MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting
Held at 280 Broadway, Third Floor Conference Room

January 31, 2019

The meeting began at: 1:00 pm

Attendees: Elliott Barowitz, Public Member; Richard Roche, Fire Department *ex officio;* Robinson Hernandez, Manufacturers' Representative; 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 January 31, 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.

He then turned the floor over to Ms. Balsam for some announcements.

Ms. Balsam: Two things. The deadline for the Project Guidelines was extended to February 28, 2019. Ms. Torres-Moskovitz and Ms. Roslund were working on comments, if any Board members want to look it over. It's a very technical document, but if you want to, send comments to them. Next, the City Council has scheduled an oversight hearing regarding Loft Law issues for February 11, 2019.

Ms. Balsam noted that it's a public meeting of the Housing and Building Committee, and that she would send the Board location details, for whoever would like to attend.

Mr. Hylton: Before we start work on the rules, Ms. Balsam has circulated a proposal for the meeting with the attorneys, scheduled to take place on February 14, 2019, at 1:00PM, in Spector Hall at 22 Reade Street. The first issue is that the attorneys have proposed a panel-discussion format, and we would like your comments on that.

Ms. Torres-Moskovitz: I think the panel sounds good. From what I read, it seems they're still planning to address primary residence and protected occupancy, is that right?

Ms. Balsam: Yes, that's what we had asked them to address.

Mr. Hylton to the Board: And I believe you've given the Chair the power to cut anyone off who begins to divert from the main topics, is that correct?

Mr. DeLaney: Is the presumption that we're working on a 1:00PM start time?

Ms. Balsam: For the meeting with the attorneys?

Mr. DeLaney: Or the Board Meeting, on February 14.

Ms. Balsam: I believe so.

Mr. DeLaney noted that there had been some confusion lately with the start-time. 1PM? 2PM?

Mr. Hylton apologized for any mis-communication, and clarified that, as a general rule, the Board meets at 1PM. And if there is to be a private session, that will be held first, commencing at 1PM.

Ms. Torres-Moskovitz: So, on February 14, we have two hours allocated for the lawyers? Will we be doing cases?

Ms. Balsam: We are not doing cases. I'm hoping that we'll have follow-up discussion on what they've presented, and maybe move forward on something, like protected occupancy; but maybe not. No, we won't be doing cases. That will be February 21.

Mr. Hylton asked if there were any other comments regarding the presentation (none); and he confirmed with the Board that the panel format was acceptable.

Mr. Hylton continued: The Board asked for a breakdown of the questions concerning Protected Occupancy, and Ms. Balsam has prepared a draft of some of the proposed questions. Are there any comments?

Mr. DeLaney: It seems from the way the questions are organized, if the answer to the first one is, "no," where do we go from there?

Ms. Balsam: If they don't have to prove primary residency prior to the Board granting an application, then there's no reason to discuss what time period they'd have to prove. So from there, we'd go to question (4). But I think you should have them address those questions. I tried to break it down to what I thought would be most helpful to the Board for them to address. The ultimate decision as to which way to go is, of course, yours. Here, we're talking about asking them questions and what we want them to talk about.

Ms. Torres-Moskovitz: I was thinking you would provide examples of actual cases that had established precedents. What I'm really interested in, based upon real-life experience I see in my own building, in terms of primary residence and protected occupancy, is the whole situation of prime lessee, tenant, sub-tenant; in particular, what rights the sub-tenant has when the prime lessee moved out to the West Coast years before, and the original lease is years old. I'm trying to understand who has rights…

Ms. Balsam: Who has rights under the Loft Law.

Ms. Torres-Moskovitz: Through case-study examples…like the one about the couple moving to Maine and their niece. Cases like that really help me understand real scenarios, that I hear about, but have no idea how they're resolved. And it would be helpful if the lawyers could then flesh that out.

Ms. Balsam: OK. I will ask them to provide that

Mr. DeLaney: Can you paraphrase how you're going to add that question?

Ms. Balsam: I think the question is already there, as question (4). And I'll ask them to provide examples regarding prime lessees and sub-tenants.

Mr. DeLaney to Ms. Balsam: You had expressed to me the question of, how does this differ from the way things were, in terms of lawyers and cases five or ten years ago?

Ms. Balsam: In reference to discovery requests?

Mr. DeLaney: Yes. I'd like to see a question addressing that added to the list.

Ms. Balsam: Does anyone have any comments on that?

Ms. Torres-Moskovitz: I agree.

Ms. Balsam: Can we make it last? The other issues are more important.

Mr. Hylton: What Ms. Balsam is saying is that this new question would be added toward the end of the list. She feels that the existing questions are the most important.

Ms. Balsam: And this list of questions is what we asked the lawyers to address back in November.

Ms. Torres-Moskovitz: Is the bigger question that, we're working on rules, and these lawyers, on both sides, argue these discovery cases, which, in their minds, are big cases that change how the rules are interpreted. So wouldn't it be helpful to understand how they read these cases? And can that help us with rule-making? We're trying to modify the rules, and I want to understand… there are rules and then there are cases, and I don't understand….

Ms. Balsam: This rule is about who gets to be protected under the law; not how they prove it. Which is why I'm hesitant to move into whether they do or don't have proof. First we have to decide who is going to be protected. Then, how they prove it is a different issue. And I really don't want to get bogged down in discovery and lose sight of the main issue, which is, who are we going to protect? That's what we're talking about here. The Board has already said, we definitely want to protect more people, we want to make changes; and you've asked to have these people come in to talk about who to protect. So I think those are the most important questions for them to address.

Mr. DeLaney: With all due respect, I'm not quite sure I agree with that, in that the question that is uppermost in your mind, I think, with regard to this proposal that's been kicking around in various forms now since September of 2017, in terms of who do we want to protect, the Board has listened to me object multiple times that there was a policy in place that was followed for thirty years that included everybody. And the notion of who do we want to protect stems purely from some sequence of events in 2014 and 2015. It's probably best articulated in the second version of the opinion in 79 Lorimer St. But I've maintained adamantly that the Board's new interpretation has reversed thirty years of policy without any input or a hearing on the matter. And that has created a lot of problems.

Ms. Balsam: But that has nothing to do with discovery. That goes to the issue of who should be protected. So I think your position is that we used to protect more people than we protect now, and we should go back to the way it was, *regardless* of what kind of discovery requests are made. So why are we going to get bogged down in the issue of how discovery requests have changed over the years?

Ms. Torres-Moskovitz: I just want to clarify, because I think I misinterpreted. "Discovery" is how much proof do they actually have?

Ms. Balsam: Yes.

Ms. Torres-Moskovitz: I think I was thinking of rules versus cases. In the Department of Buildings, for architects, we have code, but then there's an examiner who starts to interpret that. So it's similar in law. You have rules, and then you have cases that…

Ms. Balsam: ….interpret the rules. That's right.

Ms. Torres-Moskovitz: So it would be helpful to hear from the attorneys if there is case history that's affecting them…

Ms. Balsam to Mr. DeLaney: Correct me if I'm wrong, but one of the complaints we've gotten from tenants is that because the Board has, allegedly, shifted, in terms of who's going to be protected, that they are now forced to provide a lot of documents they didn't used to have to provide. And I've asked repeatedly for examples of before and after, but I haven't gotten those examples. They're claiming that it's much more burdensome, and it may be. I've gotten some information, but it wasn't of a before-and-after nature, and I really want to see that picture, so I can understand what it is they're talking about. Because it seems to me that if you're filing for coverage and protected occupancy, a lot of the information you're submitting for coverage is also going to go to protected occupancy. Now, if it's just a protected occupancy claim, that's different, because the unit's already covered. So it could be that there's something there that the Board should discuss, but I haven't gotten any of the feedback I need.

Ms. Torres-Moskovitz: So that might be something for the lawyers on the tenant side? Maybe they have past, closed cases that are examples of that?

Ms. Balsam: Of how the discovery has changed? Yes. But again, we need to decide who we're going to protect. That's the issue, and we need to stay on task. We can't get sidetracked on this other path. And it's a lot harder now.

Ms. Torres-Moskovitz: Well, to be more specific, is there a case where we can hear about the discovery issue?

Ms. Balsam: Tenants have said that they cannot afford to meet the discovery requests, so they've settled cases. And my response to that is, that OATH will make the owner pay for it if the tenant can't pay. That's what the OATH rule says. I don't know all that's going on there; I'm not privy to all that. We need to focus on who we're going to protect. That's what the lawyers are coming in to talk about: Who should be a protected occupant? Why should we protect them? Etcetera. How they prove that is a secondary issue. If we have time at the end, I'm in favor of having them discuss that; but I really don't want to get side-tracked talking about discovery for two hours, and then we never get to the issues, which are: Should you have to prove primary residency? If you do, what time period should that be? And what should happen between sub-tenants and prime lessees, when the prime lessee is there, claiming protection?

Ms. Torres-Moskovitz: Ok. I'm just throwing this out there. At the end, could they be asked a question about a case that's already closed, where a tenant was harmed by this? Can we learn something from an actual case?

Ms. Balsam: I'm sure you can. You can ask them whatever you want, and I'm sure they'd be willing to discuss it, as long as the cases are not pending.

Ms. Torres-Moskovitz: So can we let them know, so they can prepare a specific, closed case in advance that they might want to share with us? At the end, if we get to that.

Ms. Balsam: I'll ask them if they have any relevant, closed cases.

Mr. DeLaney: I think that would be helpful. Again, with all due respect, I have to take issue when you talk about an "alleged" change in the policy. The Board, in its revised decision on 79 Lorimer St, detailed quite thoroughly that it had changed its policy. This is not a "theory." And in part, this distinction was created from another piece of what, in my opinion, was wrong with the 2010 Loft Law. The Board had never had a deadline on filing for coverage and registering buildings. It was in the 2010 legislation that there would be a deadline two years after the subsequent rules. In an effort to allow applications in buildings that were already covered to add additional units, we split apart coverage applications and protected-occupant applications. And from my vantage point, that's really where the trouble started. We did that without the Board discussing it or having a public hearing, or any notices involved. We've seen cases where lawyers have protested that they weren't even aware, at the time the case was heard, that they needed to provide certain proof. There was a system in place that worked very well for thirty years; and I question why we're abandoning it over and over again.

Ms. Balsam: Do you really want to get into that? Because I think it's something to be discussed after the lawyers have made their presentations. For now, I'd like to finalize these questions, and move on to the other rules that we can perhaps move forward with today. Because I'm sure the Board will have lengthy discussions after the presentations.

Ms. Torres-Moskovitz to Mr. DeLaney: Is there a specific question you want to ask one of the attorneys who was involved with a particular case?

Mr. DeLaney: At least one of them was…

Ms. Torres-Moskovitz: Do you want to ask what they feel the ramifications were from the outcome of that case?

Ms. Balsam: There is still pending litigation…

Mr. DeLaney: Yes, but it's out of the Board's hands. I guess one thing I would ask is that maybe you could distribute to all the Board members the 79 Lorimer Street opinion --- the order that passed.

Ms. Balsam: Sure.

Mr. DeLaney: And I guess I still have to register concern that your interest is in, how should we have the rule now, in terms of determining who's protected; whereas, in my opinion, that's by-passing, without even considering, the question of how did the original scheme function, and why should we change it?

Ms. Balsam: If you want to ask the attorneys that, fine. Do you want me to add a question that addresses that?

Mr. DeLaney: Yes. I think it would be helpful.

Ms. Balsam: I'm not sure how that gets us to where we need to be today.

Mr. DeLaney: Well, I guess it gets us to where we need to be in that, maybe the whole notion of changing this language, regardless of how to change it, is not such a hot idea.

Mr. Roche to Mr. DeLaney: So in essence, you're saying that perhaps we should just rewind to the 2014/ 2015 timeframe, and say, we were doing it this way for thirty years; and it was working; and we were protecting more people; so let's just erase the period since then, where we seem to have gotten a couple of wheels off track. You're saying that perhaps the answer we might get from these attorneys is already in front of us.

Mr. DeLaney: Perhaps not from all of them. But certainly, the process was very clear. Once the unit's registered, to become a protected occupant and to make it a covered unit, you needed to prove residential use during the window period. Once the unit was registered, if the owner had reason to believe it was not being used as the primary residence of the protected occupant, it was grounds for eviction, and the owner could take them to court. I see that you distributed today in the package, 2-08(1).

Ms. Balsam: Mr. Carver asked me to distribute that, and I did so for section (c), which covers succession rights. He couldn't be here, so he asked if I would please give that out. But it happens to have the eviction rule, too.

Mr. DeLaney: Right. So the notion that, unlike rent stabilization, I have to prove the unit is my primary residence before it's covered, for any period prior to registration, is, in my opinion, wrong.

Ms. Roslund: So part of understanding why….is looking at the different phases, as Chuck was saying, and understanding what did work and didn't work, at how it went from point A to point B. What I'm hearing you say is we're going to learn as much from how we went astray or how it changed, as (we will in terms of) where it needs to go. Does that make sense? Learning from the past; both the good and the bad.

Mr. DeLaney: I'm trying to think of something…. We had a system in place that worked extremely well for thirty years. Neither owners nor tenants complained about it. Then at some point….

Ms. Torres-Moskovitz: You're saying that, because of the 2010 law….

Mr. DeLaney: Whether the 2010 Law made it necessary or whether it was a justification offered for changing the rules…..And as you know, it's not just me who feels this way. The OATH judges have, in many instances -- not a hundred percent, but in many, many instances -- objected to the Board's interpretation; and the Board has modified the OATH judges' opinion. So, this is not just my individual point of view.

Mr. Hylton: Ok, but for now, I think we have to move on to the purpose of today's meeting. We're not dismissing anything, but we need to try to accomplish what we came here today to do.

Mr. DeLaney. Sure. And in that regard, my only request was that we add a couple of more questions to frame the issue, beyond just why we should change it.

Mr. Hylton: Thank you Mr. DeLaney. So we'll now continue our discussion on the proposed rule changes. Ms. Balsam will continue this discussion.

Ms. Balsam: Looking at the document that was sent for the November 15, 2018, meeting, we had already voted, I believe, on page 1. So we would be on page 2, the extension rule. That would be (2). We were talking about good faith efforts, and we were asked to prepare some information about that, from decisions. So I prepared a chart of twelve decisions. I'm sorry that some of them are very old, but at a certain point in time, the decision-maker on extensions went from being the Board to being the executive director by administrative determination….Of course, I have files for the ones I did, but those done by others are more difficult to trace. And it's only the cases that were appealed—because they were denied extensions – that are Board decisions; so it's harder to find more modern material. But I think the ideas encapsulated in these cases represent fairly well what we're talking about in terms of good faith efforts. So to the extent that you might want to add language to the rule, that's fine. I think the language in the *Salva* case would be very good.

Ms. Torres-Moskovitz: This is great**.** And it's actually interesting that you say it's hard to find earlier cases, because that's part of my point: that we don't know how these decisions are being made. So I'm wondering if there could be an internal document, like a checklist. Something that could be part of a FOIL request – something that the public could see, that says, here's how that executive director made that decision. These are all the points that were met. You may already do that, but I haven't seen it.

Ms. Balsam: I do not have a checklist. And if I did have one, I would say that it's an attorney work product, so not subject to disclosure under FOIL. So let's start with that. But, no; in my opinion and experience, in terms of anything pertaining to the Loft Law, checklists don't work. The whole point is that every single issue is unique. So to the extent that you're talking about cases where, in the past, the Board has granted extensions, here are some examples. And I think they're pretty clear in terms of the kinds of things people have to do. I recently granted an extension request where the person, within ninety days of assuming ownership, had actually filed the Alt 1, and a Narrative Statement, and had already scheduled the conference. So to me, that person is working very hard to legalize this building. They had also had conferences with tenants "off-line," which they're free to do.

Ms. Roslund said that she also found the cases very helpful, and that they seemed to reflect Ms. Balsam's point about consideration on a case-by-case basis. She also noted that the gray area where the problems arise seems to be where there's a discrepancy between what the owner thinks are good faith efforts and what the Loft Board thinks they are.

Ms. Balsam: Right. And also, remember that tenants are served with the extension application, and have a right to answer. And they quite often do, at times vehemently protesting the granting of an extension; because they claim the owner has not done all that he's claiming he has. And we take that information into consideration as well.

Ms. Balsam to Ms. Torres-Moskovitz: I thought that your concern was that you wanted to put some language into the rule.

Ms. Torres-Moskovitz noted, again, that the fact that Ms. Balsam had a hard time finding documentation of these decisions supported her point that some kind of internal documentation would be helpful. It could also be useful in documenting, for example, how the interpretation of these submissions may have changed in 2015, when the decision-making process changed from the Board to the executive director.

Ms. Balsam/ Ms. Cruz: The shift occurred in 2006.

Mr. Roche: How exactly did that come about?

Mr. DeLaney: I think it was agreed to as part of the tightening of the process. Ms. Cruz is the historian here.

Ms. Cruz: I think there was some concern about presenting these applications to the Board, and it was thought that the executive director could do it faster.

Mr. Roche to Mr. DeLaney: Was that also a component of how you think things might have gotten switched in 2015?

Ms. Balsam: No. In 2006, there was a major overhaul of this rule. It used to be – and I still can't wrap my head around this – that people could apply for *retroactive* extensions. So they would come and say, well, I'm past the dead line, but I did good things a year and a half ago, so the Board should say I'm in compliance, so I can charge rent for that period of time. I can't even exactly figure out how that worked, but it seemed very bizarre to me.

Mr. DeLaney: It was a little like being able to go into the library two months after your book was due and renew it. The concept of an extension was not part of the 1982 Loft Law. It was added when the Law was renewed in the 1990s. And it took the Board a while to develop a rule for that. At first it was just like, fine, any old time…

Ms. Balsam: They could even do it without notifying any of the other parties. The owner could just apply, and not even tell the tenants.

Ms. Cruz: It depended on the duration of the extension. If you were applying for less than thirty days, it was one type of application, that didn't require notice to the other side. Then another type of extension was up to three months; and then to the end.

Ms. Balsam: So the language I highlighted from *Matter of Salva,* I thought was very good. And if you want to incorporate that language into the rule, I think we could do that. The language I'm talking about is:

"If the circumstances show that the IMD owner intended and tried to meet his obligations, but failed, then the extension must be granted. But if the circumstances show that the owner's intentions were otherwise-- for example, to delay in the hope that he might avoid the obligation to legalize, or to impose sufficient inconvenience on the tenants that some or all of them abandon their units—then the extension must be denied."

Ms. Balsam: If we were somehow taking that language -- maybe the first part of it – looking at the total circumstances to show that the owner intended or was trying to meet his obligations, as a definition of good faith…

Mr. DeLaney: On that point, it seems to me that one of the things we need to consider is that the way the draft is currently written, it's really a two-pronged task, correct?

Ms. Balsam: It's good faith efforts and circumstances beyond their control.

Mr. DeLaney: And we don't necessarily look to one or the other first? We just weigh them both?

Ms. Balsam: No, I think we look to circumstances beyond their control first. Because there would be no reason to look for good faith efforts unless there are circumstances beyond their control.

Mr. Bobick: The reason is that for extension applications, you have to file before the deadline expires. But a lot of times, these buildings are already out of compliance because it's a new building or a new owner; so theoretically, the owner can't apply for an extension, because those deadlines expired ten years ago. So the rule allows for two exceptions. In the case of an owner who is in compliance and who wants to file, they have to do so before the deadline expires. So that should go first, and then they can demonstrate good faith efforts to legalize the building, regardless of whether you're in compliance or not.

Ms. Roslund: So first the owner is showing that he attempted to make the deadline, and the reason he didn't meet it was due to circumstances beyond his control?

Ms. Balsam: We don't usually think of it that way. We usually do the circumstances beyond their control first. And it is phrased that way in the statute.

Ms. Torres-Moskovitz asked Ms. Balsam if there is a way she quantifies circumstances beyond their control.

Ms. Balsam: A lot of the buildings are in Landmark disputes.

Ms. Roslund asked if there could not be a circumstance where an owner who did not meet the deadline is making good faith efforts, but he has actually created circumstanced beyond his control, *himself.*

Ms. Balsam: Absolutely. And there was an example in one of the cases, I think it's *Ken-Zen,* where they had decided they were going to add to their Alt 1 information about commercial use of the manufacturing spaces. So they created that circumstance.

Ms. Roslund: So it can't be a self-created hardship?

Ms. Balsam: Right. As opposed to another building we had – and I don't recall whether they were in compliance or not – but to use them as an example, they needed to apply, I think, to City Planning for a waiver for rooftop recreation. That's not BSA, but that was…because the roof could not support rooftop recreation. That was their argument. And City Planning granted the waiver. But if they had come to me to ask for an extension, I certainly would have considered that situation a circumstance beyond their control. They didn't make the roof. They didn't build it that way.

Ms. Roslund: It is part of City Planning's responsibility to consider open space requirements.

Ms. Balsam: That's the way we tend to look at it. We consider circumstances beyond their control before we get to good faith efforts.

Ms. Torres-Moskovitz felt that the point about self-created hardship was an important one, and seemed to favor the landlord, in that they could use the system to deliberately add something to the scope of work that causes delays, so they don't have to spend money; so they don't have to renew building permits. That's a real issue.

Ms. Roslund: From what I've seen in my twenty-five years in New York, it's a hardship for a landlord to bring their building up to code, even under 7-C, because quite often, they*, themselves*, created units that don't work. The sprinkler system doesn't work. The egress doesn't work. The work wasn't done by licensed professionals, etc. It was all done sort of ad hoc. So you end up with a building full of people living in spaces that are impossible to bring up to code. So, in effect, the entire Loft Law deals with landlords who have self-created hardships, right?

Ms. Balsam: I'm not sure you're correct that it's the landlords that have done the work. A lot of times it's the tenants who have done the work with the landlord's acquiescence.

Ms. Roslund: When a tenant files for a permit to do work, they have to get the landlord's signature. So it's *always* the landlord's responsibility.

Mr. Hylton: The building code puts the onus on the owner to maintain the building; so yes, the ultimate responsibility falls upon the owner of the building. But the defense in court, in building violations is, I didn't do it. The person living there did the conversion work without my knowledge. But that doesn't remove the onus from the owner. It is still their responsibility to maintain the building; so in essence, they allowed it to happen, with or without their knowledge.

Ms. Roslund: But isn't that the crux of the issue? The owner can say the easiest thing to do is to remove everyone from the building, rip out the work, and start from scratch? And we don't want that, right?

Ms. Balsam: It's illegal.

Mr. DeLaney: I think Ms. Roslund raises a very interesting point. When, for example, the butter and egg people moved out of Tribeca, because they went to Hunts Point, owners were sitting with vacant buildings, which, at that point, in the 1970s, didn't have any real value. And along came these artists and kindred spirits, who did a lot of work. Sweat equity. As time went on, in the past twenty years, it became more common that owners, for example in Brooklyn, could say, hey, this vacant space isn't something I have no idea what to do with. This is a valuable commodity. In some of the smaller, earlier buildings, it may have been the tenants who created the problems with renovations, but in the larger, newer buildings, where the value is considerable**,** it may be that the owners created the issue.

Mr. Bobick: I'd like to point out that that work would be required to make the building residential. It's one of the requirements to apply for coverage. So it would be hard to penalize the owner for doing that work, but at the same time cover the tenant.

Ms. Roslund: There are situations where, for example, the configuration of a floor of a loft building is such that it's impossible to make it code-compliant. And that could, potentially, be a reason that someone can't meet their deadline. A couple of these examples were, the owner hired an architect, and they can't make it work; so he hires another architect, and they can't make it work; so he hires another…. This could go on indefinitely, if there's no answer. What if there's no answer? If they can't get to the exit without cutting someone's unit in half.

Ms. Balsam: We have had cases where the landlord did have to take away space from people's units in order to provide egress. We had a case where the owner put in a back stair, and the tenant was very upset that

he/she had to lose space. The other choice would have been for him/her to leave. So, it's preferable to have a smaller space, in which you get to stay. We have had cases where tenants have to lose space, but it has to be for legalization. It can't just be because the owner wants it.

Mr. Barowitz: Since the Loft Law first went into effect, and including the buildings in SoHo, NoHo, and Chelsea, I can't recall one building where it was difficult to bring the building up to code. As far as the buildings in Brooklyn, there they tend to be more complicated.

Ms. Balsam: Those are huge buildings.

Mr. Barowitz: They are huge buildings, and sometimes they consist of odd spaces, like the building with the garage door. But nonetheless, the difference is that, as I recall, going back to the 1960s, artists moved into these spaces, and the landlord didn't care at all whether they were living there or not, because the manufacturing industry was leaving the city. SoHo was the felt and feather business of the city. They had a mini industry down there. So I think we have to give a little more consideration to actually seeing what these buildings look like, which I do. I go out to Brooklyn. And yes, they can be difficult to renovate, but the difference is that landlords now know who they're renting to. They're not just renting to anyone, because the space is empty. They're renting to people who they know are living there.

Mr. Hernandez: I don't think they necessarily always know that they're living there. I think part of the confusion was that there were a number of folks who rented to work, and then there was a considerable amount of illegal conversion of the place. And that's happened a lot in Brooklyn. I've been in a number of them already that have been illegally converted. And that's a situation the owners have to reckon with.

Mr. Barowitz: Yes, you're right. There are a lot of buildings where….stuff goes on. And it's not until fumes start spreading and someone complains…

Mr. DeLaney: When you say, "illegally converted," what do you mean?

Mr. Hernandez: The zoning was M, and the buildings are clearly marked for manufacturing. Someone comes in and creates an artist studio, without living conditions in place. And then, over time, they move in a bed; they start to use the bathroom as a normal bathroom. Even if their unit has a dedicated bathroom, it's not residential. It's supposed to be a working loft, and yet they've started to live there. And that's what's happened in Williamsburg.

Mr. DeLaney: And is it your sense that this was done without the owner's knowledge or permission?

Mr. Hernandez: In some cases, yes. So the owner is renting out to people to work there, and then they start to convert. But I'm sure in many cases – and there are buildings we are familiar with – the building owner pretty much understood what was taking place; and in some cases facilitated that illegal conversion. But in many cases, their argument has always been, this is a building designed for "work." Now, I can't stop people from staying overnight. I can't stop people from staying multiple nights. If someone moves in a bed, there's no way for me to track that. And so people ultimately end up creating that residential conversion**.** It happens throughout. That's why there was legislation passed by DOB five years ago increased the fine to $25,000 per unit, in order discourage illegal conversion of buildings.

Ms. Roslund: As a complicated example, my office was in a building in Williamsburg, which is commercial. There are three buildings on this corner, all commercial, and a couple of the tenants began staying, living. And the landlord finally did evict them, because everyone complained. It says clearly in the lease, no living. So that's an example of a landlord who is on top of things. So it's a partnership between the tenants and the landlord. You need both. You need tenants who want a commercial space and a landlord who wants a commercial building.

Ms. Balsam: But for the ones already covered under the Loft Law….(Laughter). Can we just get back to, do we want to make changes to the language in this section?

Ms. Torres-Moskovitz: Well, it was a very good discussion that does point to the inertia that might come from both the landlord and tenant sides to not fix the building. Both are content to just continue along as-is for years. And we're fighting that inertia. So I just want to make sure that when we give an extension – I guess that's why I was interested in the checklist on the other side. An extension seems like a very nice thing to give a landlord who's working in good faith. But I also think it's important to track them, so they don't disappear in the system; which is why I like the idea of the Enforcement Plan.

Ms. Balsam: Right. That was one of the purposes of the Enforcement Plan.

Ms. Torres-Moskovitz: So, maybe you're doing it already, and maybe the checklist can't be FOIL'd, but may be the Board could see it?

Ms. Balsam: I don't have a checklist. As I said, in my experience….

Ms. Torres-Moskovitz: But there's got to be a way. Landmarks, for example, deals with all kinds of scenarios, and they've managed to come with a strategic checklist.

Ms. Balsam: Do you want this in the rule?

Ms. Torres-Moskovitz: I know we're doing rules, but I don't want to just leave it at rules. I want to be sure that if we give someone an extension, and they fall back, that we're catching them, that we keep them moving through the system. That's what we're trying to resolve, right?

Ms. Balsam: No. Right now, we're trying to decide what we are going to do with this rule. But OK, as I'm going through the extension applications, I can try to come up with a checklist, saying, here's what I look at. But in the meantime, if we could figure out whether we're going to leave this as it is, or add language to it….because you were very concerned about good faith efforts not being adequately defined.

Ms. Torres-Moskovitz: But you had mentioned that it was hard to find information from before the executive director was making that decision.

Ms. Balsam: No, what I said was that the reason we have old cases is that it's easier to find cases where the extensions were denied, because in those cases, it's likely the owner will appeal, and those appeals go to the Board. Where the extension is granted, there'd have to be a tenant who would bother to file an application to challenge it, and that's going to be rare. So that's why some of the cases are so old.

Ms. Roslund: Is there a penalty for….Say an owner has had a building for a long time. He sees the market is changing and the building becoming more valuable. So he sells the building as-is, which is causing problems for the new owner. But the previous owner, who created the problems, has now cashed-out. Does that come into account ever?

Ms. Balsam: To the extent that the new owner is allowed to ask for an extension, yes.

Ms. Roslund: There's no way to discourage that from happening?

Ms. Balsam: One of the reasons we're undertaking the Enforcement Plan is to try and get buildings that haven't done anything, moving. Hopefully, we will be issuing fines to some of these buildings. That's the only way we can affect that. And we're targeting the ones that have been in the system the longest, first. When we move forward with the plan, we'll have a report. That's not for today. But *here*, the issue is, we have this language, which pretty much tracks the statute. And I think there was concern among the Board members that it wasn't sufficient, and how are we going to make it sufficient.

Mr. Roche: I'd like to go back to the language and solve it. I sort of like this, and I'm wondering if we can get some kind of agreement….(to Ms. Balsam) You said you could see this language inserted…?

Ms. Balsam: I think we can use this language to say, for an owner to demonstrate good faith efforts, they have to show that they've intended and tried to meet their obligations, but failed. I think it's good language. It's narrow enough, but gives some leeway.

Mr. Roche: Does anyone object to moving forward with inserting this?

Mr. DeLaney: I asked Helaine to send me the cases that are in the Summary, and its interesting reading. The other thing I asked, just an hour before the meeting, which, obviously, she can't do for a while, would be to send out some examples of cases that were denied; because here, we're only looking at the glass half-full, as opposed to half-empty. And I didn't meditate on this language as much as I would have if I had realized you wanted us to seriously consider it for the rule. So, "…tried to meet his obligations, but failed." I try to exercise, but I haven't done anything in a year, is different than, I tried to exercise, but then (there was a power outage). So the mere act of "failing," I don't find persuasive.

Mr. Hylton: So can we tighten that language and move forward?

Mr. Barowitz: Let's hear what the lawyers have to say about it.

Mr. Hylton: Well you've heard what Ms. Balsam thinks.

Mr. Barowitz noted that he has experienced how exacting and careful lawyers can be about language, so while he agrees with Ms. Balsam, he just wants to be sure that this language is OK.

Mr. Bobick, Ms. Leveille, and Mr. Clarke each concurred with Ms. Balsam.

Ms. Cruz also commented: Just reading the first sentence: "If the circumstances show that the IMD owner intended and tried to meet his obligations, but failed, then the extension must be granted." I think in terms of good faith effort, the key words are "…circumstances show that the IMD owner intended and tried to meet his

obligations." For instance, if an owner has to do some work in the cellar, and then Hurricane Sandy happened. But before that, he had purchased the equipment, and had contracted a plumber to do the work. That shows he intended and tried to do the work. But if, on the day that Sandy happened, he hadn't done any of those things, but his vision was that he was going to install this plumbing system, that it was necessary for legalization, that's not enough. I think the language is fine. I would end it there, and not include, "then the extension must be granted." I think that ties our hands. But I think if this is what we actually look at when the issue is being analyzed and the case is being written, I think it's fine to add language to clue the public into what the staff is going to look at when trying to determine whether they've exercised good faith.

Mr. Barowitz: You would just take out that last phrase? Or should we use "can" instead of "must"?

Ms. Cruz: I would just limit it to the wording to define good faith effort.

There was some discussion about whether to fine-tune that language. Should the word "tried" (to meet his obligations) be changed to indicate actions more concrete.

Mr. Hylton suggested, "took affirmative steps."

Mr. DeLaney: Two notes. One, the summary of *Salva* is perhaps 400 words. The report and recommendation from the OATH judge who heard the case is 39 pages.

Ms. Balsam: Well, there were a lot of issues that were not applicable, so I just took out what we needed.

Mr. DeLaney: I understand. But I what I would propose is that you (a), circulate *Salva;* and (b), why don't you come back to us at the next meeting with proposed language to consider for insertion?

Mr. Hylton: For this piece? We've just discussed it. I thought we just came up with a reasonable solution.

Mr. Barowitz: I would take out "took" and I would say "will"…..

Ms. Balsam: Well, no. I like the idea of taking "concrete steps" to meet their obligations. They have to show that they did something. That's what good faith efforts are. Not that they just "tried," but that they actually did something.

Mr. Hylton commented again, to Mr. DeLaney, that he didn't think it was necessary to send this back around again for another round of debate.

Mr. DeLaney: What I'm suggesting is that we give the staff time to fine tune it, rather than us spending another hour on it.

Mr. Hylton to Ms. Balsam: Do you think you can come up with that language quickly? Then we'll recirculate it.

Ms. Balsam clarified for the Board the structure of the section of the rules where this would be inserted (2)(i). "Examples of such conditions or circumstances include, but are not limited to X, Y,Z" and then the new language: "If the circumstances show that the IMD owner intended and tried to meet his obligations, but failed…"

There was further discussion about where the new language should be inserted.

Ms. Balsam: It should be in (i), because (ii) talks about what proof you have to have, while (i) sets out the standard you have to meet. We could add something to (ii) to say that taking concrete steps would be showing invoices, hiring an architect.

Mr. Hylton: Do we have enough to come to an agreement in principle about the language we're going to put there?

Mr. DeLaney: I'm not clear on either where we're putting it or what it is.

Mr. Hylton asked Ms. Balsam if she was able to clarify.

The Board adjourned for a few minutes to allow the staff to compose this section with the new language.

Ms. Balsam: So we are proposing to add, after what is currently the last sentence of (2)(i): "To show good faith efforts, an owner or responsible party, must show it intended and took concrete steps to meet its legalization obligations, and failed."

Mr. DeLaney asked for this to be repeated. It was then suggested that "intended" be removed, with the result:

Ms. Balsam: "To show good faith efforts, an owner or responsible party, must show it took concrete steps to meet its legalization obligations, and failed."

Ms. Balsam clarified the point that, "intending" to make good faith efforts accounted for nothing. Taking "concrete steps" should be the standard.

Mr. Hylton asked if there was a consensus on this language.

Ms. Roslund suggested changing "concrete" to "tangible."

Various words were suggested: Specific, tangible, etc. "Concrete steps," was changed to "affirmative steps."

Ms. Balsam: "To show good faith efforts, an owner or responsible party, must show it took affirmative steps to meet its legalization obligations, and failed."

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

Mr. Roche moved to accept the incorporation of the language just read into (2)(i); Mr. Hernandez seconded.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Carver, Mr. Schachter

Members recused: 0

Mr. Balsam: Then we have (2)(ii). At the fourth line down, "For example, copies of documents from the Landmarks Commission or the Board of Standards and Appeals, or an architect's statement," we can add, "or invoices for the purchase of construction materials."

The merits of retaining the word "copies" was discussed. It was decided to remove it, and just say "documents."

The issue of the availability of actual invoices at this point in time (filing for an extension), was discussed, and whether or not the simple fact of having purchased some materials was proof enough of good faith effort.

Ms. Balsam noted that the section could just remain as-is. That nothing need be added to it.

Mr. Hylton asked who it was on the Board who was concerned with this, and why.

Ms. Torres- Moskovitz said it was she; that she wanted the public to see that there are specific criteria an owner is required to meet in order to be granted an extension. She proposed including contracts between the owner and professionals/ contractors, as this is what any condo board requires/ accepts as proof.

Ms. Balsam: So, "contracts with licensed professionals"?

Mr. Barowitz: The more specific you get, the greater the possibility that some people get it wrong.

Ms. Balsam: These are just examples….So we'll just leave it as it is? Fine. But we'll take out "copies." Now, on page 3, how to file for the extension. They must use the standard form, and we added here, "include a statement from a licensed architect or professional engineer estimating the amount of time the Owner needs to obtain a Certificate of Occupancy for the residential portions of the building. The statement should include an overview of the work needed to legalize the building and units, and the time necessary for completion of each phase of the work."

Mr. Barowitz asked if providing plans would be better. There was some discussion of this.

Mr. DeLaney said it perhaps hinges on what phase of work the extension is for.

Ms. Balsam noted that the submission of the statement as mentioned would be adequate no matter what phase the project was in, and that this is really about, "how much time do you need?" She continued: One of the questions that had come up in earlier discussion was "how much time should we give them?" And this statement addresses that. It requires something from an architect saying how much time the work is going to take.

Ms. Roslund outlined the elements that are usually included in the first part of an architect's contract, and that it outlines the scope of work, the trades required, and the schedule to complete various phases.

Ms. Balsam: So my only question is that, for a new owner buying the building, who's at the beginning of the process, in a building where the prior owner has done nothing – Do you think it's reasonable to ask for a scope of work, within ninety days?

Ms. Roslund: Within ninety days of hiring a professional…

Ms. Balsam: Yes, but they have to ask for the extension within ninety days of purchasing the building. I didn't want to go overboard, asking for things that might be too hard to get within the ninety days. That said, I did just have a case where they filed the Alt 1 and Narrative Statement within ninety days. So, it can be done. But it depends upon the building.

Ms. Roslund: I guess if you're prepared going in, yes.

Ms. Balsam: But I've had owners tell me they've called three architects, and can't get anyone.

Ms. Roslund explained the steps that are usually involved with hiring an architect; and having a scope of work is necessary for the architect to give the client a price, so generally speaking, you know what the scope of work is from the beginning.

Ms. Balsam: When I get extension applications, the owner has usually hired an architect, and what the owner includes – and I really don't grant an extension without this –is a copy of the contract with the architect that says: I'm going to survey the building, prepare plans for an Alt 1, serve and file a Narrative Statement, attend ten Narrative Statement conferences….It's more "Loft Law" oriented than construction-oriented. Is that the scope of work?

Ms. Roslund: No, you should have a scope that describes the actual construction. It's not the overview of the construction work needed to legalize the building; it's the overview of the professionals' work needed.

There was some more discussion about whether or not plans need to be part of this.

Ms. Balsam: It could read, "The statement should include an overview of the construction work needed…"

Ms. Roslund: That's the one that will be difficult to get within the ninety-day timeframe.

Mr. DeLaney: It seems to me that if I'm the new owner, and the previous owner hasn't done anything, so I'm starting from scratch, I would be able to drive a certain kind of narrative, as opposed to, if I'm looking for an extension for a TCO, I should be able to provide more specific information. So maybe part of the problem with this paragraph is that it's trying to do one-size-fits-all.

Mr. Bobick: This is a generalized statement, intended to help us get information from the owner in terms of what has been done to legalize the building. And that might not be something that necessarily belongs on a set of plans. It might be, the architect has surveyed the building, or I've met with engineers to figure out the elevator situation, I've met with DOB on ADA. It doesn't have to be on a plan. It has to be: What are you doing to legalize this building? It should be general.

Ms. Leveille suggested changing the word "overview" to "explanation."

Mr. Barowitz: This is the problem with language. Every word has a few different definitions, so no matter what you say, it's going to be open to some kind of interpretation. We use Narrative Statement for some other context, but it's actually a very good term.

Ms. Roslund: I would suggest that "overview" is the wrong word, because it implies "everything." So that's saying, I'm expecting you to bring me the whole package, with nothing missing.

Ms. Balsam: Right, and that's not the intent. So is "explanation" a better word? A "preliminary explanation"?

There followed discussion as to what this term should be. The term "narrative" should not be included, as it could confuse issues. Should it be "detailed" or not? Should it be "preliminary" or not? Various terminology to describe/ specify the type and extent of the document were proposed.

Mr. Bobick: If you're talking about a new owner or a new IMD, it's going to be very hard for that owner to get a full plan and narrative together in ninety days. You're simply trying to find out, what steps have you taken to legalize? So if the owner says, I've got an architect, I've got an engineer, I've surveyed the building, I've gained access to all the tenants' units… These are all things that would help the executive director make her decision.

Mr. Hylton: I like the word "description;" without "brief."

Ms. Balsam to Mr. Bobick: I think what we were getting at here is the time frame. The purpose behind asking for this is to say, how much time do they need to do these things? Because we have to give them a time frame for the extension. And right now, we have to actually ask them for a date, which is ridiculous.

Mr. Hylton: Let me suggest this. So, "….must include an estimate from a licensed architect or professional engineer, setting forth the amount of time the owner needs to obtain a Certificate of Occupancy for the residential portions of the building. The estimate must include a description….

Discussion ensued regarding the terms "description" and "detailed."

Mr. Hylton also raised the point about the "licensed architect or professional engineer" having to be licensed in New York State. He wanted to be sure that qualifier would be included in the language.

Several people pointed out that the language regarding professional qualifications is included in the rules, as shown on the current draft.

Ms. Balsam So, "….must include an estimate from a licensed architect or professional engineer, licensed and registered to practice under the Education Law of the State of New York..."

Mr. Hylton felt, "licensed to practice in New York State" was adequate.

Ms. Balsam/ Mr. Hylton: "An application for an extension must include a list of all residential IMD units in the building and must include an estimate from an architect or engineer, licensed to practice in New York State, setting forth the amount of time the owner needs to obtain a Certificate of Occupancy for the residential portions of the building. The estimate must include a description of the work needed to legalize the building and units and the time necessary for the completion of each phase of the work."

Mr. DeLaney asked for the section to be re-read.

Ms. Balsam: "An application for an extension must include a list of all residential IMD units in the building and must include an estimate from a New York State licensed architect or professional engineer, setting forth the amount of time the owner needs to obtain a Certificate of Occupancy for the residential portions of the building. The estimate must include a description of the work needed to legalize the building and units, and the time necessary for the completion of each phase of the work."

Various people discussed how and when the terms "licensed," "professional" and "registered should be applied to "architects" and "engineers."

Ms. Roslund: It's either one or the other: Either "a licensed architect and engineer" or "a registered architect and professional engineer." With New York State coming before that. And if, in the first part, you're asking for an estimate of the amount of time, isn't it redundant to then ask for the necessary time for completion?

Ms. Balsam: The second part is asking for the amount of time to complete each phase of the work. X amount of time for sprinkler; x amount of time for mechanicals, etc.

Ms. Roslund still didn't understand what the distinction was; why both were needed.

Discussion ensued about this; whether the last phrase was necessary.

Ms. Balsam clarified that the earlier section [(2) good faith] was about what they've done already; but this part (3) is about how much time are they going to need going forward (if they're granted an extension).

Mr. Hylton asked Ms. Balsam if she felt it was necessary to have the projected amount of time broken up into phases.

Ms. Balsam: Honestly, I'm OK with leaving that part out.

Ms. Roslund (and Ms. Torres-Moskovitz): You're asking for an estimate of the amount of time to complete…the milestones?

Ms. Balsam: They have to ask for a certain amount of time.

Ms. Roslund: Which is this? So the owner says, I've hired an engineer. There are serious structural issues with the building. It's going to take three years to complete all this work. I have to relocate the tenants. I have to shore it up, etc., etc. So, do they get a three-year extension?

Ms. Balsam: It depends on a lot of factors. But they certainly wouldn't get more than three years. Depending on when they filed, it could be thirty months.

Mr. Hylton and Ms. Balsam clarified that, after the word "units," the rest of the sentence –"and the time necessary for the completion of each phase of the work" – would be removed.

Ms. Torres-Moskovitz: Time needed to legalize. Do you want to tie that into the milestones?

Ms. Balsam: I think it depends on where they are in the process when they're asking. You wouldn't want to say, the time needed to file an Alt 1, if they've already filed an Alt 1. So we can end it like this.

Mr. DeLaney: The only benefit to breaking down the time for various phases is how it might affect the tenants, in terms of them filing an objection or not. For example, the plumbing work in our small building of three residential units. The owner asked if, while work was happening on one floor, those tenants could use the bathrooms on the other floors. And we certainly saw the kind of timing headache that came out of that case, where we found interference with the time. So, if there are multiple phases of work, I don't think having some sort of breakdown is such a bad idea.

Ms. Balsam: I don't know. If it's not specific enough, I'm a little nervous about keeping it in. I agree with your point, but I'm not sure how I would phrase that. And I don't know that it would affect, overall, how much time we would give. So, I'm not sure….

Mr. DeLaney: Well it provides a rationale and justification for why I'm asking for twelve months rather than six months.

Mr. Hylton suggested ending with, "…needed to legalize the building and units, to include timelines."

Mr. DeLaney: Yes, that would make sense.

Ms. Roslund proposed removing the statement about time from the first part, and retaining the last phrase, about phases. In essence, it must include a description of the work and a schedule for completion.

Ms. Balsam: "…..must include a statement from a New York State registered architect or professional engineer, describing the work required for the owner to obtain a Certificate of Occupancy for the residential portions of the building, and an estimated schedule of completion."

Mr. DeLaney: Can you repeat that, please.

Ms. Balsam: "…..must include a statement from a New York State registered architect or professional engineer, describing the work required for the owner to obtain a Certificate of Occupancy for the residential portions of the building, and an estimated schedule of completion."

Ms. Balsam: So, moving on to (3)(ii), I think I just rephrased this: "The owner or responsible party must serve a copy of the extension application on the occupant of each IMD unit in the building in the manner described in Chapter 1 of these rules prior to filing the extension application with the Loft Board. After serving the application, the owner or responsible party must file the application along with proof of service with the Loft Board."

Mr. DeLaney: So that tracks exactly what will be described in Chapter 1?

Ms. Balsam: Yes.

Mr. DeLaney: So why do we need to repeat it?

Ms. Balsam: Because here, we're telling them, this is how you do this. I think for the purposes of someone being able to know what they have to do, it's good to have it in both places. But we could just put it in a general statement….

Mr. DeLaney: Part of what I'm tripping over is the language, "…in the manner described in Chapter 1…"

Ms. Balsam suggested changing the wording to **"…**as described in Chapter 1," and that was agreed upon by all.

Ms. Torres-Moskovitz: I have a question. The tenants in the building who are not covered, they also receive notification, right?

Ms. Balsam: Yes.

Ms. Torres-Moskovitz: It says "…the occupant of each IMD unit in the building," when it's actually every occupant of the building.

Ms. Cruz: It's a concern as to who else occupies a unit.

Ms. Torres-Moskovitz: I noticed that the tenants in my building who aren't covered received copies of the Narrative Statements.

Ms. Balsam: Yes, the Narrative Statement is supposed to be served on all the building residents.

Ms. Torres-Moskovitz: So that's served to everyone in the building. But in terms of construction, it seems that people will be affected, whether they're covered or not, so they should be entitled to know what the landlord's doing.

Ms. Cruz: The problem is, you're the prime lessee and you have five roommates. Do we serve each roommate? The landlord may not know who they are.

Ms. Torres-Moskovitz: But just serving (one notice) to each unit…

Ms. Cruz: So if the occupant of each unit is known, and/or each unit….I don't know how to solve that one. That's a good question.

Ms. Torres-Moskovitz: I mean, I guess the commercial tenant on the first floor would want to know if the landlord is going to get an extension for three years…

Ms. Cruz: Well, the Narrative Statement does go to occupants of commercial spaces.

Mr. Bobick: With the extension applications, the reason we only serve occupants of the IMD units is because, theoretically, those not living in an IMD unit have their own problems. The extension application has to do with the landlord collecting rent.

Ms. Torres-Moskovitz and Mr. Bobick clarified for Ms. Cruz that Ms. Torres-Moskovitz was referring to tenants of other units in the building. Not roommates in IMD units.

Ms. Torres-Moskovitz: I'm just wondering, in general, the tenants in non-IMD units, when are they notified and when are they not?

Ms. Balsam: It depends on what's happening. If an owner is doing work in an IMD unit, I don't know that he has to tell the commercial tenants that he's doing work five stories above them. We're not so concerned about that. What we want to know is – from the occupants of the IMD units – should this owner get this extension? That's why the notice is being served.

Ms. Torres-Moskovitz and Ms. Roslund pointed out that they are required to file a "tenant protection plan," because work in one area can affect egress for all units in the building. And if the owner is going to be granted a two-year extension…all the tenants are affected by that.

Ms. Balsam: So you want to change, "the occupant of each IMD unit," to "the occupant of each unit in the building"?

Ms. Torres-Moskovitz: Yes, that's what I'm wondering.

Ms. Balsam: Martha's making the point that the people who are not in IMD units do not necessarily have standing to object to an extension. It's just a question of whether the owner is granted the extension, and therefore, remains in compliance with the Loft Board for a longer period of time, and the tenants are obligated to pay rent. Commercial tenants are not IMD tenants, and any non-IMD residential tenants – which there shouldn't be – would not be affected by that.

Ms. Torres-Moskovitz: From the rent point of view, no. But from the life safety point of view…

Mr. Roche: Don't you have situations where you have covered and non-covered units? But at the end of the day, they're all loft tenants. I've seen cases recently where the owner is doing significant construction in a building that affects everyone living in the building, covered or not. So I do see a safety advantage to every unit being notified.

Ms. Cruz: Aren't we're talking about two separate things? Tenants being notified of an extension application, and tenants being notified about work to be done in the building. Landlords are required to post permits in the building, so everyone knows that work is happening at that point.

Mr. Roche: But the permit doesn't really say what the work is.

Ms. Balsam: Neither does the extension application, to the extent that we just added in this description and estimate. But the extension application doesn't say either. But the Narrative Statement does. And that is required to be served on everyone in the building.

Mr. Roche: So whether we do it here, or at some other place in the rules, everyone in the building is being notified about work to be done.

Ms. Balsam and Ms. Cruz confirmed that.

Ms. Roslund: And there are other rules that require notice. The landlord must notify the tenants twenty-four hours in advance of shutting off the water; other specific notifications that happen.

Mr. Roche: I'm actually thinking of a very specific situation. I was in a building recently where they were doing significant jack-hammering on the roof, and there was no one doing anything peaceful in the building that particular day. But what troubled me even more than that was, the closer you got to the areas where the jack-hammering was underway, the dust was (unbelievable). And that's a tremendous health issue. So, I'm just concerned that tenants are aware of the upcoming work, so they have the opportunity to plan accordingly. To take the baby out and go shopping for the day.

Ms. Torres-Moskovitz also made the point that, in buildings where there's a frequent turn-over of tenants, a new tenant won't have any idea what was announced about work in the building a year prior.

Mr. Hylton: Just to clarify, are we talking about IMD versus non-IMD?

Ms. Balsam: Yes. Whether or not non-IMD units should be notified of an extension application.

Mr. Hylton: Do we have governance over that?

Ms. Balsam: I don't know that it's a question of governance so much as it is of notification.

Mr. Hylton: I'm just wondering if, under existing tenant protection laws, this is within the Loft Board's purview. There are so many rules in the Building Code that deal with this already…

Ms. Roslund: That's exactly the discussion we're having.

Ms. Torres-Moskovitz noted that she was just wondering where the decision was made that it's only IMD units that are notified, and whether there were any guidelines that addressed this.

Mr. Roche: If the building is under our jurisdiction, isn't the onus upon us to look out for the overall welfare of everyone in the building?

Ms. Balsam: But this is just pertaining to the extension. So, the owner wants an extension of code-compliance deadlines. And he'll be doing work, whether or not he's granted the extension, because he still has to legalize the building, whether he gets the extension or not. So who do we want to reach about this? We want to reach the people who would have standing to comment on whether or not the owner should be entitled to the extension. And that's not the non-IMD residential or non-IMD commercial tenants.

Ms. Roslund: Maybe it's part of the bigger question of how much notification should all tenants of the building be given regarding the various steps of the process? Which compliments the issue of poor construction habits, because the tenant protection application says you can't have dust migrating outside of your work area. So while that could be considered, in another sense, as a specific violation…..if someone could anticipate that this kind of work would be happening on this date, they could make a decision to not be around, based on a timeline provided by the owner of all these different processes – which might now be extended…. So it's part and parcel of how the building goes from point A to point B and who the various affected parties are.

Ms. Balsam: Well, if the Board feels this is something you want to require the owner to notify everyone….

Mr. Hylton: If there's legal work going on, everyone has been served. I'm conflicted, because I'm not sure that we're not expanding our reach.

Ms. Torres-Moskovitz noted that she didn't want the Board to over-reach, but that in non-legalized buildings, there's always a safety concern.

Mr. Roche: I guess I'm hung-up on the point that, no matter how many covered or non-covered units there are, the building, itself, is under our jurisdiction.

Mr. Bobick: But that also goes to, the building can be covered, but is the unit covered?

Mr. Barowitz: If the building needs a sprinkler system from the second to the sixth floor, where people are living, what about the commercial? Would they be required to get the sprinkler system for their space?

Ms. Roslund: Not necessarily.

Mr. Barowitz: Not necessarily. So if the sprinkler system is going in the whole building, there should be one in the ground floor as well.

Mr. Roche: Typically, we're going to have a sprinkler system in the commercial space before we have it in the residential space.

Mr. Barowitz to Ms. Roslund: Is that so?

Ms. Roslund: Yes, that's correct.

Mr. Roche: So if someone is operating commercially within a building under our jurisdiction, and doesn't have a sprinkler system, that's probably going to happen before. But some of the buildings coming to my mind are sprinklered throughout. The commercials had sprinklers and so did the old factory floors. So are you saying…and we're just talking here…but are you saying that the sprinkler only has to work on the second floor, because that's the only place where we have an IMD unit? Or does the sprinkler have to work in the whole building, because the whole building is under our jurisdiction?

Mr. Roche continued: I'm not saying I have the right answer; I just take personally buildings under our jurisdiction; because when something comes into the Fire Department that says "Loft Building," they come to me from all floors, and say, "This is your building." So I'm wondering if the onus isn't on us to make sure that that communication flows to everyone, not just the covered units.

Ms. Balsam: The non-covered units are notified of many things, and we could actually add more tenant-protection- type things to 2-01, if you wanted to. But I don't know that it necessarily belongs here.

Mr. Roche: The question is, are we serving this to every tenant?

Ms. Balsam: Right. That's what the issue is. Are we going to serve this to every unit?

Ms. Torres-Moskovitz: The person living there with no IMD coverage is actually the least protected person in the building. And that's still a human being we don't want hurt.

Mr. Barowitz: Let me put it another way. You have a six-story building, and the top floor is a non-IMD, commercial space, above an IMD unit on the fifth floor, that has a sprinkler system. If there's a fire on the sixth floor, the sprinkler system on the fifth floor isn't going to help very much in terms of preventing the spread of the fire. So it seems to me that in order to protect the IMD tenant on the fifth floor, the sixth floor commercial space has to be sprinklered. I thought that one of the most important things about the legalization of lofts was Article 7-B

Mr. Hernandez asked for clarification about who is responsible for serving this notification, and how that's done.

Ms. Balsam clarified that it was the owner, and it was done by mail

Mr. Hernandez felt that if the Board wanted to make sure the "least protected" person was aware of what was going on, then everyone in the building should receive notice.

Ms. Torres-Moskovitz: Right. That's my point. Unless we're giving too much information, and it's over-reach.

Mr. Hylton: I raised the issue of over-reach, because we should not be putting things into the rules that we cannot enforce.

Mr. Hernandez noted that we could institute the notification, and if we're challenged on it, if we're told that non-IMD units can't be notified, then we tried.

Ms. Balsam: But what do we do with the answers if non-IMD tenants – commercial or residential – actually send us responses? What do we do with that? Because they're not in a position to challenge the granting of a code-compliance deadline, because those deadlines don't apply to them.

Mr. Bobick: The owner could also say a tenant in a non-IMD unit shouldn't be there. And in fear of receiving a response he doesn't want to deal with, he may go to court to evict that person. If they're not an IMD unit, there's no C of O, so technically, the law is not protecting them.

Ms. Torres-Moskovitz: Right. And I'm thinking that if they're not protected, then they're living in fear every day.

Mr. Bobick: This is about our extension; it's not actual work. It's about the landlord being able to collect rent. And someone in a non-IMD unit may have this problem already. He's not protected by the Loft Board. The owner could go to court to evict him. He is not protected by our rules.

Mr. Roche: We have an issue right now, where we have a building that went from one status to another; where there were two different types of people in the building. One is writing rent checks out just like I write mine, and others are covered units under the Loft Board. It looks like the building's going to swing the other way now, lose its C of O, and come to protected (covered) status under the Loft Board. So isn't there some kind of onus on us as a Board, if the building is coming back under our jurisdiction, to advise the people living there not in covered units, what's going on with their building?

Ms. Balsam: And advise them of what? That the owner's going to be able collect rent from the other people, who aren't paying? Because that's what this is about.

Mr. Roche: Well, I brought this up in the beginning because there was talk about, what if there was construction going on in the building. That's what caught my attention. Maybe this isn't the area for it, but I heard "notification of construction," and I focused on that.

Mr. Hylton: There is no construction here, but you'd be right on that, if there was. This is just notification of an extension of a code-compliance deadline. And that's the point Ms. Balsam and Mr. Bobick are making. The only people affected by the extension are IMD tenants.

Mr. Bobick: If work is going to be done in the building, there's no question, one hundred percent of the tenants should know that there's going to be work in their unit to bring it up to code. And to your example of the commercial space on the sixth floor and a residential one on the fifth, it's a residential building, and the code says, sprinkler the entire building. A fully sprinklered building.

Ms. Torres-Moskovitz to Ms. Balsam: You're thinking of it in terms of rent, but I'm thinking about how the construction – that's being extended – affects everyone's lives.

Mr. Roche: That's what I picked up on.

Ms. Balsam: So this would put all tenants on notice that the construction might take longer.

Ms. Roslund: That the entire legalization process is being extended, so they can plan their lives accordingly.

Ms. Balsam: You are the Board; you can do whatever you want.

Mr. Roche: Doesn't everybody have the right to know?

Ms. Torres-Moskovitz: Because it's very disconcerting not to know…

Mr. Hylton: The other tenants will know under another set of circumstances. And sending out these notices to everyone may even cause some confusion

Ms. Torres-Moskovitz: Isn't there a way for some kind of general notification to be triggered every time there's (an event that impacts the schedule)?

Ms. Balsam: It depends on the kind of application. You're talking about, who is an "affected party"? And here, we have a difference in who will be affected, because we're viewing the effect here as, the owner gets to collect – or continue to collect – rent. Whereas, you're viewing the effect as something else. As safety.

Ms. Torres-Moskovitz: Right. I'm thinking construction is the destructive effect. No one should breathe in jack-hammer dust.

Ms. Balsam: Of course not. Again, we can do whatever you want to do. If you want to notify everybody…

Mr. Hylton: Well, let's do what's sensible.

Mr. Roche: Well, if I understand correctly, now, I'm going to advocate that it be sent to everybody. As long as they're notified.

Ms. Torres-Moskovitz: Look, we just decided they're turning in an estimated construction schedule. That would be the most concrete information a tenant could ever get out of a landlord.

Mr. Roche: I agree with you, but now what concerns me is, if I'm a non-IMD tenant and I receive this notice, I'm wondering, what am I supposed to do with this? And if I do send it back in, that opens a whole other issue: What does the law say has to happen with it? So if our safety concerns are covered somewhere else – in the Narrative Statement – then in this case, it might be best not to notify them, as it might really cause a quagmire, if people start sending these things back in.

Ms. Roslund: What if I'm a non-IMD neighbor, and I find out what's going on, and I object to it?

Ms. Balsam: You don't have standing to object. In the context of extensions, the commercial tenant doesn't have grounds to object. The only people who have standing to object are the IMD tenants.

Ms. Roslund wondered, why it matters, then, if tenants without standing respond to a notice they can't affect anyway.

Ms. Balsam: Aren't you giving them the expectation of some kind of due process they're not entitled to? I envision this as, they send something in; the extension is granted; they're really upset about that, so they file an appeal; then they sue us…And they never had standing to begin with.

Ms. Torres-Moskovitz: When these things come in the mail, they don't even have a letter explaining what it is.

Ms. Balsam: No, they should have an instruction sheet and an answer form. If not, then you have to take it up with your landlord. The Narrative Statement usually has a cover sheet with it, but with the application, they're supposed to attach a copy of the answer form.

Mr. DeLaney: I understand the merits on both sides, and I'm very sympathetic to the situation you describe (Mr. Roche), with dust swirling around a couple of floors of the building, and a huge racket. It's like making an appointment with your dentist for a root canal, and then postponing it. The real pain is when you have the root canal. Putting people on notice is great, but receiving notice of an extension from the owner doesn't tell me that the day I should take the baby and go shopping is seven and half months from now. So, I think, particularly in these larger buildings where, let's face it, you can have a mix of market-rate tenants, who will surely expect to be treated in a market-rate kind of way; you could have IMD-covered tenants; and, part of the reason the 2010 extensions are such a mess, you can have a lot of tenants living there who can't be covered, but who the owner is not going to evict, because he likes the rent flow. So you've got a whole different group of people in the bigger buildings, and we need to take a close look at how to provide for the safety of everybody. But I understand Ms. Balsam's concern. If I get something in the mail that leads me to believe I have the right to object….So, I think this is something we should look at somewhere else in the code compliance.

Mr. Barowitz: My point is, there are so many people in this city who have no idea what the Loft Board is, so anything that makes people more aware of it, in any particular building, that it's an official agency, sanctioned by the State and the City of New York, is a good thing.

Mr. Hylton: So are you in favor of this language, the way it is?

Mr. Roche: I'm fine with what we've discussed here this past hour.

Mr. Hylton: Honestly, I think we should leave this "IMD" in here. Is anyone opposed to that?

Ms. Roslund asked for an overview of the entire process, which follows as outlined by **Mr. Bobick:**

- Start with a tenant applying for coverage. The entire building is put on notice.

- The building goes through coverage; becomes an IMD building, and the signs go up on the building.

- Now the owner has to legalize. He prepares a Narrative Statement, describing all the work, and that is served on everyone.

- The Loft Board then invites everyone to these Narrative Statement conferences. Not everyone shows up. Sometimes some show up; sometimes no one shows up. Sometimes you get a person not living in an IMD who shows up.

Once the Narrative Statement goes through….Here, we're talking about a landlord trying to collect rent from his IMD tenants. The issue is, if the non-IMD tenants get that (notice), they may be required to pay the owner; the owner goes to court; like I said, they have other issues. But this is solely to collect money from the IMD tenants. Other applications, you don't need to serve on everyone.

Mr. Hylton: The issue of collecting rent does not affect the non-IMD tenants.

Ms. Torres-Moskovitz: But so far, we haven't talked about how you see that rule as solely about collecting rent.

Mr. Hylton: But that's what it's about.

Ms. Torres-Moskovitz: From your perspective, yes. And that tenants would have to start paying rent is an important piece of it; but you're seeing it as the major piece of it.

Mr. Hylton and Ms. Balsam: Yes, because it is.

Mr. DeLaney: I respectfully disagree with that. In many instances the tenants are paying rent. So the main purpose is to get to code-compliance, and if he's not doing that, fining him.

Ms. Balsam: Yes, that's true.

Ms. Roslund and Ms. Torres-Moskovitz made the point that, as long as everyone is being notified about some things, why not notify them about everything? The more transparency, the better.

Ms. Torres-Moskovitz: And tenants are constantly turning over. They have no idea what decisions have been made about the process.

Mr. Bobick: But I don't think getting an extension application will help the tenant understand. The more informative applications are for coverage or the Narrative Statement.

Ms. Torres-Moskovitz: So if someone receives this notice and calls the Loft Board….

Mr. Bobick: My first suggestion would be to FOIL the folder on the building, and read it.

Mr. Roche: Mr. Chairman, can I make a suggestion. As I see we're starting to wind down here for today, I can really see the picture now, but I think it would be a good idea for the staff to come to us on February 14 with the legal concerns involved in notifying everybody.

Ms. Balsam: That would have to be February 21.

Mr. Roche: Yes, of course. Because I am concerned about that issue of, I'm not protected; I send this back; now what does the staff do with it?

Mr. Hylton: Yes, the staff will do it if you ask for it, but again, I think…

Mr. DeLaney: Perhaps an alternative would be to just require the landlord to post a copy of the extension information in a public area.

Ms. Balsam: I don't know. The application is usually multiple pages. It could have architectural documents…That is a thought though. We could also add to the extension applications that only IMD tenants can respond.

Ms. Cruz proposed that perhaps what is posted is a copy of the executive director's decision granting the application, containing the details of why it was granted and for how long.

Ms. Balsam: Do you want it posted in the building or mailed to everyone?

Ms. Cruz: Posted.

Ms. Roslund said she would mail it, because you may have separate commercial and residential entrances. She also proposed the example of a commercial tenant whose business plan includes moving when the building goes under construction, and all of the considerations and cost involved for that person. She made the point that under those circumstances, what the Board is discussing can really have an effect on someone's livelihood.

Mr. Hylton proposed some possible wording.

Ms. Balsam noted that it would go in the next section.

Mr. Hylton noted that they would not vote on this at the end of a meeting. He further clarified the start times of the meetings: The Board members always meet at 1PM. Sometimes there is a private meeting at one; sometimes the entire public meeting begins at 1PM.

Mr. Hytlon: This will conclude our January 31, 2019, Loft Board meeting. Our next public meeting will be held February 14, 2019, at 1:00PM, at 22 Reade Street, first floor conference room.

The End