

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

October 17, 2019

**The meeting began at: 2:30 pm**

**Attendees:** Elliott Barowitz, 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 October 17, 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.

---

**Mr. Hylton** stated that as Meeting Minutes were not yet available for review, he would turn the floor over to Ms. Balsam for the Executive Director's Report.

---

**EXECUTIVE DIRECTOR'S REPORT:**

**Ms. Balsam:**

The web site: DOB's Communications staff is continuing their work on the website updates. We've been exchanging drafts and information, so we are getting closer to completion, though I can't give you an exact date yet.

Revenue: The Loft Board unofficially collected \$6436 in September.

Registrations: As of September 1, 2019, we have 334 buildings under our jurisdiction. Sixty-two buildings have not renewed their registrations; and we're starting to work on the notices for that.

Litigation: I gave you a copy of the decision regarding *Bridge Associates of SOHO*, which just came down today. This was a case where an owner declared bankruptcy and made a motion in bankruptcy court to sell the property free and clear of any claims, including the claims of the protected occupants. In the court below, the bankruptcy judge denied the motion, and the owner appealed. The judge then certified the appeal to go directly to the Second Circuit Court of Appeals, which I understand is unusual – skipping a level of appeal. The case was argued on October 3, 2019, and today we received the decision that upheld the decision of the bankruptcy judge. So it's a very favorable decision, and we're happy about that.

We have one new case: *Kristen Russell v. Loft Board*. This is a tenant-filed mandamus proceeding, in which the tenant asked the court to order the Loft Board to decide the Owner's reconsideration application. The Proposed Order is number (3) on today's calendar.

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

**Mr. DeLaney:** Thank you for the update on the web site progress. It's unfortunate that it's taking as long as it is, and I'm sure you share my concern about that. Do you think the end of the year is a reasonable expectation?

**Ms. Balsam:** I think next month is more in the ballpark.

**Mr. Hylton** asked Ms. Balsam for clarification regarding the "unofficial" status of the revenue.

**Ms. Balsam** explained that, until the Revenue staff gives it a stamp of approval, it's unofficial; and it had been decided that this is how she would report the revenue in the meantime.

**Mr. DeLaney:** Should we expect some orders for owners who have failed to register in November?

**Ms. Balsam:** I'm not sure they'll have time to respond that soon, but we do have a meeting scheduled for December 5<sup>th</sup>, and I hope to the cases on for that meeting. I'd like to get them done before the end of the year.

**Mr. DeLaney** asked for confirmation of the meeting schedule for the rest of the year: We have a special meeting on October 31<sup>st</sup>. In November, we have one meeting, and then December 5<sup>th</sup>. And we don't anticipate any additional meetings.

**Ms. Balsam** confirmed that was correct.

**Ms. Torres-Moskovitz** asked if there was any additional information about educational outreach.

**Ms. Balsam:** Because we are understaffed, we asked the DOB's liaison staff to take this on. I believe they are coordinating with City Hall.

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

---

## THE CASES:

### Appeal and Reconsideration Calendar

**Mr. Hylton** introduced the first case.

	Applicant(s)	Address	Docket No.
1	Sonaal Industries Inc.	58-60 Grand Street, Brooklyn	AD-0098

**Mr. Clarke** presented the case.

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

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

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

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter, Mr. Roche, Mr. Hernandez

**Members recused:** 0

**Mr. Hylton** introduced the next case.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
2	Ximena Garnica and Shegekazu Moriya	58-60 Grand Street, Brooklyn	R-0359

**Ms. Balsam** presented the case.

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

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

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

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter, Mr. Roche, Mr. Hernandez

**Members recused:** 0

**Mr. Hylton** introduced the next case.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
3	400 South Second Street Holdings, LP	394-400 South 2 <sup>nd</sup> Street, Brooklyn	R-0376

**Ms. Cruz** presented this case.

**Mr. Hylton** thanked **Ms. Cruz**, and asked for a motion to accept the case, and for a second.

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

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

**Mr. DeLaney:** Frequently in Reconsideration cases, or sometimes in other cases, when an application is denied because of procedural issue, we then go on to say, but aside from the fact that you don't have standing, or weren't on time, or whatever the case is, if we had decided on the merits, it would be this, that, or the other. And I've frequently argued that it's an expenditure of the Board's energy to deal with the merits, when they could just reject it on procedure. However, given the extremely litigious behavior we're seeing out of some of the owners and their attorneys in Brooklyn, I think in this case, providing the analysis of why the arguments are unpersuasive, even if the filing had been done appropriately, is warranted. And I thank Ms. Cruz for the analysis.

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter, Mr. Roche, Mr. Hernandez

**Members recused:** 0

**Summary Calendar:**

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

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
4	Peter Hornung	151 Kent Avenue, Brooklyn	PO-0096
5	Stephen Craig Doyle	43-49 Bleecker Street, Manhattan	PO-0098
6	Sofie Iommie	156-170 North 4 <sup>th</sup> Street, Brooklyn	TM-0100

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

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

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

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter, Mr. Roche, Mr. Hernandez

**Members recused:** 0

**The Master Calendar:**

**Mr. Hylton:** There are five cases on the Master Calendar. The first case is

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
7	26 BNDO LLC	26 Bond Street, Manhattan	LB-0194

**Mr. Clarke** presented this case.

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

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

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

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter, Mr. Roche, Mr. Hernandez

**Members recused:** 0

The Loft Board finds that Owner and the Estate executed a valid MDL §§ 286(12) and 286(6) sale of rights and improvements pursuant to the Agreement and therefore Owner is precluded from seeking an abandonment finding for the Unit. However, because there has been no harassment finding, the IMD unit remains subject to all of the requirements of Article 7-C, including the legalization requirements of MDL § 284, except that the IMD unit is no longer subject to rent regulation. See, 29 RCNY § 2-10.

Owner is hereby directed to file a sales record form for the Unit with the Loft Board within thirty (30) days of the mailing date of this order. Failure to file a sales records form may subject Owner to a civil penalty. See, 29 RCNY § 2-11.1(b)(6)(iii).

**Mr. Hylton:** The next case on the Master Calendar is

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
8	110 Bridge Street Tenants	110 Bridge Street, Brooklyn	TR-1077

**Ms. Balsam** presented the case.

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

**Mr. DeLaney** motioned to accept these cases, and **Ms. Torres-Moskovitz** seconded.

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

**Mr. DeLaney:** I plan to vote in favor of the Proposed Order; however, I would like to note that in the findings and conclusions rendered by ALJ Faye Lewis, conclusion number (5) reads as follows: “Unit for 4B, occupied by Jonathan Weiss and Cynthia van Elk, otherwise qualifies for coverage” – “otherwise” relative to incompatible use. “Under the Loft Board’s long-standing precedent, Mr. Weiss and Ms. Van Elke, who is his wife, both qualify for protected occupancy. However, under the Loft Board’s recent interpretation of its rule governing protected occupancy, only Mr. Weiss qualifies for protected occupancy.” I’ve objected to this conclusion on the part of the Board in the past and just want to note that, once again, we had a case – today, the second on the agenda -- where both parties were found to be protected occupants. Here, as in *Matter of Schuss*, I think that if people are married and lived together in the unit during the Window Period, they should both be found to be protected occupants.

**Mr. Barowitz:** This has come up before. I don’t know what we, personally, can do about it, but I think we should get some information to the Law Department, and bring it to the State legislature, because it doesn’t make any sense.

**Ms. Balsam:** If I can just comment, the Board has already considered the issue, and has agreed to amend the protected occupancy rule to include the coverage of spouses. But we haven’t changed the rule yet, so we can’t do anything at this point.

**Ms. Roslund:** I’m going to throw in my two cents about the incompatible use. While I understand the black-and-white nature of the law versus **not-law**, I’m not prepared to vote yes on this one yet. I’d like to discuss it further.

**Mr. Hylton:** The incompatible use issue?

**Ms. Roslund:** Yes.

**Ms. Balsam:** It isn’t an issue, because the law changed.

**Mr. Hylton:** Going forward, yes.

**Ms. Roslund:** We didn’t discuss tabling it, but if I vote no, it’s automatically tabled until next month, right?

**Mr. DeLaney:** Given what, in my view, is the unfortunate way we’ve started doing business over the past year, and that the staff takes the position that it won’t discuss cases in public, or rather won’t answer questions about the cases in public, is there anything that the other four Board members here today could discuss that would help?

**Ms. Roslund:** Along the same lines of some of the other cases we’ve had, this is the first of its kind since the law changed...

**Ms. Balsam:** This is the first of its kind, ever.

**Ms. Roslund:** I believe it warrants more review and discussion.

**Mr. Hylton:** You can certainly comment on your concerns here; it's just that you won't get any input from staff. But the other Board members can address them if they wish. So you're not precluded from saying anything here.

There was brief discussion about if/how the vote should proceed. It was decided to take the vote without further discussion.

**The vote:**

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

**Members dissenting:** Ms. Roslund

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter, Mr. Roche, Mr. Hernandez

**Members recused:** 0

**Mr. Hylton** noted that the case did not pass.

**Mr. Hylton** announced that, at the request of a Board member, the following case would be tabled.

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

**Mr. Hylton:** The next two cases will be voted on as a group.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
10	35 West 26 <sup>th</sup> Street Realty, LLC	35 West 26 <sup>th</sup> Street, Manhattan	LE-0708 and RG-0203
11	357 Bowery Partners LLC	357 Bowery, Manhattan	LE-0713 and RG-0206

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

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

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

**Mr. DeLaney:** I would just comment that the case involving number (10), 35 West 26<sup>th</sup> Street Realty, presents a rather unique and interesting set of circumstances. It's a building, where there was a finding of harassment against a prior owner several years ago; and, though the current owner brought the building up to code, he never sought to terminate the finding of harassment. Therefore, we're setting the legal rent for three units --

one of which is occupied by a protected IMD tenant, while the other two units do not have a protected tenant in them, but will now have a regulated rent. This is the first time I've seen this occur, and I'll be interested to learn more about the history of this building going forward.

**Ms. Torres-Moskovitz** asked if the new status of these units could be stated for the public record.

**Ms. Balsam:** 35 West 26<sup>th</sup> Street Realty, LLC: Originally four units. One was bought-out; three are rent-regulated. 357 Bowery Partners LLC: Originally three units. One was bought-out; two are rent-regulated.

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter, Mr. Roche, Mr. Hernandez

**Members recused:** 0

**Mr. Hylton** announced that the Board would take a short recess, then resume with a discussion of the rules.

---

**RULE-MAKING:**

**Mr. Hylton** reconvened the meeting and turned the floor over to Ms. Balsam.

**Ms. Balsam:** We're on page 70, line 21. This is, again, part of the Narrative Statement rule. The Board has already discussed this. It requires the occupant filing an alternate plan to file an electronic copy and a hard copy with the Loft Board, whereas now they only have to file a hard copy. So it mirrors the section on what the owners have to do. The section runs from here to line 2, page 71. Are there any questions or comments?

**Mr. Hylton:** I know we discussed this before, but why do we need a hard copy if they're filing an electronic copy?

**Ms. Balsam:** Because everyone may not have digital access. Some people may not use a computer, so I feel it's a good idea to have a hard copy.

**Ms. Torres-Moskovitz** commented that this was interesting, considering that DOB was moving toward being paperless.

**Ms. Balsam:** I would be happy with paperless, but I'm very cognizant of the fact that not everyone in the world is computer savvy, or can use a computer, or has email.



**Ms. Roslund:** But they can obtain a hard copy from an electronic copy.

**Ms. Balsam:** With plans, it's not so easy. Large plans or large sets of plans have to go out for printing. If the Board wants to do that, that's fine. But we'd have to do it for the owners as well.

**Ms. Torres-Moskovitz** said she thought there was a law of some kind passed by the Council, saying that there was a deadline for going paperless.

**Ms. Balsam:** If that's the case, then the Law Department will tell us.

**Ms. Roslund** said she thought hard copies would also have to be submitted to DOB so they have something to actually stamp. She continued, saying that it's an interesting point for the future -- what's considered a legal document, and an admissible document.

**Mr. Hylton:** The electronic copy would just be submitted by email?

**Ms. Balsam:** Yes. Or they could drop off a flash drive. I was told by one of our IT people that the largest file that can be emailed is 20MGS.

**Ms. Roslund:** That's the biggest obstacle I see for digital submissions: that sometimes files would have to be uploaded and transferred via a cloud-based system.

**Ms. Balsam:** Are we OK with this language? So (H) on page 71 mirrors the rule we have now. They can examine and copy at their own expense if they want to. But obviously, they can come to the Loft Board and see the plans for free. That may not be necessary, as everyone will be receiving electronic copies, but if they want to they can.

**Mr. Hylton:** What is DOB's acknowledgment of the filing? A stamp? On the bottom of page 70, line 27, it mentions DOB's acknowledgment of the filing. (To Ms. Torres-Moskovitz and Ms. Roslund): What do you usually get as an acknowledgment?

There was some discussion of this, and there didn't seem to be one clear answer.

**Mr. Hylton** said he was just wondering if there was a standard acknowledgment.

**Ms. Balsam:** I really don't know. That mirrors what the rule says now.

**Ms. Cruz:** It's my understanding that DOB used to give the applicants a piece of paper.

The discussion about the application process and how the different stages are acknowledged continued.

**Mr. Hylton** clarified that for the alternate plan process, what is needed is acknowledgment that a finished product has actually been filed; not pre-filed.

**Ms. Roslund:** Your acknowledgment then is when it shows up in the computer. In BIS.

**Mr. Hylton** asked Ms. Cruz if she knew what had been accepted as proof in the past, and she said it was the job number.

**Mr. DeLaney:** This section is talking about alternate plans, but where the original plans are served on the tenants, do we use the same language?

**Ms. Balsam:** Yes. This mirrors that language. We can do more research into this, because we don't want to pass a rule for something that's not happening.

**Mr. DeLaney:** The goal here is that we want to make certain, in the sending out of the original plans and of alternate plans, that the plans have actually been filed with DOB.

**Ms. Torres-Moskovitz:** Normally when submitting a plan the building owner would have to sign the paperwork. But with an alternate plan, you skip some of the standard paperwork, don't you?

**Ms. Balsam:** Right. The owner doesn't sign.

**Ms. Cruz and Ms. Balsam** explained how these applications are described; that they are alternate plans for a loft building, and do not require a permit. It's a no-work application.

**Mr. Hylton:** But there will be physical plans?

**Ms. Balsam:** Yes, but it's a no-work application, and their plans could never be approved. Assuming the tenants are successful, the Board would order the owner to change its plans.

**Mr. Hylton:** So what we need to determine is at what point are we looking to know that the DOB has acknowledged receipt of actual physical plans?

**Ms. Balsam:** Right.

**Mr. Hylton:** It may be the job number, but I don't know enough to be sure.

**Ms. Cruz:** I recommend keeping the language as it is, because the form of acknowledgment could change.

**Mr. DeLaney:** So we could say something generic like, along with proof that the plans have been filed with DOB.

**Ms. Balsam** proposed, "along with proof of filing with the DOB," and noted that page 65, line 26, would have to be changed to the same wording.

There was some discussion of the difference between the wording as it exists and the proposed change.

**Mr. DeLaney** asked Mr. Barowitz for his opinion; but **Mr. Barowitz** said he didn't have a strong opinion about it either way.

**Ms. Roslund:** I don't think DOB will ever stop issuing acknowledgments. It might change the method of delivery or type of acknowledgment, but there will always be some form of acknowledgment.

**Ms. Torres-Moskovitz:** I could picture them rejecting it, asking, what is this? But hopefully it would make its way to the examiners who are familiar with loft buildings.

**Mr. Hylton** said this would be before that, and asked Ms. Balsam if this meant filed and accepted or just filed.

**Ms. Balsam** didn't understand the difference.

**Ms. Roslund** noted that it was just like applications filed with the Loft Board. They have to be complete or they're not accepted.

**Mr. Hylton:** Not everything that's filed is accepted. The wording should reflect both – proof that the plans were filed and accepted by the Department of Buildings.

**Mr. Barowitz:** I don't understand why that has to be included.

**Mr. Hylton:** Because we don't want garbage submitted. We want what they've filed to be something substantial, something the Department has accepted.

**Ms. Balsam:** So how do you want it to read? "Its filed alteration application along with...."

**Mr. Hylton:** Proof that an accepted set of plans have been filed with the Department of Buildings.

**Ms. Balsam** entered the wording into the draft and read it back to the Board: "Proof that an accepted set of plans have been filed with the Department of Buildings."

**Mr. Barowitz:** "Accepted" means that the DOB has made a determination that the plans are not bogus?

**Mr. Hylton** explained that there are various criteria that must be met for plans to be accepted. He didn't know exactly what they all are, but he didn't want the filing of alternate plans to be exempt from that process. The filing party then has to prove to the Loft Board that they've filed plans that have been accepted by the Department of Buildings for examination.

**Mr. Hylton** asked Ms. Balsam if, at this point, the tenant's alternate plan has been approved.

**Ms. Balsam:** No. They have to clear their objections, one of which would be that they need Loft Board certification. But we're not going to give them Loft Board certification, so they never actually get approval; they just clear their objections.

**Mr. Hylton:** If you could just put this language in for now, I'll make sure that it's OK with the technical folks.

**Ms. Torres-Moskovitz** had a question about whether or not mechanical plans would have to be filed, too, as they do with the landlord plan, in order for the DOB to accept the alternate plan.

**Mr. Hylton** said that whatever would be acceptable to the DOB would have to be filed.

**Ms. Roslund** said they could be filed later.

**Ms. Balsam:** We've had Narrative Statement conferences on Alt 1's where they haven't done the mechanicals yet. We'd have another conference after they're done, but we have had Narrative Statement conferences where they haven't yet filed the mechanicals, because they're just not sure yet what will be involved.

**Mr. Hylton:** If you don't mind, just leave this with me, and I'll have someone at DOB review it. If the other language is fine, and there's no room for misdeeds, then we'll go with it. Thank you.

**Ms. Balsam:** So (H) on page 71, lines 4 and 5 – I think that’s fairly straightforward. (I) is in the same vein; it mirrors what we have now. Are there any questions on those?

**Mr. DeLaney:** Just out of curiosity, do you happen to know what the current copying costs would be? The ceiling listed in § 101-03?

**Ms. Balsam** wasn’t sure, but she thought it was fairly high for the first few pages; that it could be up to \$10 per page for plans.

**Ms. Rivera:** It’s eight dollars per page, and for additional copies of the same page, it’s an additional five dollars per page.

**Ms. Roslund** asked if that amount is revised from time-to-time.

**Mr. Hylton** said yes, it is, but it usually isn’t revised down. What they’ve done is remove some things.

**Ms. Roslund** said that it should go down, as printing today is a fraction of the cost it was ten years ago.

**Ms. Balsam:** For most fees in the City, you can’t just charge whatever you want. The Office of Management and Budget comes in and asks you why you’re charging this fee, etc.

**Mr. Hylton** added that even to remove fees they do that.

**Ms. Balsam:** In the best of all possible worlds, everything would be electronic; everyone would just email everybody, and nothing would be printed. But it doesn’t always work that way. So (J), page 71, line 14: this is new language. It’s a change that allows for late filing of an alternate plan if both sides agree. It always said that if there’s good cause, then the occupant could file. But if both parties agree, we’d allow late filing also. Normally, you have to file an alternate plan within a certain amount of time. We’ve had cases about this, where the tenant didn’t receive notice or whatever, so they needed to file late; but the rules weren’t flexible enough (to allow it). This adds some flexibility.

**Mr. DeLaney:** We’ve specified that that would be permitted either by Order or Executive Determination, but if both parties agree, could it also be by request of the parties?

**Ms. Balsam:** I think you’d still need an acknowledgment from the Loft Board that it’s OK to do it; from staff or from the Board itself. We would want to have a certain amount control. We’d want them to come to us and say, this is what we want to do, is it OK?

**Ms. Torres-Moskovitz:** When it says, “all affected parties,” does that mean anyone in the building?

**Ms. Balsam:** It depends on what it’s about, but yes, it could be. For an alternate plan, it depends on the scope of that plan. Let’s say an alternate plan is going to be filed to keep gas in the building. That would involve everyone in the building. But if the alternate plan is just, I want to keep my bathtub here, rather than have it moved there...that’s only going to involve the owner...unless another unit is somehow affected.

**Ms. Torres-Moskovitz** said she was wondering about the difficulty of achieving consensus of everyone in the building.

**Ms. Balsam:** But you might want that. You could have a building that's going to move forward with legalization, and you've had fifteen tenants in the building say OK, and the sixteenth tenant shows up out of nowhere and says, hey wait a minute, I want to file late. Well, maybe those fifteen people don't want him to file late, and they should have a right to know that. Because that will hold-up the legalization of their units.

**Ms. Torres-Moskovitz** wondered about the situation where there's someone living there who has no interest in applying for coverage.

**Ms. Balsam:** These are units that are covered, and the occupants are protected. That's who would be filing an alternate plan. Someone who isn't covered wouldn't be filing an alternate plan.

**Ms. Torres-Moskovitz and Ms. Roslund:** But they're affected...

**Ms. Balsam:** Yes, if it's a building-wide issue, yes, they could be. You want to make sure the notice gets to them, don't you?

**Ms. Torres-Moskovitz:** Right, so if everyone in the building has to agree...

**Ms. Balsam:** It would only be the parties affected by the alternate plan. And who that is depends on the scope of the alternate plan.

**Ms. Roslund** asked who determines who the affected parties are.

**Ms. Balsam:** Usually it's the people filing the alternate plan; but we could review it and say, we think you should serve this person, too, and they do.

**Ms. Torres-Moskovitz** was still unclear about who exactly has to agree; so **Ms. Balsam** explained: There are two paths here. This rule creates a new path that wasn't there before. In the past, the Board would only look at whether or not the tenant had good cause, to make a determination. Here, we're saying, if everyone agrees, we're going to let them do it. Everyone who is going to be affected by that late filing should agree. If they don't agree, then the tenant filing the alternate plan has to take the other path, and show good cause about why they're not filing in a timely fashion. And maybe they'll be able to do that, and that's fine. But maybe they won't. It's just a question of being in a position to give the parties flexibility that isn't there now. And, yes, it is possible that everyone in the building would have to agree, if they are all affected by the scope of the alternate plan. Are we OK? We can leave it?

**Ms. Balsam** continued: The other material you see deleted was moved to other places in the rule; that's why it's deleted here. On the next couple of pages, we're changing cross-references, or changing the numbering, because we re-numbered the rule. On page 73, line 9, where it says "subparagraph (v) above," that should be (vi). And the same on line 16, the (ix) should be (x). Just so you know. We had to add a section, so everything is moving up one.

**Mr. DeLaney:** In new (x) (page 17, line 13), the existing language says, "If the DOB issues objections to an alternate plan application submitted by any occupant of the building, the occupant, through his or her architect or engineer, must take all necessary and reasonable actions to cure such objections within 45 calendar days of notice of objections from the DOB." Or what? Is my question.

**Ms. Balsam:** Page 74, line 1, reads, "If an occupant's alternate plan application has been filed and the 45 calendar day period provided in subparagraph (x) above for addressing objections to the occupant's alternate plan application has expired without all necessary and reasonable actions having been taken by the occupant to cure the objections, the Loft Board shall issue a letter certifying the owner's compliance with all requirements..." There's your answer.

**Mr. DeLaney:** Why wouldn't they be together?

**Ms. Balsam:** I think the rationale for putting it here is that this section deals with when certification can be issued. But we can move it if you want to. I'm OK with that. Or we could cross-reference it. Or we could add a line...

**Mr. DeLaney:** Or we could add a line to (x).

**Ms. Balsam:** We could add a line saying, failure to take action to cure the objections....It's hard to restructure it. I haven't really thought about it.

**Mr. DeLaney** noted that, when he hears, you must do such and such by X date, he always wants to know right away what the consequences would be if it's not done, and part of his interest is trying to make this as accessible to lay people as possible.

**Ms. Balsam:** I totally agree.

**Mr. Barowitz** asked if penalties would be imposed.

**Ms. Balsam:** No, we're not going to penalize a tenant who files an alternate plan, but then doesn't pursue it. The penalty is that they don't get what they wanted. They paid someone to file the plan to begin with.

**Ms. Roslund** observed that, really, the penalty is implied by the deadline. In order for the filing to count, it has to be done in 45 days. There doesn't need to be a penalty attached to it. So it's fine to have it somewhere else, or not at all. Not just in this particular case, but generally speaking. If the rule states, these are the things you need to do, and you have to do them within 45 days, it's clear enough what the repercussion would be.

**Ms. Balsam:** We could add something like, failure to take all reasonable and necessary action to cure the objections within 45 days may result in the certification of the owner's plan. But then on page 74 the rule says "shall." So I don't think we can use "may" and then "shall." We could put shall, but then we have it twice. Do you want to do that? I understand the rationale for putting it here.....Honestly, we have so much rule-making to do, do we need to do this now?

**Mr. DeLaney:** No. As long as you make a note to clear it up later on, if we have an opportunity.

**Ms. Balsam:** Beginning on the bottom of page 73, where it says, *Loft Board Certification of the Legalization Plan*. There are some font changes (she noted a few places where certain letters were italicized on pages 73 and 74). On page 75, we need to change the rule numbers again, move the sub-sections up a number. The

same on pages 76 and 77. On page 77, at lines 6 and 19, we're also changing a cross-reference to Chapter 1. 29 RCNY § 1-06 is becoming 1-21.

**Ms. Balsam** clarified some of the sub-section number changes for Mr. DeLaney and Mr. Barowitz.

**Ms. Balsam** continued, noting where on page 76 the numbers were being advanced.

**Mr. DeLaney:** Throughout this section, you use the term Loft Board. And last time, we spent a lot of time changing things to just Board. Is this consistent with that change?

**Ms. Balsam:** No, and I will make those changes.

**Ms. Torres-Moskovitz** asked when they would see all the changes.

**Ms. Balsam** replied that before the Board votes on the final product, they will see a document with all the changes. She then resumed work on rules, noting the font changes on page 78 through 81.

**Mr. Hylton** thought it would be a good time to stop.

**Mr. DeLaney:** So we'll start again on page 81, line 12?

**Ms. Balsam** confirmed that.

**Ms. Torres-Moskovitz** asked if the meaning of LONO was in the definitions.

**Ms. Balsam** said that it is defined on page 6, line 4: "Letter of No Objection (LONO) means a Board certificate issued to a responsible party authorizing work in a non-IMD space." But if you want, I can add LONO to the title, on page 78, line 4: *Requirement of a Letter of No Objection for Work Permits in IMD Buildings*.

It was agreed that would be done.

Before closing the meeting, **Mr. Hylton** asked if there were any comments (none).

---

**Mr. Hylton:** This will conclude our October 17, 2019, Loft Board meeting. Our next public meeting will be held on Thursday, October 31, 2019, at 10AM at 22 Reade Street, Spector Hall. I ask the Board members to be present at 9:45AM for a brief private meeting. The public meeting will continue until approximately 3PM.

The End