along of actual code-compliance costs, but also the pass-along of the cost of financing the code-compliance work. Because of the way they're structured, some of the temporary rent increases won't expire until sometime in 2050/ 51, and the new rent will be composed of three components. One is the rent guideline increases put in place since the owner obtained the C of O; the second is retroactive code-compliance costs, including financing for a number of months; and then the remaining period of the costs. Basically, the tenant's rent goes from something like $700 a month to $1800 a month. So it's a significant increase. The increase is predicated mainly on the very high costs of common areas, which were allowed by our auditor. The numbers, as they affect this individual tenant, may suffer from not having been challenged by the tenant, who didn't take issue with the costs. Was all the work reasonable and necessary? Were some of the costs deferred maintenance? Were some of the common area costs, which I think were somewhere in the neighborhood of a half a million dollars, actually reasonable and necessary?

But it's hard to make an argument on the tenant's behalf if the tenant didn't make the argument. My concern, as the tenant representative, is to make sure the Board, having had this rule on the books since the mid-1980s, applied it correctly to the allowable costs of financing. When the case first came to us, the owner's final permanent financing was accepted into the cost of the loan, but then the owner appears to have taken some money out of the building, relative to what was really necessary, and that got adjusted.

I think if, in the future, we have buildings where the owner does code-compliance work and seeks to include the cost of financing, which means it's amortized over a fifteen-year period rather than a ten-year period, it will matter that the Board has applied the rules correctly here. Certainly, we know of buildings where ultra-luxurious renovations are being done in non-IMD spaces; and if somewhere down the road, such an owner should seek financing pass-alongs, hopefully the tenants would question whether that work was all reasonable and necessary, or deferred maintenance, or whatever. In terms of what the Loft Board did in this case with the facts as they were presented, I'm comfortable that we followed the law, and therefore I plan to vote in favor of this case.

Mr. Carver asked Mr. DeLaney: You say this is the first case you've seen of code-compliance costs and the cost of financing passed along. But has the Board seen cases where just the code-compliance costs were passed along?

Mr. DeLaney: Oh yes.

Mr. Carver: Because I don't think I've seen one, and I've been on the Board since 2016.

Mr. DeLaney: I think you might have missed one when you were on walk-about. Back when the Loft Law passed in 1982, one of the things that owners and tenants were saying to me and to the loft community was, we don't want this law, because the cost of compliance is going to be so high, it's going to price you out of your unit. And at that time, the tenant community made the decision that they'd rather be priced out of their unit legally, than harassed out of my unit as an unprotected tenant. So if the cost of compliance is such that I'm evicted because I can't afford it, that's better than being evicted because my landlord is a nasty, aggressive human being. You can see the logic to that, can't you?

Mr. Carver said that he wasn't sure all of this was answering the question he asked.

Mr. DeLaney: To summarize, what we've learned is that, in most cases, the cost of bringing buildings up to code has been relatively minimal. So in most circumstances, the owner waves the code-compliance pass-along; though there have been cases where it's been passed along. Generally, the wildcard is an elevator. Outside of that, the work that's done in the residential units and common areas has not been that expensive. This building is unusual. It's a five story building, and the owner spent two-and-a-half-million dollars bringing it up to code.

Mr. Carver: Thank you for your thoughts.

Mr. DeLaney: You're welcome.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton: For a moment I want to return to self-certification. The meeting I'm trying to arrange is about the design professionals' self-certification, is that right?

Ms. Torres-Moskovitz, Ms. Roslund: Yes.

Mr. DeLaney to Mr. Hylton: Before we adjourn, I move that we go into executive session to discuss the case that the Executive Director reported on earlier, the Appellate Division, Second Department decision concerning Dom Ben Realty.

Mr. Roche seconded the motion.

Mr. Hylton explained to the public that this will be the last order of business, after which the meeting will be closed, but they are welcome to remain for that if they wish.

The vote:

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

Members dissenting: Mr. Carver,

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton asked the public to excuse the Board for discussion in executive session. They would have to wait outside and are welcome to return, but there will be no further discussions.

A member of the audience stated that he had information that might be important for the executive session. **Ms. Balsam** spoke with him at his seat.

THE BOARD RETURNS

Mr. Hylton asked for a motion to return to public session, and for a second.

Mr. Roche moved to return to public session, and **Mr. Carver** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton: We are back in public session, and this will conclude our November 21, 2019, Loft Board meeting. Our next public meeting will be held on Thursday, December 5, 2019, at 9:30 AM at 22 Reade Street, Spector Hall.

The End