MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting

September 17, 2020

The meeting began at: 2:22 PM

Attendees: Elliott Barowitz, Public Member; Richard Roche, Fire Department's *ex officio*; Robinson Hernandez, Manufacturers' Representative; Charles DeLaney, Tenants' Representative; Heather Roslund, Public Member; Julie Torres-Moskovitz, Public Member; Samira Rajan, Public Member; Renaldo Hylton, Chairperson Designee; and Hanchun (Tina) Lin, Loft Board, Acting Executive Director.

INTRODUCTION:

Chairperson Hylton welcomed those present to the September 17, 2020, public meeting of the New York City Loft Board, and explained that the meeting was being held via teleconference due to the coronavirus emergency, pursuant to the Governor Executive Order 202.1. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board; and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

Mr. Hylton: Before we start, I would first like to welcome our new public member of the Board, Miss Samira Rajan. Samira has been CEO of Brooklyn Federal Credit Union since September 2008, and Executive Director of the credit union's 501c3 affiliate, Grow Brooklyn, since its founding in 2007. She has been with the credit union from its first year, while she served as an AmeriCorps VISTA volunteer. After the year of service was complete, she joined the full-time staff in 2002, as loan officer, and has taken on increasing levels of responsibility ever since. Now, Brooklyn Co-op is recognized as a national model for a sustainable, grassroots, community financial institution. It is Brooklyn's third largest credit union and has been certified by CDFI since 2001. Samira's educational background includes a BA from Bryn Mawr College and MPP from Harvard, Harvard's Kennedy School of Government. She was raised in Queens, New York, and currently lives in Brooklyn. Welcome, Ms. Rajan. Would you like to say a few words?

Ms. Rajan: Thank you, Renaldo. Thank you for the opportunity, and I'm looking forward to making a contribution.

Mr. Hylton: Thank you, Ms. Rajan. Before we turn to a vote on the minutes, I would like to update the Board members on two outstanding matters for which I was responsible. One concerns self-certification privileges on DOB (Department of Buildings) applications pertaining to jobs filed on buildings under the Loft Board's jurisdiction, and the other concerns modifying the Building Information System website, BIS, to reflect former loft buildings. Regarding self-certification, a meeting will be arranged in the coming weeks for certain members of the Loft Board to meet with the DOB Deputy Commissioner of Development, where any concerns can be raised and for the department to respond. Regarding BIS reflecting former Loft buildings, the department has assigned this matter to its IT department, which is looking at the appropriate level of priority at this time for programming. As soon as there is progress, I will report.

At the last Board meeting, Mr. DeLaney also asked whether anything can be done about having Certificates of Occupancy reflect the building's legalization. Ms. Lin will address this shortly in her report

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VOTE ON MEETING MINUTES:

July 16, 2020, Meeting Minutes

Mr. Hylton: First we'll turn to a vote of the minutes from the July 16, 2020, public meeting. Are there any corrections or comment to these minutes?

Mr. DeLaney: Yes, I have a couple of comments. First and foremost, I raised with the Chair and the Acting Executive Director my concern that the summaries of the cases seem to have disappeared from the minutes this month, and I am not prepared to vote in favor of approving minutes without those summaries; because as it is now, all it tells you about the cases is who presented it and how the Board members voted. I had suggested in an email earlier this morning that perhaps it would make sense to table these minutes until next month, so that they can be updated.

Mr. Hylton: Yes, thank you, Mr. DeLaney. But because we're not able to do that at such short notice, if the Board members concur, I will entertain a motion to…Mr. Barowitz, do we need a motion to do that?

Mr. Barowitz: You may just table it.

Mr. Hylton: Thank you. So, at Mr. DeLaney's request, I'm going to table the minutes until the next meeting. There are some other corrections to be made as well, so we'll table the minutes. Thank you. So, we'll turn to Ms. Lin for her Acting Executive Director's report.

ACTING EXECUTIVE DIRECTOR'S REPORT

Certificate of Occupancy:

Ms. Lin: At our last Board meeting, Mr. DeLaney asked whether the Certificate of Occupancy for former IMD (Interim Multiple Dwelling) buildings could reflect that it was legalized pursuant to Article 7-C. Before DOB issues a temporary or final Certificate of Occupancy (C of O), they ask the Loft Board staff whether they have any objection to the issuance of a C of O. But going forward, the Loft Board staff can review the Schedule A to ensure that former IMD units are designated as such, referencing Article 7-C of the Multiple Dwelling Law. And if it does not, the staff can issue an objection to the DOB, letting them know that we believe the C of O should reflect Article 7-C on these former units.

Governor's Order:

On September 4, 2020, the Governor issued Executive Order 202.60, which extended the toll on statutory deadlines to October 4, 2020. So, in accordance with this EO (Executive Order), initiatory filings with the Loft Board are tolled until October 4th. This EO also extends the Governor's suspension of the in-person-meeting requirement of the Open Meetings Law to October 4th.

Revenue:

The unofficial Loft Board revenue for July was $794, 511.75. The unofficial Loft Board revenue for August was $271,320.00.

Litigation:

We have one new case: *Dezer Properties II, LLC, versus New York City Loft Board*, index number 155782/2020. This Article 78 filed by the owner of the building located at 18-22 West 20 Street, New York, New York, challenges the Loft Board Order 4947, which denied an appeal of an administrative determination

denying owner's request to have units 901 and 904 exempt from legalization requirements and rent regulation because the rights to those units were previously sold. And that's my report.

Mr. Hylton: Thank you, Ms. Lin.

Mr. DeLaney: Could you repeat the address of that Article 78 case?

Ms. Lin: Yes. That was 18-22 West 20th Street, New York, New York.

Mr. DeLaney: And the $794,000 income in July and the $271,000 -- that reflects renewals coming in correct?

Ms. Lin: In renewals, yes.

Mr. DeLaney: And has the staff been able to have any discussions on the timing of following up on failure-of-owner-to-register cases for this fiscal year?

Ms. Lin: We have, but the original schedule could not be adhered to due to some internal issues. But we are aware of your interest in this matter, and we're doing our best to get to it.

Mr. DeLaney: Thank you.

Mr. Hylton: Ms. Lin, to clarify, the Governor has suspended the Open Meeting Law until October 4th?

Ms. Lin: Yes, which, again, does not cover our next meeting. But as soon as we know whether or not the in-person meeting requirements will be suspended again, we'll let the public know. It will be updated on our website as soon as we know.

Mr. Hylton: So, we'll have to wait and see whether or not our next meeting will also be via teleconference. And in terms of the initial filings…

Ms. Lin: Also tolled till October 4th.

Mr. Hylton asked if there were any other questions for Ms. Lin. (None).

THE CASES:

Appeal and Reconsideration Calendar

Mr. Hylton: There is one case on the Appeal and Reconsideration Calendar:

	Applicant(s)	Address	Docket No.
1.	Triad Capital LLC	15 E. 17th St., New York, NY	R-0381

Conclusion:

Owner sought review of Loft Board Order Number 4937, in which the Loft Board granted Owner's application to remove the Building from its jurisdiction, but found that the third-floor unit of the Building was rent-regulated since the Owner failed to prove that the Unit had been deregulated by a valid sale of rights in 1993. Owner located Tenant and obtained a signed copy of the sale as well as a recent affidavit from the Tenant in which he states he knowingly entered into a sales agreement with the Prior Owner in 1993. This constitutes new evidence that was not available when the Loft Board rendered the Order, and proves the Unit became deregulated in 1993, when the sale took place. Owner's reconsideration application is granted.

Mr. Argov presented this case.

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

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

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

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Summary Calendar

Mr. Hylton: There are seven cases on the Summary Calendar, which are voted on as a group. These cases are:

	Applicant(s)	Address	Docket No.
2.	Chris O'Rourke	223 East 2nd St., New York, NY	PO-0102, TR-1370
3.	Shane Moloney and Richard Chambers	1099 Flushing Ave., Brooklyn, NY	TA-0232
4.	Emil Hewitt	1099 Flushing Ave., Brooklyn, NY	TA-0235
5.	Marc Pflieger	1099 Flushing Ave., Brooklyn, NY	TA-0236, PO-0047
6.	Peter Hong and Keela Williams	57 Thames Street, Brooklyn, New York	TA-0249
7.	Felicia Angus	15 E. 17th St., New York, NY	TA-0267
8.	Sala Yoshida	239 Banker St., Brooklyn, NY	PO-0127

Conclusions:

Case #2 – *Matter of Chris O'Rourke* (223 East 2nd Street, NY, NY)
By a letter dated July 16, 2020, Mr. O'Rourke withdrew his coverage and protected occupancy applications with prejudice. Mr. O'Rourke's applications are deemed withdrawn with prejudice.

Case #3 – *Matter of Shane Moloney and Richard Chambers* (1099 Flushing Avenue, Brooklyn)
In stipulations of settlement in February 2020, the tenants withdrew their applications for rent overcharge with prejudice.

Case #4 – *Matter of Emil Hewitt* (1099 Flushing Avenue, Brooklyn)
In a stipulation of settlement dated June 30, 2020, Tenant agreed to withdraw his rent dispute application with prejudice.

Case #5 – *Matter of Mark Pflieger* (1099 Flushing Avenue, Brooklyn)
In a stipulation of settlement dated February 7, 2020, Tenant withdrew his applications with prejudice.

Case #6 – *Matter of Peter Hong and Keela Williams* (57 Thames Street, Brooklyn)
In a stipulation of settlement dated April 15, 2019, Ms. Williams agreed to withdraw her claims. Mr. Hong agreed to withdraw his claims with prejudice upon becoming registered as a protected occupant. The Loft Board's records show that Mr. Hong is a protected occupant of the Unit.

Case #7 – *Matter of Felicia Angus* (15 East 17th Street, NY, NY)
In a stipulation of settlement dated June 12, 2020, Tenant agreed to withdraw her application with prejudice.

Case #8 -- *Matter of Sala Yoshida* (239 Banker Street, Brooklyn)
In an email dated August 2, 2020, Tenant withdrew her application without prejudice. In a second email dated August 13, 2020, Tenant reaffirmed her request to withdraw her application without prejudice.

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

Mr. Roche moved to accept this case; and Mr. Barowitz seconded.

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

Mr. DeLaney: Yes, I would just note for the record that five of these cases involve situations where the Board is deeming a case withdrawn pursuant to a stipulation where there are portions of the stipulation that the Board goes out of its way to note it neither accepts nor rejects. And I have frequently expressed my concern about this approach. None of the stipulations in this batch, as far as I can tell, are particularly egregious. But I want to note that I wish we could work out a way to resolve these cases without stipulations that go into various areas. And we've also given some thought in the private session to the question of whether deeming them withdrawn was the right approach.

Mr. Hylton: Thank you Mr. DeLaney. What would Board members like to do? We could have a five-or-ten-minute discussion on this, but maybe at the end of the meeting. Is that all right?

Ms. Torres-Moskovitz: I think after the meeting sounds good.

Mr. Hylton: Okay. So, we'll just have a brief discussion about both of those points. Are there any other comments on these cases? (None)

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Master Calendar:

Mr. Hylton: There are two Proposed Orders on the Master Calendar. The first case is:

	Applicant(s)	Address	Docket No.
9.	Various Tenants of 100 Metropolitan Avenue	100 Metropolitan Ave., Brooklyn, NY	PO-0041, TR-1031, TR-1285, TR-1297

Ms. Lee presented this case.

Conclusion: The Loft Board grants the residential tenants' applications for coverage and protected occupancy status. The Loft Board finds that the Building is an IMD pursuant to MDL § 281(5) and that the following units and tenants are covered and protected, respectively:

Covered Unit(s)	Protected Occupant(s)
Unit 1A, Second Floor	Eric Schlosser
Unit 2A, Second Floor	John Expertly
Unit 2B, Second Floor	Heather Scharf
108 Metropolitan Avenue, Second Floor	Justin Greville
Unit 1A, Third Floor	Amanda Maceroni
Unit 1B, Third Floor	Ted Blanks
Unit 2, Third Floor	Jeffrey Graetsch
Unit 3, Third Floor	Larry Anderson
Unit 5, Third Floor	Edward Mansfield
Unit 4, Third Floor	Bill Lowry
Unit 6, Third Floor	Raphie Frank
Unit 7, Third Floor	Vanessa Marisak
Unit 8, Third Floor	John Philip Saladin

continued

Loft Board directs the Loft Board staff to designate Units 1A (Second Floor), 2A (Second Floor), 2B (Second Floor), 3, 4, 5, 6, 7, and 8, as well as the second-floor unit at 108 Metropolitan Avenue, as IMD units covered pursuant to MDL § 281(5), to maintain Units 1A (Third Floor), 1B (Third Floor), and 2 (Third Floor) as IMD units covered pursuant to MDL § 281(6), and to maintain the thirteen tenants who are already registered with the Loft Board as protected occupants.

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

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

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

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

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

	Applicant(s)	Address	Docket No.
10.	Dima Realty Inc.	34 West 28th St., New York, NY	LE-0712

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

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

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

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

Mr. Hylton: I guess Ms. Rajan has brought some teamwork here. We've had unanimous votes on all these applications before us, so, thank you. That's the end of the cases. Before rulemaking, I would like to open the floor up to discussion of the topics Mr. DeLaney raised regarding the language that often appears in Orders, where the Loft Board says it neither accepts nor rejects this stipulation; and also, the language about this sort of an application being deemed withdrawn. So, Mr. DeLaney, would you like to summarize, as this has been your baby for a while? If you would, please give us a little background and your feelings about it.

DISCUSSION OF "NEITHER ACCEPTS NOR REJECTS" AND "DEEMED WITHDRAWN

Mr. DeLaney: Sure. As we know, OATH (Office of Administrative Trials and Hearings) tries to settle cases. If the case goes to OATH, it first goes before a settlement judge. And if the settlement judge is not able to effectuate the settlement between the parties, it then is transferred to a different OATH judge, who can do the fact-finding and produce a report and recommendation free of any undue influence from previous discussions and negotiations regarding the case. It frequently happens that cases are settled at OATH, sometimes by the settlement judge and sometimes, I believe, by the judge who's hearing the case, because the parties reached an agreement.

My issue has always been with the situations where the owner and tenants stipulate to terms which, at times, seem to trample on the Loft Law to some degree. That could include rent, or forgoing delivery of services, or waiving certain other rights. And in my mind, sometimes the Board, in a rush to get to a solution and to clear its calendar, will accept these settlements and sort of sanitize itself by saying it neither accepts nor rejects the other provisions -- when I find some of those provisions questionable. Granted, the Board has occasionally rejected a stip they found to be so egregious that it was deemed contrary to public policy. So, that's topic one. And topic two, which is not so much my issue, but I understand where it's coming from, is the question of why we deem something "withdrawn."

Mr. Hylton: Thank you. As to topic one, I need to ask, what kind of authority does the Loft Board have over a settlement, except when it goes beyond or contrary to public policy? How can we not accept a settlement?

Mr. DeLaney: My view is that we should give OATH some guidance as to potential areas that are outside the scope of the application; that shouldn't be part of the stipulation that's crafted with the assistance of the OATH ALJ.

Mr. Hylton: And then the OATH ALJ would have to then let us know what those terms were?

Mr. DeLaney: No, I think we should let them know.

Mr. Hylton: So, basically, you're saying once that guidance to the ALJ is there, we are going to trust that the ALJ will work within those guidelines; and therefore, we wouldn't need the language, accept or reject?

Mr. DeLaney: I think that would be a step in the right direction. We'd have to see how things progress. We started using OATH in the mid-90s, so now we've got twenty-five years of working with OATH. And at various points in time, they've been more on the mark, and other times, not so much.

Mr. Hylton: Anyone else?

Ms. Torres-Moskovitz: I hear that point about OATH, but how about this idea. Could there be another category besides Master, Summary, and Appeal and Reconsideration? Could there be a Recognition category, where we put all those that are passing through? Then we don't have to say, neither accepts nor rejects, but were announced? I don't know. I'm just wondering if that's possible.

Mr. DeLaney: Part of my issue is that when we take such a nuanced position; when we say, okay, we're going to deem this withdrawn, but we neither accept nor reject the rest of the stipulation, that leaves the parties unclear, particularly the tenants, I think, who may well wonder, well, what don't they accept? And is there anything they do accept? And, to me, that just clears the case off our docket, but I don't know, in the long run, whether it paves the way toward a harmonious existence between the landlord and tenants or the pathway to legalization.

Mr. Hylton (to Ms. Lin): What is meant by, the Loft Board neither accepts nor rejects the remaining terms of the stipulation? What are we actually saying there?

Ms. Lin: We're saying we're not giving an opinion on its legality and enforceability. A lot of times, they can agree to any number of things. And sometimes we have no way of knowing whether it's actually going to be…whether it's enforceable, either under our jurisdiction or any jurisdiction. As far as the Loft Board is concerned, the tenants coming to us -- most times it's tenants, but sometimes it's the owner -- saying, we want to withdraw this application. And the underlying reason may not necessarily matter. It's very difficult for the Loft Board to step in and say, we're not going to accept your applications, because we don't like the terms that you've decided on. So, we can do it, if it violates public policy. But that's pretty much the only ground that we can.

Mr. Barowitz: Correct me if I'm wrong. Summary judgment by the courts, say by the OATH courts, that's the end of the process. They can't be renewed in any manner whatsoever. However, with the OATH courts, we say, well, we neither accept or reject it. I've been confused about this since I first came on the Board. So, I'm not sure. Maybe we should just say, the settlement judgement was….and just let it go with that. Of course, we know we can accept or reject it, or modify it. So, this particular court does not have total jurisdiction? Of course it is. So, the whole thing is a sort of great mystery to me.

Mr. Hylton: If I understand you, Mr. Barowitz, you're saying we should just be silent whenever we're not aware of whether it violates public policy or not?

Mr. Barowitz: Yes, we should be silent unless there is a problem with public policy.

Mr. Hylton: How do you answer that, Mr. DeLaney?

Mr. DeLaney: That's a good question, Elliott. As I said, there's something kind of precocious about saying, well, I neither accept nor reject everything else. We just voted on few common examples on the Summary Calendar. The landlord and tenant agree to a rent. And they agree that maybe there's been an overcharge, and the tenant can offset that rent. Is that the legal regulated rent? Maybe. Maybe it's too high, maybe it's too low. We need to know, but we accept it, and we neither accept nor reject the terms. It could be another five years before that building comes before us for an Exit Order. And then we have to go figure out what the rent is.

Ms. Roslund: For me, one of the tenets of this discussion is the fact that it's presented to the Loft Board as a *fait accompli,* rather than it being a sort of tentative decision, which is then vetted by the Loft Board and then becomes an actual Order. (For example) they say okay, we agree these are going to be the rents; and then it comes to the Loft Board and is checked against the records; and the Loft Board says, yes, these are actually the rents. Then it can be accepted. Really accepted, as opposed to this neither here nor there.

Mr. DeLaney: Yes. Rent disputes are probably the easiest ones to look at. You may recall, Ms. Roslund, shortly after you came on the Board, we had a case where the stipulation included the tenants waiving their right to a freight elevator, and I spent quite a bit of time on that. Some of the other Board members were supportive of questioning whether that was an appropriate thing to have in a stipulation. So, I guess the concern I have is that, without some kind of parameters… What I frequently hear when I talk to attorneys and ask, what kind of deal was that, they say, well, you've got to realize the landlord was being very difficult. And, you know, the tenants have so many days of trial, and they want to settle it, and it's costing them a lot of money.

So, the more we say, oh, I apply for coverage, but we can get into a fight about whether or not the freight elevator is available to me -- I think that creates an expanded playing field, where, from my vantage point, more often than not, it's the owner and the owners attorneys who are bringing in additional requests and raising ancillary issues. And if they can get that into the stipulation before they finally say, okay, yeah, sure, we'll register the unit and you're the protected occupant and the rent is X…. The late Esther Rand from Met Council used to always say that landlords ask for the moon on the theory that they'll get a piece of it. And in my experience, the stipulation process at OATH sometimes looks a lot like the lunar surface to some owners.

Mr. Hylton: Any other comments? And maybe some advice on what we do? Where do we go from here? Mr. DeLaney, I've heard a whole lot of uncomfortableness, but what's the fix, in your opinion?

Mr. DeLaney: The best I've been able to come up with is that we provide OATH with some guidance. That if the application is for X coverage, then certain other topics are part of the application.

Mr. Hylton: So, we could only give some guidance, and then…Are you asking staff to come up with guidance for Board approval?

Mr. DeLaney: If I had a definitive answer, I'd propose it. I don't. I'm just stating that I saw it as a problem that we should give some attention.

Mr. Hylton: What if we ask staff to do a little bit of research into our legal options, do some consulting, and report back about what we could possibly do or not do? Maybe give us…(to Ms. Lin) two months? Not next month, but the following month?

Ms. Lin: We'll do our best.

Mr. Hylton: We have quite a bit of rulemaking on the table right now. So…

Ms. Lin: We have a lot. Especially with the violations for the late filing. There's a lot going on in next few months. And we are, professionally, short-staffed. So, we'll do our best to do the research, but I would ask for your patience at this time.

Mr. Hylton: Okay, Board members, you heard that, yes? It would be added pressure on the staff right now without an Executive Director. Ms. Lin is doing a great job, but we are short-staffed. Perhaps when the new Director comes on board, we can revisit this; hopefully, with some guidance from the 7th floor. Would that be okay with everyone?

Mr. DeLaney: It's fine with me. I can promise I'll continue to keep raising the issue.

Mr. Hylton: I know, Mr. DeLaney. Thank you. The other issue was with the language, "deemed withdrawn." I think it was Ms. Roslund who brought this up.

Ms. Roslund. Yes. What does it mean when we say, "deemed withdrawn"? And why are we deeming an application withdrawn after a settlement? Or that's not deemed closed. Or what the advantage to withdrawing is rather than..

Mr. Hylton: …resolving?

Ms. Roslund: Resolving, yes.

Mr. Hylton: My only answer to that is that an application is for the Board to decide when it comes before us. Whenever there is a settlement, there's no longer anything for the Board to decide. So, we usually say it's deemed withdrawn from the Board. But the record still stands as to the resolution of the application. But I could be wrong, so I'm opening it up for comment? Or do we need to change the line? Did I understand you correctly, Miss Roslund?

Ms. Roslund: Yes.

Mr. Hylton: So, is there a better way to put this?

Ms. Lin: I think mostly in our Orders we track the language, if we called it a settlement. But often times the language used in the actual stipulation, the stipulation of settlement, says, I withdraw the application. And that's what the tenant will refer to as well. I think the Chairperson's explanation makes sense. If we treat it as an application to the Board, and the applicant is now withdrawing the application…..that makes logical sense to me. But I'm not sure if it's significant to say the application is closed. I think, logically, it makes sense to say the application is being withdrawn.

Ms. Roslund: So, many of these stipulated settlements, state, specifically, that a tenant is seeking protected occupancy. And almost every time the stipulated settlement is that, if the tenant withdraws his application, the owner will file that particular tenant as protected occupant. And that was how this conversation started. I said, well, what's the difference whether the tenant makes the application or the landlord makes it? Why does the tenant always withdraw this application, and the building owner is the one to do the filing? Why don't we just complete the tenant's application, and then it's the same end result? And then that opened the question about the rent disputes. So, they put in for rent dispute, and then the dispute is settled. Why is the application withdrawn? Why isn't it just that the application is acted upon, and the

dispute is settled? So, there's all these different things that are happening, which could be resolved by not withdrawing the application.

Ms. Lin: Yes, I think it's a fair question.

Ms. Roslund: And the application would resolve the issue. So, instead of just acting upon the application, it seems like there's always this other thing that happens to resolve the problem, and then the application is withdrawn. So, it just seemed odd to me.

Ms. Lin: This is often how the stipulation is worded when it comes to us, as this is how the parties choose to settle it. They might choose to write, the tenant withdraws the application, even when the tenant's been granted what they want. That's how the parties have chosen to phrase it, and we often respect the parties' language. Now, that being said, if the Board would like the staff to word the Proposed Orders differently, when there's a settlement in favor, we could certainly do that. For example, if the tenant is being granted protected occupancy status, would it be better to say the application is settled? As opposed to withdrawn?

Mr. Hylton: Or maybe say that the tenant is granted protection or…

Ms. Lin: Protected occupancy.

Mr. Hylton: The tenant's been granted protected occupancy status, therefore…

Ms. Lin: …the application is being settled.

Mr. Hylton: Yes. Settled. Or, the application is being resolved.

Ms. Roslund: It's the same application, right? So, it's only resolved if their application is being acted upon. It's factually correct. If somebody withdraws their application, then it's withdrawn. Even if you can get to the same point with a different application.

Mr. Hylton: Can you repeat that please? I'm not sure we understand.

Ms. Roslund: We could just not say that the application is being withdrawn. It's a factually correct statement. If the tenant or whoever it may be is withdrawing an application, then we can't change the language to say that it's been resolved, because it's not been resolved; it's been withdrawn. It's only been resolved if it was then closed out.

Ms. Lin: So, I think that's a big reason why we try to respect the actual language that the parties have used, which is often withdrawing the application. But if the tenant is getting what they want, we could, in theory, settle the application.

Ms. Roslund: So, I think the conversation is to two pronged, and the first is what we're discussing now, which is the Loft Board's language about accepting or rejecting, but also withdrawn. I think it has to do with emphasis. In the Proposed Order, a lot of times the emphasis seems to be that the application's withdrawn, as opposed to the application has been -- or the intent of the application has been settled in a different manner. And that resolution is a rent settlement, or a rent, or an overcharge returned, or a protected occupancy status, or whatever it may be. Right? So, I find the Proposed Orders….It feels like we are neither accepting nor rejecting the fact that this person has withdrawn their application. And that's not really true. It's really a bigger picture about why they placed the application in the first place, right?

So, the second prong, the second part of the conversation, is why is this the way the process works? Because it seems to happen in every case. Someone makes an application; there's a stipulated settlement; then they withdraw their application. As opposed to, I make an application, and the settlement is that you process my application.

Ms. Lin: I think you're really asking why the parties are doing this; and unfortunately, I can't really answer why they use the specific language that they do. Is there more discussion to be had? I don't know. Maybe this is a something that's worth discussing at a later Board meeting. I'm just noting the time is 3:22, and we do still have rules. If the Board members want to table this discussion for now and see what we can do with the rules….

Ms. Torres-Moskovitz: Can I say one more thing on this? I think, maybe what we're getting at, or coming around to is -- you have some cases that are transferred, and they continue on in a different direction, because it moves over to the landlord. And others are withdrawn because the tenant disappeared. Those are the ones I wonder about. Did something happen? Why all of the sudden is the tenant not applying for coverage, when they were? All of that is held under "withdrawn." And it's confusing, I would think, for the public to read that, because it's confusing for us. It would be better to just know, okay, that tenant moved out of town and stopped their application; and this tenant is continuing to pursue a path with the landlord, and they're progressing. But when everything's just withdrawn, it's hard to…

Ms. Lin: Yes, I can understand that. So, what staff can do is to clarify when the tenant has been granted their application in effect. Even if they withdraw it, we can say, the application is being withdrawn, because the tenant is either being granted protected occupancy or is being granted rent overcharge. In situations where the tenant is just withdrawing the application, we often don't know why they're doing it. We don't often see the effects. Did they move out? Did they feel like they had a losing case? We don't really know when the tenants don't get anything in the stipulation. But in stipulations when tenants do get what they want or something as a deal, we could include that in the Proposed Orders, if you think that'll clarify things.

Mr. DeLaney: I think that would be helpful. And, you know, some of these conventions that have evolved over the years….There's one owner attorney for whom it's formulaic. The tenant applies for protected occupancy; they go around a while; the attorney denies everything on behalf of the owner. And then ultimately, there's a stipulation, and part of the stipulation requests that the tenant withdraw the application with prejudice, even though the tenant has actually won, because the landlord has agreed to register the unit and has agreed to make the tenant the protected occupant. So why is the tenant withdrawing the application with prejudice? I mean, it just…I guess there's a method to this madness, but I don't know what it is.

Ms. Lin: Okay, so the staff can certainly provide more details when the tenant is getting something out of the settlement deal. We can clarify what the tenant is getting.

ATTENDANCE, SELF-CERTIFICATION MEETING

Mr. Hylton: Okay, so it seems to me that at least the temporary or progressive solution here is to provide some more information for the time being, and then take it from there. If anyone comes up with any better ideas, sure, we will entertain more discussions. But I want to go on to the rules for now, with everybody's permission. But before we do that, regarding the meeting with the Deputy Commissioner of Development, which will probably be next week, I need to review the attendance. I believe Ms. Torres-Moskovitz, having made the request, is one. I cannot have more than four people at this meeting, otherwise, I'm having a Board meeting, which would be against the law. So, Ms. Torres-Moskovitz, Ms. Roslund, I believe, was interested?

Mr. DeLaney: I expressed interest.

Mr. Hylton: And Mr. DeLaney. Yes. So that leaves room for one other person, and if it's not me, it would be kind of awkward. So, I'm thinking that Mr. Roche…You expressed some interest in this meeting also correct? But five makes the Board meeting?

Ms. Lin: Yes. Five is a quorum.

Mr. Hylton: So, Mr. Roche, you and I will have to decide between the two of us, who will attend. We'll discuss it. Now, the next item on the agenda is rulemaking, and updates to the rulemaking. Mr. Clarke will lead the discussion.

RULEMAKING

Mr. Clarke: For Ms. Rajan's benefit, the new Board member, we've been working on rulemaking for quite some time. And one of the purposes of the work, originally, was to clarify some of the more confusing parts of the rules. But last year, the Loft Law was actually amended, so it's more important now for us to complete this task, because our rules have to now match the law that has been changed.

The Loft Board staff has worked with the Board members to create the proposed rules that we now have. And we submitted them to various different departments, who have returned to us their comments and feedback. Now, we're presenting those comments to the Board to see how they feel about the changes that some of these other departments want to make to our proposed rules.

The first group of comments we want to review are from OATH, the Office of Administrative Trials and Hearings. All the Board members should have the document from the last Board meeting. It starts with 1-12 Definitions. These are all the comments that OATH submitted. Does everybody have that? Because we're going to be working from that sheet.

If everybody remembers, on page five of the proposed rules, OATH's first comment was about the definition of adjudicator. I'll read what OATH wanted to include and what they wanted to change. In the definition of adjudicator, we have, "Adjudicator means an Administrative Law Judge or hearing officer of the Office of Administrative Trials and Hearings;" and OATH inserted, "for matters before that tribunal." And then it continues, "or a Loft Board," and they wanted to insert the word "Adjudicator" and take out staff member. And then the remainder of the sentence says, "assigned to conference or hear and decide an Application for matters before the Loft Board."

So, basically, what OATH wants to do with this language is make it very clear that the Administrative Law Judge or the hearing officer, before either the Loft Board or before OATH, in defining who the adjudicator is. So, what they put in was, "for matters before that tribunal." We spoke to OATH, and we agreed that that language is fine, as it clarifies what tribunal the adjudicator is presenting to.

Next, OATH wanted to use the word adjudicator in the definition of adjudicator. Ms. Torres-Moskovitz had pointed out that that is not acceptable, and I think we all agreed.

So, we'd like to get the Board members' opinion on whether or not we should include what they wanted to include, which is "for matters before that tribunal," which gives a little bit more clarity in terms of what tribunal the adjudicator is in front of. And also, if we don't want to use the word adjudicator, what would we like to use instead? Originally, it was staff member, instead of adjudicator, but we'd like the Board members to weigh in to see if we can clarify this definition of adjudicator.

Mr. Barowitz: I didn't like that term, adjudicator. They're judges; is that not enough? And tribunal, it's also another fancy word for the courts. I don't know why we can't keep it nice and simple. The judge in the court. And let it go with that. When it comes to the staff members, I am not quite sure the right term to use, because obviously you are lawyers; you're not adjudicators; you're not judges. But you are lawyers. We now have what, five lawyers on the staff? So, why isn't lawyers good enough? Don't lawyers go to court, many of them? I'll let this thing go, because if they feel that they need to have the fancy terminology….

Ms. Lin: Mr. Barowitz, I just want to highlight the fact that the part about adjudicators from OATH is already in our proposed rules. It's what I understand the Board has already voted on. That's not an OATH input; the word adjudicator is from us, the Loft Board.

Mr. Barowitz: Did it come down from the state? Is that what you're saying?

Ms. Lin: No, it's what the Board had decided to do at some point when you were doing rulemaking.

Mr. Hylton: This word adjudicator came up and was approved by the Board to be used in this definition. I think the problem here is that we were trying to use one term to define the OATH ALJ (Administrative Law Judge) as well as the former tribunal person that decided Loft Board matters; which is still in our rules and which we're keeping. We have that option for the future, right? To basically have our own tribunal. So, we were trying to find this one term, and adjudicator would be any of those people without changing the rules again. So, that probably was the issue. Did I get that right?

Mr. Clarke: Yes, in the past the Loft Board did have a hearing officer.

Mr. DeLaney: Mr. Chair, maybe I can offer kind of a little background.

Mr. Hylton: Thank you.

Mr. DeLaney: Up until 1995, the Loft Board had its own hearing officer. And they were called hearing officers. We brought OATH into the equation to take over that function in the mid-1990s. But there are still

things that the staff does. Staff works on reconsideration applications. The Executive Director and the Acting Executive Director rule on administrative determinations. So, I don't know if it's important, but we should be mindful of that as we look at refinements.

Mr. Hylton: So, the issue is perhaps just with the word staff member? What's wrong with leaving staff member in?

Mr. Clarke (to Mr. DeLaney): We don't want to lose that language. Because even though right now the Loft Board staff doesn't handle the hearings and trials, that might change in the future. We might decide that we want to go back and handle these cases in-house again. And we needed some terminology there, so that we can reserve that space for the future, if we wanted to do that again.

Ms. Torres-Moskovitz: Can I add some of my thoughts? I'm remembering our last conversation on this. So, I, personally, am in support of, "for matters before that tribunal." That makes sense to me. Thinking of it from the perspective of a landlord or a tenant, you might think, okay, we have an issue; we're going to housing court or something, because it's a house. But then the question is, who is adjudicating this? Oh, it's, OATH and OATH is this thing that's a little different than a court. I think it's a little different, but it still has jurisdiction to make a ruling. I don't know, you all know better. But I've been through it. I get it, because I've been through it. It's not the same as going to a big courthouse. And then, when it says, "or a Loft Board Adjudicator," I'm wondering, could it say legal staff member? Can it just say, staff member? That would be the easiest. But if there's a concern that it can't be a secretary or something who's making decisions, it needs to be someone who has legal training. Does that need to be in the terminology?

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

Mr. Barowitz: Why don't we just say staff lawyers?

Mr. Clarke: I think Ms. Torres is saying that she doesn't mind staff member, but it's possible to maybe add the word legal. Some type of reference to a staff member with a legal background that could handle a hearing, rather than any staff member of the Board.

Mr. Hylton: The only thing is, I don't believe the person here is actually making decisions. They're just fact-finding, right? And they're making recommendations to you, the Board members. So, I am not quite sure if that's necessary; if it has to be a person with legal qualifications. Don't forget that the Board, you, the Board, is still, in effect, the decider of the case. OATH is just fact-finding, and so is this person, this staff member. So, it could be an experienced staff member. In fact, I believe….Mr. DeLaney, you should be able to tell us. Before, was it the lawyers that handled that? I know the Executive Director is a lawyer, but…

Mr. DeLaney: The original cadre of hearing officers included a couple of people who were not attorneys.

Mr. Hylton: Right.

Mr. DeLaney: Which is probably why staff member was used at the time. Maybe one way to get out of this would be to modify the staff member to say something like a staff member designated by the Executive Director, or designated by the Chair, so that it would recognize that the person had to be qualified in some way.

Ms. Rajan: Can I ask a question? Just to clarify a couple of things.

Mr. Clarke: Sure.

Ms. Rajan: Okay, the remainder of the definition, the part after the Loft Board, says, "assigns to conference, or hear and decide." It's not about the fact-finding. It feels like what they're trying to figure out in the definitions is who's going to be the one who gets to decide. So, for matters before the OATH tribunal, they're saying…. we're saying, if it's before the OATH tribunal, then it's either the Administrative Law Judge or hearing officer of OATH. Those are the people who get to decide. If it's not them, and if it's still at the Loft Board, then the language means we should probably be able to indicate who has the authority to decide. Is that critical? The idea that somebody in the Loft Board has to be able to decide? And if so, is that an authority that rests with the Loft Board or with the Loft staff?

Ms. Lin: So, I think it depends on the application. There are some applications where that does apply, like the code extension applications. The Executive Director decides that. All other applications go to the Board.

And that's referenced down below on 1-31, in decisions. The adjudicator will submit findings of fact and recommend decisions. So, I agree, that it sounds a little misleading, but what they're actually deciding on is the recommendation for the application.

Ms. Rajan: I didn't understand that part. We're deciding on the recommendation.

Mr. Clarke: Right.

Mr. Hylton: Yes. Ms. Rajan, the Board, the Loft Board, of which you're now a member, is the ultimate decider of applications before it. Everything else -- our fact-finders -- everyone else is OATH, or if it was a staff member that would do the fact-finding, they would make a recommendation on that application, and the Board would actually decide. What Ms. Lin is saying is our rules contain provisions that allow the Executive Director to decide some issues, right? But only the Executive Director. So, it is a little unclear here.

Mr. Clarke: It's a little misleading because of the words hear and then decide.

Mr. Hylton: It should be hear and recommend.

Ms. Rajan: If the authority is just within the Loft Board, then you just have to say, or a Loft Board member. Right? Then there's no staff member.

Mr. Hylton: True. Or Loft Board member assigned to conference.

Ms. Lin: If you just say Loft Board member, it sounds like it's a Board member.

Mr. Hylton: Oh, I see. Yes.

Ms. Rajan: A Loft Board individual. So that's not right.

Mr. Hylton: We want to make sure it's the staff that supports the Board. That's why staff member was initially there, to clarify that. Say we put back the word staff member. Or a Loft Board staff member assigned to conference, hear, or decide an application for matters before the Loft Board.

Mr. Clarke: That would accomplish everything, I think. Because then you would have the Executive Director, who could decide actually.

Mr. Hylton: Right. Did everybody get that?

Ms. Torres-Moskovitz: Yes. I like staff members. Everyone else is okay.

Mr. Hylton: Yes, but, it's also proposing a change to the second part of that. Did you hear that? So, let me just read that again and see if we can decide. By the way, was OATH stuck on this word, adjudicator? Or were they just proposing it?

Ms. Lin: No, they just proposed.

Mr. Hylton: OK, so the second part of that sentence would read, "for a Loft Board staff member " – OATH's edit of adjudicators – so, "or a Loft Board staff member assigned to conference," – take out the word, for -- "hear, or decide an application for matters before the Loft Board." Do I have any objection? Thank you. So, go on.

Mr. Clarke: Thank you. The next section is 1- 27 regarding hearings. There are two sections: a part (b) and a part (e). The first is part (b). OATH has some issues with respect to who is going to be mailing out notices for scheduling hearings. Our original rule said that the Loft Board would send out the notices to schedule the hearing. We tried to change it so that whoever was adjudicating the matter would be responsible for mailing out the notices for the hearing. That being said, OATH is our primary adjudicator, which would mean that OATH would primarily be responsible for mailing out the notices for scheduling the hearings. OATH gave us some push-back and said that the buildings that are coming under our jurisdiction now are getting bigger and bigger, and mailing out these notices is getting extremely burdensome to OATH.

So, OATH wants the Loft Board to take responsibility for mailing out the notices at some point. But we let OATH know that right now, we are very short-handed, and it would be impossible for us to mail out notices to all of the parties. And OATH said, that's fine. They didn't want to commit to it in writing, but they said that they would continue on with the normal process of OATH sending out the notices.

They've been doing it ever since we've sent over cases to OATH; and they said, as long as we're short-staffed, they will continue to do it. But they didn't want to commit, in our rules, to an adjudicator sending out the notices. So, we agreed that we would leave the word Loft Board in there, because that's the way it is in our rules now. And OATH more or less agreed that it would help us out during this time, while we really just don't have the staff to send out such a vast quantity of notices to all the parties about developments with a hearing or trial.

So, the first question is, do the Board members agree that we can just leave Board member in, as it is in our original rules, instead of trying to change it to adjudicator? Or, do the Board members want to press the word adjudicator, whoever is adjudicating is responsible for mailing out these notes?

Ms. Torres-Moskovitz: It sounds like you've already lost the battle to push it off onto OATH, right? I think we're stuck with doing it. Is that where we are?

Mr. Hylton: Yes, for now. But they're going to continue to do it. They understand the situation, and believe it or not, it may have been a reaction to Coronavirus and everything that's happening. But as Ms. Torres-Moskovitz was saying, we don't really have much of a…

Ms. Lin … leg to stand on.

Mr. Hylton: We don't have a leg to stand on. We are on our knees right now. So, we have to go with it. They're protecting themselves right now. But if worse comes to worst, we'll get this done. It's not a problem.

Mr. Hernandez: Could the language not be changed to say, at least fifteen-days' notice of a scheduled hearing must be provided to an applicant, and then leave out who, specifically, will be providing it? To give

us a little bit of flexibility. I get that it will revert to us at some point, but they may make a unilateral decision at some point, where we have no say, and we'd have to take on that responsibility. Can we leave the language vague?

Mr. Hylton: And if it's vague, it's our rules, and therefore, it will default right back to us.

Mr. Hernandez: True, but I just see it as, the moment we put "the Loft Board," they'll immediately use that as an opportunity, when they get an Executive Director who says, no, you know what? I don't want to do this. Throw it back into the Loft Board. And they'll point to this. And there's no room, no wiggle room for negotiation. So, I'm just wondering if there's a way of rephrasing the sentence, where we just say at least fifteen-days' notice needs to be provided. We don't necessarily pinpoint who (has to provide the notice). That just gives us a little bit more wiggle room at some point in the future, when it does revert back to the Loft Board.

Ms. Lin: I think, again, this is what our rules currently say. It currently says, Loft Board. I am a little concerned that leaving it vague would create ambiguity where there shouldn't be any.

Mr. Hylton: Yes, and Mr. Hernandez, the purpose of rules is to undo ambiguity, to make things fair. And, again, as Ms. Lin just said, the rule actually, right now, says, "Loft Board." We got stuck. We tried to sneak this one in by putting the word adjudicator there; and as OATH is one of the adjudicators, they would be doing it. But they found us out. They caught us out on it.

Mr. DeLaney: But they are in fact doing it at the moment.

Mr. Hylton: Yes, they are in fact doing that right now. And as a matter of fact, if it comes down to us doing it, we will have to do it. We'd just have to find a way.

Mr. DeLaney: Can we explore what the consequences of that would be?

Mr. Hylton: The consequences of what?

Mr. DeLaney: Of doing it. I would remind the Board members that -- and of course, one of the problems we have is we've been working off of the proposed rules for many months now, so that most of us don't have what's currently in effect in front of us, because this section was entirely rewritten -- a few years ago, the Board had already taken some work off its plate by having the applicant serve the parties with the application. It used to be the applicant would submit a whole bunch of copies to the Loft Board, and the Loft Board would serve all the other affected parties. Now, we handed most of the adjudication work over to OATH, and if we take back the obligation to provide these fifteen-days' notice, if we're going to send out the notices, and then we've people writing back and saying, oh, I can't do it; that's the wrong day; I need an adjournment. Who's going to deal with all of that?

Mr. Clarke: I believe what OATH is saying is, at the end of the day, we would be responsible for all of that.

Mr. Hylton: We would be responsible. They're doing it now. But we would, ultimately. If they say, we're swamped and cannot do it, then we would have to take that on, and that would be a need that the Department of Buildings would have to accept.

Mr. DeLaney: So, somehow, we've got to coordinate with OATH Judge X to know what's on his or her calendar to send out a notice, right?

Ms. Lin: Yes, that's what would happen.

Mr. DeLaney. Right. So, we say OATH Judge X, how about December 12? And OATH Judge X says, that's fine. But then one of the attorneys is going to be on vacation that week. And that comes to us. And now we're back on the phone with OATH Judge X.

Mr. Clarke: Like scheduling a Narrative Statement Conference.

Mr. DeLaney: Right. Except there's no OATH judge in the equation.

Mr. Clarke: Exactly.

Mr. DeLaney: And so, the truth of the matter is, when the Loft Board was started, it had a million-dollar budget. It had a staff of thirty. We have shrunk over the years, whereas OATH has grown into an empire, right? It used to just be the tribunal and the trials division. Then they glommed on to all of ECB (Environmental Control Board). I understand the next few years are going to be tough in the government, but I don't think we should take this back. I think this needs to be given a little more thought.

Ms. Lin: Mr. DeLaney, I just want to emphasize, we're not taking anything back. This is what our current rules currently say. We're trying to make a change that they don't want. So, there's no taking things back, because this rule is not the rule yet.

Mr. DeLaney: I think we should stick to our guns.

Mr. Hylton: Okay.

Mr. DeLaney: At this point in time, follow the money. If somebody applies to the Loft Board and sends money with an application, it comes to us, right? Do we keep the money? No, it goes into the general funds, correct?

Mr. Hylton: Yes.

Mr. DeLaney: Do we pay OATH anything for what they do?

Mr. Hylton: Yes. They get all the money from our violations.

Mr. DeLaney: The ECB components, that's now part of OATH?

Mr. Hylton: Or the OATH account.

Mr. DeLaney: I think there's a real question here as to whether, in the long run this….I'm always concerned about things that could collapse the Loft Board. Look at one area we got to work on about a year and a half ago. It was a wonderful, and in my view, very important enforcement initiative. And that's just disappeared.

The attorney who was handling it left the agency, and I haven't heard a peep about it since. In fact, I made a note earlier today to write a letter to you, Mr. Chair, asking that we address that. But now we're going to be keeping Judge Spooner's calendar for him? And arranging and making determinations? And then when somebody wants another postponement, are we going to decide, no, you've had too many? Or are we going to have them decide? We're going to be on the phone with OATH all day long.

Mr. Hylton: I don't believe we'd be trying too much. Once the judge, or adjudicator, has decided on a new hearing or something like that, then the notice of that hearing would, ultimately, be the Loft Board's responsibility, as per our rules right now. That's where we are. But I get you. Follow the money. We know that OATH can push back, but I don't want them to be pushing back when this matter goes for public hearings. It wouldn't look too good. The Mayor's Office required us to get OATH to opine on these rules. But I'm just letting you know; I'm not opposed to giving a shot.

Ms. Lin: You can try. I mean, I don't… Again, this is at the request of the Mayor's Office. And I don't know what they'll do with certification. If this is a somehow a deal breaker for…

Mr. Hylton: Again, I'm not even sure OATH has to comply with our rules.

Ms. Lin: No… I'm not sure.

Mr. Hylton: Okay. Alright. I get you. I hope OATH'S not listening. But we'll keep this up a little bit.

Ms. Torres-Moskovitz: I hope they are.

Mr. Hylton: No, no, we don't want them to be listening now. But, we'll try and see what we can do.

Mr. DeLaney: I mean, again, look at the case that we had on the docket today, 100 Metropolitan. Twenty-three days of hearings. Twenty-three days of trial.

Mr. Hylton: Right. Yes. I got you.

Mr. Clarke: But the thing is, Mr. DeLaney, our rules have already said it's the Loft Board's responsibility. So, OATH is saying, just keep it the way that it is. We'll still help you out. We'll pinky swear that we'll keep on helping you out, as long as you guys are in this situation. But….

Ms. Lin: But just for now, is what they're saying.

Mr. Clarke: They're not making a long-term promise.

Ms. Lin: I'm not sure if it's in the Loft Board's best interest to be antagonistic on this issue. They are, I think, doing us a favor, because our rules can't and don't mandate them to do this. And right now, they are doing us a huge favor by doing this. I'd prefer not to rock the boat.

Mr. Hylton: That's a good point. Ms. Lin's saying that we are at their mercy already, because our rules say we should be doing it, and they're doing it. So…

Mr. DeLaney: I would just remind my colleagues that the reason the rules say the Loft Board should be doing it is because, when that rule was written, OATH did not exist. There was no OATH. And it was probably an oversight for us when we did some amendments to the rules in the 90s and put in, "or OATH hearing officer," in about twenty different spots. We probably should have addressed this then.

Mr. Hylton: Did they discuss with us what they do when they adjudicate other cases?

Ms. Lin: No one else has this requirement but us.

Mr. Hylton: Oh.

Ms. Lin: That's the problem.

Mr. Clarke: Yes, that's the problem.

Ms. Lin: Everyone else is like an agency violation and the agency does it. They issue a notice, and so they don't do this. But because we have two parties, and it's not us doing it, that's why it's an issue. So, the other solution OATH did propose was to put this burden onto the parties.

Mr. Clarke: Right.

Ms. Lin: Which we did not agree to.

Mr. Clarke: Right.

Mr. DeLaney: Can you repeat that, Ms. Lin?

Ms. Lin: One of the proposals OATH made was to have the parties who filed issue these notices. We didn't think the Board members would like that solution, because it does place the burden on the litigants. But it's something to think about, if the Board members would like to consider that option.

Mr. Clarke: Basically, the applicant would have to take on this responsibility.

Mr. Hylton: That would be a burden. I wouldn't vote for that.

Mr. Clarke: I think you know that the point is, as Deputy General Counsel Lin said, we don't really have a leg to stand on. OATH was very adamant that this is something that's actually drowning their unit as well. They said, specifically, that the buildings are getting bigger and bigger, and they're mailing out more notices than they ever anticipated. And on our end, we said, can you imagine how we would feel if we had to take this on? And we came up with a temporary solution: leave the language the way it is now, and they would continue to help us out with the mailings, as long as we're in the situation that we're in. But they're not committing to doing this indefinitely. With that being said, we can put a pin on that, and I think we can go to the next OATH issue, which is also pretty dicey.

Ms. Lin: It's 4:12. Do we want to start a new issue?

ADDITIONAL RULEMAKING MEETING IN OCTOBER and CLOSE OF MEETING

Mr. Hylton: I don't believe you want to go any further with this. With that said, let me ask the Board members: are you open to having a dedicated rules meeting in October? I should have asked my Executive Director first, but we're not going to get far with the rules if we don't dedicate a meeting to it. Cases and other things seem to get in the way. Are we okay with an October meeting just for rules? We'll send you an email with the available dates. Would that be OK with you, an extra meeting? We normally try to have our meetings on Thursdays, but we'll have to look at the calendar. And if it's not October, then November. But that would be difficult with Thanksgiving. So, we'll try for October.

Mr. Barowitz thought it would be better to wait until there are in-person meetings again, because the rules discussions are complex. But Mr. Hylton reminded him of the timeline and the fact that it could be a while before in-person meetings resume, and continued…

Mr. Hylton: I'm sorry, this is not the place to do this anyway. You need to look at your calendars. We'll get back to you with dates. We need a quorum, so if it doesn't happen; it doesn't happen. I don't want the cases to be delayed because of our rulemaking, but we do need to get the rules done. So, Ms. Lin will circulate an email with some suggested dates, and we'll see if we can get a quorum. If so, we'll have an extra Board meeting, and we'll try to keep it on a Thursday. But Tuesday can also work for some. Today, this was a nice, spirited, natural discussion, and I think we at least resolved one issue.

Ms. Torres-Moskovitz asked how the staff felt about the rest of the issues on the OATH list; whether they were difficult issues or not.

After some review, Mr. Clarke and Mr. Hylton agreed that they were all important.

Mr. Clarke: The last one is not so bad. But the next three coming up -- we want to be very familiar with, and hopefully you can come prepared with an opinion about what OATH would like to change. And if we're not in agreement, then possibly some suggestions for alternate language.

Mr. Hylton commented on how much the COVID situation had set back the work on the rules.

Ms. Lin: There are a lot of things to review from the Law Department, too. Some matters staff can resolve, but there are some issues that the Board needs to tell us what to do – issues of policy and so forth.

Mr. Hylton: Yes. What Ms. Lin is saying is that there is a substantial amount of things to address from the Law Department before they're even ready for you.

Ms. Lin: There are questions for the Board members to decide, and then we have to go back to the Law Department. And there are issues the staff has to figure out how to implement.

Mr. Hylton (to Ms. Lin): Do you think you're in a position to bring some of those things to our next staff meeting?

Ms. Lin: Some of them, yes. There are some issues that won't be resolved, but I don't think we're going to get to get through OATH, and the Law Department comments, and get to that section.

Mr. Hylton: This will conclude our September 17, 2020 Loft Board meeting. Our next public meeting will be held on Thursday, October 15, 2020, at 2pm. And I'll add that we may have another Board meeting in between or after that date to discuss rules; and, that the Governor's suspension of the in-person meeting requirements of Open Meetings Law is in effect until October 4, 2020. So, at this point, we do not know whether the next Board meeting will be in person or via teleconference. Board members, we will update you as soon as we know the format of our next meeting, and we'll post that information on the Loft Board's website. I encourage the Board members to sign and email their attendance sheets as soon as possible. Thank you and have a great weekend.