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

March 21, 2019

The meeting began at: 2:25 pm

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

INTRODUCTION:

Chairperson Hylton welcomed those present to the March 21, 2019, public meeting of the New York City Loft Board. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board; and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

Vote to approve January 31, 2019, Meeting Minutes

Mr. Hylton asked if there were any corrections or comments on the minutes (None); and asked for a motion to accept the minutes.

Mr. Barowitz moved to accept the January 31, 2019, meeting minutes; and **Ms. Torrres-Moskovitz** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: Mr. Carver

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Vote to approve February 21, 2019, Meeting Minutes

Mr. Hylton asked if there were any corrections or comments on the minutes.

Mr. Roche asked that the record reflect that the Fire Department (he) was present, but had to leave due the late start of the meeting conflicting with another commitment**.**

Mr. Hylton directed that the minutes be adjusted to reflect his presence.

Ms. Balsam: Mr. Hernandez was here as well, and Mr. DeLaney pointed out that on page 1, where we are talking about the transcripts of the decisions, it is somewhat unclear.

The fifth quote down, where I say, "No. Those were decisions from the bench, where there's a transcript, and we haven't gotten those yet. But I'll follow up with the Law Department." (In the minutes, this is followed by the statement, "Ms. Balsam further confirmed that they will not be written decisions; and she will circulate them").

Ms. Balsam clarified: We haven't gotten the transcripts yet. We want to make that clear. There will not be written decisions, but we'll circulate the transcripts.

Mr. DeLaney: Where this is a transcript, did you mean, but there's a transcript?

Ms. Balsam: No. What I'm saying is those are decisions from the Bench, where there's a transcript. Instead of a written decision, there's a transcript. I can it to but, if you feel strongly about it.

Mr. DeLaney: No.

Mr. Hylton: So what, exactly, are you changing?

Ms. Balsam: It would be, "No, those are decisions from the Bench where there's a transcript, and we haven't gotten the transcripts yet, but I'll follow up with the Law Department." And the next line would be, "Ms. Balsam confirmed that there will not be written decisions, but she will circulate the transcript."

Mr. Hylton asked if there were any further comments on the minutes.

Mr. DeLaney asked if there would be minutes from the February 14th meeting.

Ms. Balsam: Yes, there will be. Unfortunately, we had a miscommunication among the staff as to who would be responsible for typing those, and it was not realized in time to have them ready for today. But they are being worked on as we speak.

Mr. DeLaney: OK. And at the last meeting I had asked about the Project Guidelines. There was a question about parts that may not be public documents.

Mr. Hylton: The Project Guidelines will be public documents once they are finalized. But I think your question was about the comments, whether or not they would be public documents, and the answer to that is no.

Mr. DeLaney: So the comments are not public documents? And will not become public documents?

Mr. Hylton: No. The comments are protected. They're not public. The final product will be public.

Mr. Hylton asked if there were any other corrections or comments on the minutes (None); and asked for a motion to accept the minutes.

Mr. Roche moved to accept the February 21, 2019, meeting minutes; and **Mr. Carver** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton: Ms. Balsam will now present her report.

Executive Report

The first announcement is a personnel issue, and it causes me great pain to say this. Mr. Bobick has decided that he is moving on, and this will be his last Loft Board meeting. We will miss him very much.

The amendments to the Loft Law are still pending. I receive emails all the time -- new drafts and more new drafts, so the people in Albany are working on it.

The City Council oversight hearing was rescheduled to April. We do not have a new date yet, but I will keep you posted.

The unofficial revenue for February, 2019, was $88,511.

We received three new law suits. The first is *Frank Hughes v. NYCLB and Dasa Realty.* This is the residential occupant, where we covered the unit but did not cover Mr. Hughes, because he testified that he was not living in the unit.

The second case is *Thomas Brigham v. NYCLB, DOB and B Jaffe Real Estate Co. L.P.* This is the case where the Board found that the landlord unreasonably interfered with Mr. Brigham's use of his unit by causing him to be out for an extended period of time. But Mr. Bringham made other claims – the sheet-rocking of the west wall, the creation of dust and debris, etcetera, which the Board held was not unreasonable interference, so he has commenced a law suit.

Finally, we have *James Gubelmann v. NYCLB, Cynthia Law and Frank Lam.* This is the window case, where we found that there were not three units; that only two out of three residential units proved that there were qualifying windows.

We have been working on the Enforcement Plan, including going to OATH and taking some other steps. Ms. Leveille will bring you up to date on that, but before she does, are there any comments or questions?

Ms. Torres-Moskovitz: I did want to make one comment. The last time we reviewed cases was February, so for the public, when we review cases, we're looking at a Proposed Order and back-up information only. But as

an architect, one of the things I'm always doing in my own practice is working with "DOB BIS" (Department of Buildings: Building Information System). So after I vote on a case, I check on the project there. And I noticed something about the February cases with "self-certing" (self-certification). Self-certing is something architects can do. I do it sometimes when the project is simple. But self-certification on a loft building …. I question whether that is too complex of a project for an architect to be able to self-cert, and I'd like the staff to talk to the Department of Buildings and check on some of the cases from February that were self-certed.

Mr. Hylton: Will you come to us with those specifications after?

Ms. Torres-Moskowitz: Sure.

Ms. Balsam: But always after.

Ms. Torres-Moskowitz: Yes. After the vote.

Mr. DeLaney: Two things. First, I'd like to get copies of the papers in the Article **78s.** Secondly, I think the issue of self-certification is an interesting one, and perhaps it would be beneficial for the Board to schedule a general discussion about when self-certification is permitted in the legalization process for IMDs, without it being tied to an individual case.

Mr. Hylton: So separately from what Ms. Torres-Moskowitz raised, you're asking for a broader analysis or presentation explaining self-certification?

Mr. DeLaney: Yes, I think it would be helpful if the Board could provide us with either the Board's interpretation or the Department of Buildings policy.

Mr. Hylton: It would have to be the Department of Buildings. So the DOB policy on self-certification as it relates to loft buildings?

Mr. DeLaney: Yes. I'd like to suggest that as an agenda item at some point.

Ms. Roslund: Does DOB have a specific policy on self-certification and loft buildings?

Mr. Hylton: I don't believe there's a policy carving out loft buildings. There is a general policy.

There was some speculation/discussion among the Board members about what self-certification is and how it might relate to loft buildings.

Mr. Hylton recommended finding out what the actual policy is, and then returning to the discussion.

Mr. DeLaney again suggested making it an agenda item.

Ms. Balsam asked if there were any additional comments. (None).

Mr. Hylton introduced Ms. Leveille, who addressed the Board about the status of the Enforcement Plan.

The Enforcement Plan

Ms. Leveille opened by recapping the status of Enforcement as of her last presentation at the Year End Summary. She referred the Board to the outline she provided (attached).

Questions from Board members:

Mr. Hylton: Has there been any response from those who were issued housing maintenance violations?

Ms. Balsam: Let me answer that. If they had cured, we would not be at OATH.

Mr. Carver: In the housing maintenance cases, what is the specific remedy you seek at OATH?

Ms. Leveille: When we issue the summons and Notice of Statement of Charges, we always give a cure and the amount of the fine that would be imposed in absence of a cure, relevant to the amount of time elapsed, the max being the $17,500.

Mr. DeLaney: So of the twenty-two buildings, there's been action on about ten of them?

Ms. Leveille: Yes.

Mr. DeLaney: And the letters from the owners and architects, those were mostly related to TCO and C of O? Those are cases that haven't been quite as lax as some others?

Ms. Leveille: That's right.

Mr. DeLaney: And the addresses of these twenty-two buildings would be public record, I suppose?

Ms. Leveille: Yes, and I've created a spread sheet of the buildings that are part of this test.

Mr. DeLaney: May I ask for a copy of that spread sheet?

Ms. Leveille: Yes, of course.

Mr. DeLaney: Thank you. I think it's great that we're embarking on this enforcement effort, but I know there was some concern as to whether we had the "bandwidth" to do this. Do you find it takes a large component of your time?

Ms. Leveille: It does to certain degree, now, in the beginning, as we have to develop the templates and work out the legal logistics. But once that process is in place, it should be smooth sailing.

Mr. DeLaney congratulated Ms. Leveille and the staff on the plan.

Mr. Hylton then turned to the cases.

THE SUMMARY CALENDAR:

Mr. Hylton: There are five cases on the Summary Calendar, and they are usually voted on as group. However cases 2 and 3 will be voted on separately; with cases 1, 4, and 5 comprising the group.

	Applicant(s)	Address	Docket No.
1	Amalia Bradstreet	22 Catherine Street, Manhattan	PO-0048 and TA-0239
4	55-65 South 11th Street Tenants	47-65 South 11th Street, Brooklyn	TR-0829
5	Tenants of 28 Locust Street	28 Locust Street, Brooklyn	TR-1272

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

Mr. Carver moved to accept these cases; **Mr. Barowitz** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton asked if there were any comments on these cases. None.

The next cases:

	Applicant(s)	Address	Docket No.
2	Pamela and Christopher Brown	255 18th Street, Brooklyn	TA-0230
3	Tenants of 255 18th Street	255 18th Street, Brooklyn	TM-0091

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

Mr. Carver moved to accept these cases; **Mr. Barowitz** seconded.

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

Mr. DeLaney: Yes. I asked that these be taken up separately, because I intend to vote no. I elaborated on my reasoning at the Board meeting in February, so I won't go into great detail; but I am opposed to settlements where the Loft Board neither accepts nor rejects the terms of a stipulation. I think there's a danger of eroding the rights accrued to tenants protected under the Loft Law, and it adds to the confusion of what's enforceable and what's not enforceable. For those reasons, I plan to vote no on these two cases.

Mr. Hylton thanked Mr. DeLaney and asked if there were any further comments on these cases. (None).

The vote:

Members concurring: Mr. Carver, Mr. Roche, Chairperson Hylton

Members dissenting: Mr. DeLaney,

Members abstaining: Mr. Barowitz, Ms. Torres, Ms. Roslund

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton: So this motion has not passed.

THE MASTER CALENDAR:

	Applicant(s)	Address	Docket No.
6	Andrew Ohanesian	473-493 Kent Avenue, Brooklyn	TM-0093

Mr. Clarke presented this case.

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

Mr. DeLaney moved to accept the case; Mr**. Barowitz** seconded.

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

Mr. Carver: I will be voting no. I believe parking is not a service contemplated by the rule that is required to be maintained, because parking is completely outside the operation of the building. Furthermore, parking bears no relationship to the goals of the statute, which is to address a housing crisis by legalizing certain living spaces being occupied physically. It makes no sense to require an owner to expend resources on parking, which could otherwise be put toward the legalization of the unit. So I will be voting no on this case.

Mr. Hylton asked if there were any additional comments.

Mr. DeLaney: Yes. I would encourage my colleagues on the Board to vote yes in this case. It was the subject of considerable discussion in the private meeting, and I believe this is the first time this issue has come before the Board. But I also think it's analogous to issues we've dealt with and found diminution in cases of access to the roof, access to storage in the basement... So I think our action here is consistent with what we've established in the past with regard to diminution of services.

Mr. Hylton: Thank you Mr. DeLaney. Are there any other comments?

Ms. Torres-Moskovitz wanted to point out that this was also a small business issue, as the tenant used the vehicle to move his artwork. So it's not just a question of someone having a car in a city with lots of subways.

Mr. Hylton: Thank you Ms. Torres. Are there any other comments?

Mr. Roche: Mr. Chairman, I'm going to vote no on this case also, based on the fact that we've had some discussion in the private session (indicating that) perhaps we should research some case law on this situation. As my colleague said, we believe this may be the first time the Loft Board has dealt with a parking space issue. I think there is enough concern that additional information would be helpful before making a decision.

Mr. Barowitz: In response to Ms. Torres' remark, there have been cases in the past where a sculptor using heavy material and making lots of noise has been barred by the landlord. In some ways, this is analogous to that, so I'm going to vote positive on this case.

Mr. Hylton: I happen to think that parking is an accessory to residential living.

Ms. Roslund felt it was unfortunate that this case was the first such case (parking) the Board had to deal with, because as it involves a loading dock, it's tricky. Guarding against the diminution of one party's services causes a diminution of services to others. If the tenant is allowed to park there, it interferes with the other tenants' ability to use the loading dock.

CONCLUSION

For the reasons stated above, the application is granted. Owner's attempt to bar Tenant from parking in the area is a diminution of services. Owner is directed to cease all effort to bar Tenant's use of the area currently used for parking.

The vote:

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

Members dissenting: Mr. Carver, Mr. Roche,

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Next case:

Applicant(s)	Address	Docket No.
400 South Second Street Tenants	394-400 South Second Street, Brooklyn	TR-1269

Mr. Bobick presented this case.

Mr. DeLaney: I am not persuaded by the reasoning of the ALJ with regard to the two units found not to be covered. There was testimony in the record that both of these units had been used residentially since the early

2000s. And while there was a period where there appears to have been a variety of subtenants during some of the Window Period, both applicants -- for 303 and 405 -- moved in at the tail-end of the Window Period. The building had a bit of a complicated history. There was a month-long vacate in September – October, 2009. The testimony of the former residential occupants of those units was not found to be not credible. I therefore propose that we modify the Order to include finding coverage for units 303 and 405.

Mr. Hylton: So you are making that motion?

Mr. DeLaney moved to modify the Proposed Order to find that units 303 and 405 were residentially occupied, and that the applicants be named protected occupants of those two units.

Mr. Hylton clarified the motion for Ms. Torres-Moskovitz and Ms. Roslund, saying that the motion was to cover units 303 and 405.

Ms. Roslund: Just the units covered? Or covered and protected occupancy?

Mr. Hylton: Both. Yes.

Ms. Roslund asked if the two could be separated.

Ms. Balsam: You can't have protected occupancy without coverage. You can have coverage without protected occupancy, but not the reverse. So you have to do the coverage first, and then go to protected occupancy.

Ms. Roslund: But the way this has been presented, we're voting on both at the same time.

Mr. Hylton asked Mr. DeLaney if his motion includes protection.

Mr. DeLaney confirmed that his proposed motion does.

Mr. Hylton: The motion would be to include those two units (303 and 405) as covered and the occupants protected. Is there a second?

Mr. Barowitz: Now that you've made that clear, I would vote yes.

Ms. Balsam: You would second the motion?

Mr. Barowitz: Yes, but I think you should withdraw the first motion and make a second motion that covers the other tenants in the building, so they don't suffer.

Mr. DeLaney: I'm sorry if I was unclear. My motion would be to acknowledge the units that the hearing officer found to be residentially occupied, and named the protected occupants; and add these two units which, in my view, have a clear history of residential use for over a decade, with people in place paying rent. (I move) to find those two units covered and those two individuals as protected occupants.

Mr. Hylton asked for a second.

Mr. Barowitz seconded.

Mr. Hylton asked if there were any comments.

Mr. Carver: I'll be voting no, because based on the record, there's no basis for this motion. The OATH judge was correct.

Mr. Roche: Mr. Chairman, I'm going to vote no on this also; and it's certainly not because I don't want to see those other tenants protected, because I do. It's because the information that was provided by our staff was compelling to the fact that those two individuals did not prove their case. And as I stated in the private session, my concern is if we start to say, you weren't quite on your A-game today, you didn't quite cut the mustard, but we're going to let you through anyway, it sends the wrong signal to the whole loft community. You don't have to do everything the Loft Board says, because they may let it slide in the end. Just as I'm not against someone having a parking space, I'd just like to have more information, because we're setting precedents. For those reasons, I'll be voting no.

Ms. Roslund: One of the big issues that we didn't spend enough time talking about in the private session was that much of the lack of documentation had to do with the fact that there was a lessee and subletter, who then subdivided, and there was more subletting and subletting – which is contrary to where we want to go. Our intent is not to help people profit from their leases in various ways. Our goal is to protect the primary occupants of units. So even though the occupants there now may be (considered) primary occupants, the process under discussion, which goes back twenty years, is quite convoluted.

Mr. DeLaney: I would just say in conclusion, again, that the people who lived in these spaces initially, and testified to using them residentially, were not found to be not credible. So the issue, I suppose, is one of sufficiency, which is a difficult and judgmental factor. I think there's sufficient evidence that these units were used residentially during the Window Period; and so they should be brought under the remedial force of the Loft Law and brought up to code. Therefore, I ask people to support my amendment.

Ms. Roslund: I'm curious as to why you wouldn't make an amendment to cover the units but not the occupants.

Mr. DeLaney: The reason I would not do that is because in this instance we have tenants who moved in at the tail-end of the Window Period, shortly after the vacate was lifted, who appear to have been living there and paying rent. So I believe those units should be legalized, and those people declared protected occupants.

Mr. Hylton to Ms. Balsam: Is it my understanding that the staff agrees with the OATH ALJ?

Ms. Balsam: Yes.

Mr. Barowitz: If the amendment fails, will the original Order be reinstated?

Mr. Hylton: Unless there's another amendment.

<u>The vote</u>: on the motion to amend Order TR-1269 to include covering units 303 and 405 and protecting the two individual tenants of those spaces.

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

Members dissenting: Mr. Carver, Mr. Roche, Chairperson Hylton

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton: So that motion has failed.

Mr. Hylton then asked for a motion to accept the original order, and a second.

Mr. Roche moved to accept the original order; **Mr. Carver** seconded.

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

Mr. Carver: Yes, I think the Order as drafted accurately reflects the current state of our rule and case law; and properly upholds the OATH judge's conclusion as to coverage of 303 and 405.

Mr. Roche: Again, I want to make clear that my vote in no way means that I don't want to see people covered, I'm just concerned that if we start saying you don't have to do this piece and you don't have to do that piece, it sets a bad precedent for the whole loft community. So if this passes, I'll be pleased that we will be providing coverage for eight units that went through the process as outlined in Loft Board rules. And there's still an opportunity for those other two units to come back around and go through the process again at another time. Correct me if I'm wrong, but this in no way excludes those two individuals from coverage.

Ms. Balsam: There would have to be an amendment to the Law.

Mr. Hylton: And just to be clear on that, the Loft Law hasn't been amended yet. And I want to make clear that this Order allows for the coverage of eight units and for the protection of at least ten people; and I think it would be an injustice to them not to vote for this Order.

Mr. DeLaney: Mr. Chairman, I would just state that I believe the responsibility of the Loft Law is to recognize units that are being used residentially and buildings without residential Certificates of Occupancy that otherwise qualify. And I think the omission of these two units is a mistake.

Mr. Hylton asked if there were any further comments.

CONCLUSION

The Loft Board finds the Building to be an HMD consisting of eight (8) IMD units: 204, 205, 301, 302, 304, 402, 403 and 406. The Loft Board further finds that Natalie South, Andy Small, Jared Cohen, Kirsten Russell, Mentor and Julie Noci, John Marc Peckham, Adam Baer, Scott Matthew and Ayca Koseogullari are the protected occupants of their respective units.

The Loft Board directs Owner, within 30 days of the mailing date of this Order, to register the Building and the eight (8) units as IMD's, in accordance with 29 RCNY § 2-05. The Loft Board further directs Owner to register Natalie South, Andy Small, Jared Cohen, Kirsten Russell, Mentor and Julie Noci, John Marc Peckham, Adam Baer, Scott Matthew and Ayca Koseogullari as the protected occupants of their respective units. If Owner fails to register and pay the applicable fees within 30 days of the mailing date of this Order, the Loft Board directs the staff to:

- issue an IMD registration number for the Building;
- list units 204, 205, 301, 302, 304, 402, 403 and 406 as IMD units;
- list Natalie South, Andy Small, Jared Cohen, Kirsten Russell, Mentor and Julie Noci, John Marc Peckham, Adam Baer, Scott Matthew and Ayca Koseogullari as the protected occupants of their respective units; and
- collect applicable registration fees and late fees.

The vote: on the original Order TR - 1269

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

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Hernandez, Mr. Schachter

Members recused: 0

Mr. Hylton: The motion is passed.

After a break, Mr. Hylton turned the floor over to Ms. Balsam to continue the discussion of rules.

Proposed rule changes:

Ms. Balsam: Thank you. Based on our discussion at the last meeting, staff redrafted the proposal. There are a lot of gaps, but I think it is based on what the Board had discussed. We can start with the new section (2), which is on the bottom of page 1, where I put in "Place holder for prime lessees with lease in effect being protected occupants to the exclusion of everyone else if applicable." So in terms of what that should be, shouldn't be... are there any comments?

Mr. DeLaney: Given the incredible amount of energy expended today over a parking space, I think it might be helpful to go through the parts of the proposal that are fleshed out and new to understand how those operate. It seems to me we've been grappling with two issues for a while now. One is, should demonstration of the unit being the primary residence be a necessary condition for obtaining protected-occupant status. The majority of the Board answered that question, yes, at the last meeting, and you've developed a proposal here for that. As to the question of, does a prime lessee, who has or had a lease, trump everyone else, in terms of being a protected occupant – I don't think there's quite so much agreement on that. So that I can speak intelligently to

tenants, I'm more interested in the impact of what you've advanced here, rather than fighting the same old war again. There'll be ample time for that down the road, I'm sure.

Ms. Balsam: Ok. We can skip (2), and go to (3), (4), and (5).

Mr. Carver: Before we do, can I just ask if there is any research being done on the legal status of a hold-over? (Last time, we reviewed how), under the existing rule, a prime lessee still trumps if the lease is past the stated expiration date. And I had raised the point that there's probably a statute in the RPL, if not the Common Law, that says, in effect, that the terms of that lease actually still exist, notwithstanding the expiration date, if the lessee remains in possession, and probably absent any notice of termination from the owner. I thought that, if I'm stating the law accurately, that would create a problem for your proposal, which hinges on the stated expiration date in the lease. I felt that more research on that was needed, and that staff was going to look into it.

Ms. Cruz said that, yes, right after the last meeting, she did some research and did not see anything in statutory law that would support that position, although she has not yet researched the case law.

Mr. Carver: OK, while you're looking into the case law, I'll ask some lawyers who are familiar with this issue for a statutory citation, if it exists, and I'll send it to you.

Ms. Balsam thanked Mr. Carver and proceeded with section (3): Section (3) says that someone can only apply to be a protected occupant of a covered unit. So if the unit is not covered, they must apply for coverage before we can determine whether or not the person is protected. It just makes sense to do it that way, as they're not entitled to protection under the law if they're not living in a protected unit. So I'm hoping that that is not controversial.

Ms. Torres-Moskovitz: But this does happen simultaneously?

Ms. Balsam: It can, yes. But you could have someone living in an already-covered unit, applying for protected occupancy later. And we did have a case where people were applying simultaneously, but the Board actually decided that there was no coverage; therefore, they could not be protected, and those people went to court.

Ms. Torres-Moskovitz: When I went through this, I never realized they were two separate things. They seemed to be always rolled into one.

Ms. Balsam: They used to all be together, but they were separated in 2014, because the legislature put a statute of limitations on the law.

Ms. Torres-Moskovitz: Is it clear what has to come first in this language?

Ms. Balsam: We have a rule that says that each application can only make one claim. So they would have to file two applications.

Ms. Torres-Moskovitz: But in the same proceeding?

Ms. Balsam: Yes. Theoretically, now, someone who is applying for both would file two separate applications. Actually, no one can file for coverage now, but if they could, they would file one for coverage and one for protected occupancy. They should file both. It wasn't always that way, but at some point, it was decided to split them up. That was before I was here, so I'm not sure why that was done. But the basic issue here is, we need to be sure the unit is covered before addressing the question of protected occupancy.

Ms. Torres-Moskovitz noted that her application was after 2014, and it seemed to be all just one application.

Ms. Cruz and Ms. Balsam explained that that one process was actually comprised of two separate applications. It may all go to OATH at the same time, but that doesn't mean they were filed at the same time.

Ms. Roslund asked again about filing separately.

Ms. Balsam: If someone applied to us for protected occupancy in a unit that was not already covered, we would tell them they have to file for coverage.

Ms. Torres-Moskovitz: So should we say you have to apply for coverage before or simultaneously?

Ms. Balsam: Would you like to say that? …apply for coverage before or simultaneously?

Mr. Carver: But there's still a problem with the language.

Ms. Torres-Moskovitz: Yes. How would you say that?

Mr. Carver: Obviously, if the unit is already covered, you wouldn't need a coverage application.

Ms. Balsam: Correct.

Mr. Carver: But as written, it actually says you must do it, so…

Ms. Balsam: No, it says, "If the unit in which the natural person resides is not an IMD unit at the time the natural person files an application for a finding of protected occupancy…."

Mr. Carver: OK. You have it.

Ms. Balsam completed that section, incorporating Ms. Torres-Moskovitz's suggestion (in italics):

"….the natural person must apply for coverage of the unit *simultaneously with or* before the Loft Board determines whether the natural person is protected."

Mr. DeLaney: Can we go over that one more time?

Ms. Balsam: "If the unit in which the natural person resides is not an IMD unit at the time the natural person files an application for a finding of protected occupancy, the natural person must apply for coverage of the unit *simultaneously with or* before the Loft Board determines whether the natural person is protected."

Mr. Carver: If it means they actually have to make two applications, we should make that clear. It doesn't quite say that.

Ms. Balsam and Mr. Hylton worked on what this change to the language might be.

Mr. Carver: The problem is, it seems like you could have an on-going trial for protection without an application for coverage.

Ms. Balsam: No.

Mr. Carver: But it says, "…before the Loft Board determines whether the natural person is protected."

Ms. Balsam: So do you want to say, before the Loft Board accepts the application?

Mr. Carver: I think that's what you mean, right?

Ms. Roslund: No, it's simultaneous. It's not that one is processed first, and then the other starts.

Mr. Hylton suggested using wording that states that the applications would be "considered" together.

Ms. Cruz: The applications can be filed together and go to OATH together.

Ms. Torres-Moskovitz: So the Loft Board doesn't rule on it until they've heard from OATH?

Ms. Cruz: What could happen is, if the ALJ says, this person has not proven their case for coverage, therefore, I'm not going to rule on their protected occupancy claim, then the claim for coverage comes back, and the protected occupancy claim remains in abeyance until there's been a final determination. Now, if the ALJ is recommending that coverage be granted, then she will hear and entertain the evidence presented for the protected occupancy claim. And usually what they do is file and make their recommendations for both claims on the same report.

Mr. Carver: Maybe it should be drafted as a negative? That you can't file for protected occupancy unless the unit is covered, or you've already applied for coverage. That's really what you're trying to say.

Ms. Torres-Moskovitz: Maybe there's a way to not go negative, but still make it clear. I think the vast majority of people are applying both at the same time.

Ms. Balsam: Right. Unless the unit is already covered.

Mr. DeLaney: I think we all understand what the issue is, so rather than all of us trying to work it out here, I'd suggest we leave it to the staff to draft the language, so we can move on. But I do have one question. In number (1) we've established that the protected occupant must be a natural person, so do we really have to repeat that in every case?

Ms. Balsam: I don't intend to do that, but I did it here because I thought it was important for this rule. But I can change that. I can take out the "natural," and just say, "If the unit in which the person resides is not an IMD…" But my recollection is that in the definition section, "person" is a defined term, and that was a problem, because it included more than just a "natural" person. I'll come up with something. But no, I didn't intend to do that throughout the rules.

Mr. Hylton suggested "individual" as a possible.

Mr. Barowitz noted that the language becomes more complicated as it progresses, and suggested changing "his" and "her" to "their."

Ms. Balsam said she'd consider both of those suggestions, and continued to (4) and (5)

"(4) The Loft Board may find a natural person who became a residential occupant of a unit prior to the effective date of the law to be a protected occupant if the natural person used the unit as a primary residence on_____ (applicable date inserted). Lack of consent of the owner or the holder of the owner's interest to a sublet, assignment or subdivision establishing such occupancy does not affect the rights of the natural person to protection."

So this contemplates someone who was there prior to the effective date of the law. For those after the effective date of the law, that would be section (5). And again, that would be a question of how big we want to make the time frame. But we never actually voted on including the primary residence. We just took a straw poll.

Mr. Carver: You had recommended something months ago, in a prior draft, correct?

Ms. Balsam: I have it in here.

Mr. Carver: Comment HB2.

Ms. Balsam: For (4), it would be during the Window Period, on the date the person filed the application for protected occupancy; and if there is a trial, through the date the record closes. That was the standard I had recommended, which is a very long period of time. On the other hand, we have a rule that says the Board is supposed to consider the entire record, so if we shorten that, we might have to tweak the other rule, which is fine. We could say, "Except as otherwise stated in these rules, the Board must consider the entire record." It's really up to the Board. I will say that if we go to the end of the trial period, that does place a burden on people to have to keep coming forward with proof. You have rolling discovery, which I think is difficult, and I would recommend that if we go that way – which I think we should – we should put some parameters, some limits, on discovery, for the time period from the time of filing the application to the date the record closes.

Ms. Torres-Moskovitz: That's in addition to the proof you have to show regarding the twelve consecutive months?

Ms. Balsam: That's for coverage, not protection.

Ms. Torres-Moskovitz: So on protection, we can create that?

Ms. Balsam: Yes. The law is very vague on who is protected, and the legislature left it up to the Board.

Mr. Carver: So let's talk about the start period first, rather than the end period, which is where we're going. The effective date of the law, I seem to recall, had been one of the goal posts. I think that makes sense, in terms of legislative intent, in terms of parity between the owners' obligations also. So that's my opinion.

Ms. Balsam: So you think the start date should be the effective date of the law? I'm fine with that.

Mr. Carver: Possibly. I think you go even earlier, by to the start of the occupancy, if that precedes the effective date of the law.

Ms. Balsam: Well you don't necessarily want to go back to the start of the occupancy, because you have people who've been living there for a very, very long time, and that would be extremely burdensome, and I don't think it's necessary. I certainly would never go before the Window Period.

Mr. Carver: I was just looking at your comment, but I think in my version – I don't think you have the same version. I think the beginning occupancy date correlates with section (5), not (4).

Ms. Balsam: The date occupancy began correlates to section (5), yes.

Mr. Carver: So for (4), my suggestion is that the effective date of the law be the start date.

Ms. Balsam: Right, it says that. It's in the comment. "All or some of effective date of law, on date application was filed, through the date the record closes." (comment HB1)

Mr. Carver: Ok, yes. Sorry. I see it.

Ms. Balsam: I think the effective date of the law makes sense as a start date for protected occupancy, because that's the cut-off in terms of consent. The difference between (4) and (5) is, do you need landlord consent for you to be there. And the way the rule currently reads is, if you were there on or before the effective date of the law, you don't need landlord consent. It doesn't matter. And I think we should say that. I don't think we should change that. So, "starting on the effective date of the law" would be fine. Or we could say prior to and on… the effective date of the law. We don't necessarily have to go back very far.

Mr. DeLaney: I would like to register that I'm opposed to that.

Ms. Balsam: OK. Well, we have that now, so what's the problem with it? Other than the primary residence. The start period as the effective date of the law…

Mr. DeLaney: If we go this route, I think it makes sense to say that you need to prove primary residency in order to become protected occupant. I think, as was recommended by the ALJ in the South Second Street case, that the date of the application for coverage leaves ample opportunity to determine whether or not the unit is in fact that person's primary residence. When we were discussing this last time, Ms. Roslund raised the question of what's the difference between the day before and the day after. If you ask people to demonstrate primary residency for a ten-year period, that's where it becomes very difficult. In the cases we've read recently, we've seen examples where someone intentionally had a different mailing address, etc. But if the goal here is to prevent a protected occupant from having a pied-à-terre, rather than living in the unit as their primary, then it seems to me we could safeguard that by saying, when you apply for protected occupancy, you'd better be able to prove that at that time and going forward, it's your primary residence. To look back now over a period of six, seven, eight years, is very harsh medicine to treat what I think is a problem that is limited in scope.

Ms. Balsam: The issue in the South Second Street case was that the OATH ALJ was talking about an end date, not a start date. So if we went with your suggestion, which is that they have to start proving primary residence from the date of the application, what do you do with the whole landlord consent issue? Because right now,

people who show they were there on the effective date of the law are protected without owner consent. That's what it currently says – they don't need landlord consent. And I think it's important to say that.

Mr. DeLaney: As you know, at the moment and over the last five years, there's quite a bit of discrepancy between what the rule says and how the cases are interpreted.

Ms. Balsam: But I don't think we've veered away from that at all. If you were there prior to the effective date of the law, you don't need the consent of the owner, no matter what. Whether or not you will be protected with this as your primary residence is a different issue. But I think we've been consistent that, if you're there prior to the effective date of the law, you don't need owner consent – to the sub-lease, sub-division, to whatever it is.

Ms. Torres-Moskovitz: I have a question for the lawyers. When you say, "effective date of the law," (what date does that mean)?

Ms. Balsam: It's the effective date of the Loft Law, and there are several iterations of them. So it's whatever you're applying under. If you're applying under 281(5), for you the effective date of the law is June 21, 2010. If you're applying under 281(1), the effective date of the law is June 21, 1982.

Ms. Torres-Moskovitz: So it's not the date of the "last" law passed? For example, in 2013 there was something that increased the window of the 2010 law, wasn't there?

Ms. Cruz confirmed that yes, the eligibility had been somewhat extended.

Ms. Torres-Moskovitz: It would be nice if it was just "the last date of the law." That saves three years right there.

Ms. Roslund: How is it determined which period is to be applied to the application?

Ms. Balsam: The applicant states which period they're applying under. Now, pretty much everyone applies under 281(5). But we could add something.

Ms. Cruz: We could add specifics, such as, if you're applying for a unit under 281(5), then the effective date of the law for you -- the date from which you would have to show it was your primary residence -- is June 21, 2010. We could add that.

Ms. Balsam: Having a definite date is always better, because we've had some situations when working on rule revisions where we had to figure out what the date was.

Ms. Torres-Moskovitz: What did that 2013 rule say? Can't it just go back to that?

Ms. Balsam: That just changed the square footage from 550 to 400.

Mr. Barowitz: And it changed the code compliance.

Ms. Balsam: Right. It changed the code compliance from 36 to 30.

Ms. Balsam and Ms. Cruz said they would have to check on the details of that.

Ms. Torres-Moskovitz: I'm just thinking that if we're going to tie it to an "effective date of the law," it could be one that's closer to us.

Ms. Balsam: We could split it up and say, if you were there on the effective date of the law, then lack of consent of the owner isn't necessary; which is the way it is now. And then we could say that you have to prove that it's your primary residence. We could split it into two sections; but I really think we should say that the lack of consent of the owner doesn't matter if you were there are the effective date of the law. I feel very strongly about that.

Mr. Carver: But then the tenant should have an obligation to prove primary residency as of that date as well. Because that's who the law was aimed at; not someone who was there part-time, and then picks an application date once they're there full-time. That's an opportunity to game the system. And of course, the owner's obligations have started already – on the effective date of the law.

Ms. Balsam: Theoretically, owners are supposed to come in and register on their own. That's the way the law reads. It doesn't often happen that way, but that's the way the law reads.

Mr. Carver: But not withstanding that, the owner's obligation has started already.

Ms. Balsam: Yes.

Ms. Roslund: Can someone reapply after the law changes? What if one of these applications is pending, and then the Loft Law is revised. Can that applicant re-apply under a different version of the law?

Ms. Balsam: The current legislative proposal contains a clause that says, in essence (and I don't think this is confidential. I'm sure it's being circulated all over Albany), if you were previously denied coverage but would now qualify due to changes in the law, then you can reapply. But that's just a proposal. We don't know what Albany will do.

Ms. Roslund: What if you haven't been denied, but you're worried that you might be? What if someone thought it would be advantageous to amend their application or withdraw it and re-apply? How would that work?

Ms. Cruz: We did have a case where a person withdrew with prejudice. There was an amendment to the law, and the owner's attorney argued that the person withdrew with prejudice under the law that existed at the time, and therefore that person's withdrawal should be considered with prejudice and not be entertained now despite the amendment. The Board did not agree with that argument, and said that based on the change in the law, the person could reapply. So there is some case law that indicates that if there's a change, the person can reapply.

Ms. Balsam: So I guess we should get an idea of how the Board members feel in terms of a start date. Let's take it piece-meal: Should the start date for primary residence be on the effective date of the law?

Mr. Carver: Is that your recommendation?

Ms. Balsam: Yes.

Ms. Torres-Moskovitz: So we don't know if the Loft Law is going to pass in Albany. But if it did, the effective date would be that?

Ms. Balsam: Yes.

Ms. Torres-Moskovitz: Is there any population that's currently applying?

Ms. Balsam: No one has been allowed to apply since June 15, 2017, but we do still have pending applications.

Ms. Cruz: But that's for coverage. In terms of protected occupancy, people can still apply.

Ms. Torres-Moskovitz: So someone applying for protected occupancy only, because they can't apply for the rest – if we're using 2010, and we're now in 2019….

Ms. Balsam: So let's use South Second Street, and let's assume that they moved into a covered unit at the end of the Window Period and had never applied for protection. Now they're applying for protection. If we made the start date the effective date of the law, they would have to go back to June 21, 2010, and go forward from there. Or, they would have to prove owner consent. That's the other choice.

Ms. Torres-Moskovitz: Or, there's the date of application.

Ms. Balsam: That would be another choice.

Ms. Torres-Moskovitz: Can we arbitrarily choose a date?

Ms. Balsam: There would have to be a rational basis for choosing that date.

Ms. Torres-Moskovitz: So what kind of argument do we have to make to choose a date?

Ms. Roslund: How does that help?

Ms. Torres-Moskovitz: I can see where you need them to prove beyond the date they applied, but you don't want them to have the burden of proving ten years.

Mr. Carver: But there's a reason why they should have that burden. It's because they don't have landlord consent. They just happen to be there on that effective date, and therefore, they get that enormous benefit. And the point of the benefit is to protect primary residents.

Ms. Torres-Moskovitz: Right. But when we talked about this with Rent Stabilization, wasn't it a hundred and eighty-three-day look-back?

Ms. Balsam: To keep a rent-stabilized apartment you're supposed to live there 183 days a year. The look-back period under rent-stabilization is two years.

Ms. Torres-Moskovitz: Can we just do two years?

Ms. Balsam: What would be the rationale for that?

Ms. Torres-Moskovitz: That 2010 is really far away.

Ms. Roslund: It is a bit arbitrary that whoever happened to be living wherever they happened to be living on the day this law was enacted is protected; but not someone who….

Mr. Carver: Future people can be protected in certain circumstances. What we're talking about here in this particular section is a smaller piece of the pie, which is those people who are seeking protection, who were living in the unit on the effective date of the law – the very date on which the obligations of the landlord start. Compatible to that is the tenant's obligation – to establish their primary residence as of that date. That's who the law was intended to apply to, as of that date. It's a very big benefit, and it should go only to those who are intended to receive that benefit.

Mr. DeLaney: Well, try this for a hypothetical. Three of us live in a loft building. In 2010, it's my primary residence. In 2011, I move to California for two years. From 2011 to 2013, California is my primary residence. But then in 2014, I move back. Just about the time the Board starts to evolve its new policy, which I would have had no way of knowing. I'm back, but there's this two year period that's now past five years in the past, during which time, I admit, my primary residence was elsewhere. Things didn't pan out in California, and I came back. But now, I'm not going to be the protected occupant -- even though I was there on the effective date of the law, and I've been there, using it as my primary residence since 2014 -- because now there's a rule being put in place that governs behavior that applies to me from years before. It seems to me the policy we're out to accomplish is that the person who's a protected occupant going forward should be using that unit as their primary residence. And to say, oops, you didn't know, and we have your 2012 Bay Area EZ Pass records, so we're going to drag you into court… what are we accomplishing?

Ms. Balsam: Let me ask you something though. Really, this is more about owner consent and lack of owner consent. So if the person who came back in 2014 could still prove primary residency with owner consent after 2014, then I think they would probably qualify under (5).

Mr. Carver: I agree with that

Mr. DeLaney: I don't think that's the way it's working over at OATH.

Ms. Balsam: Well that's why we're making a rule; and what do we want that rule to be? Agreed, it's not working that way now. We need a new rule. So let's figure out what we want. Or let you figure out what you want, and we'll draft it.

Ms. Balsam recapped Mr. DeLaney's story for Ms. Torres-Moskovitz, clarifying the point that when this tenant came back from California, the landlord happily continued accepting his rent. So that person would still qualify under section (5), because he's there with the consent of the landlord. It would only be a problem if, when he returned from California, the owner said, you left, and I'm not taking your rent anymore. Then he's not there with the owner's consent, and that would be difficult.

Mr. Carver: As it should be, because he left.

Ms. Torres-Moskovitz: And consent is not a lease, it's just…

Ms. Balsam: We put in some factors – some suggestions of what we thought would demonstrate consent. We haven't gotten to discussing them yet. But we wanted to give some guidance as to what would constitute

consent. You'll accept or reject those, or tweak them. They're fairly broad, on purpose. I think that that person who was there and came back, if they're paying rent to the owner, and the owner knows they're there, I think they would qualify under (5), so I think it's a non-issue. I think (the question is) for the person who stays, who's been there, who is going to get the benefit when there's lack of owner consent?

Ms. Cruz: So it would be as if the tenancy started again.

Ms. Balsam: Right.

Ms. Torres-Moskovitz: So that clarifies (5); but back to (4), and someone having to prove from 2010 to 2019 and beyond…

Ms. Balsam: The thing is, if there's a coverage application at the same time as a protected occupancy application, then I don't feel it's particularly burdensome, because they have to prove Window Period occupancy anyway. So you're already looking back. The question is, is it unduly burdensome to prove after the Window Period, and I think that's something we could fashion in terms of what documentation they use as proof. And maybe that's the answer: On the effective date of the law, they prove they were there, and then they have to supply something that shows they continued in occupancy. And we can tailor what that is. And that would make it less burdensome. If they didn't have to produce every bank record and every tax return and every voter registration or whatever…., maybe then, even though it's a longer period of time, it would be less of a burden. Does that make sense?

There was a brief discussion of the number of years it is required to save tax returns. Seven was the general consensus.

Mr. Carver: You could conceivably create milestones. As an analogy, in zoning, if you're trying to establish that you have a grand-fathered use from the 1930s, the Building Department doesn't require you to show a photograph every day of the year for the last one hundred years. They'll accept proof from certain points in time. So perhaps, as this period gets longer, you could establish milestones -- keeping in mind that the occupant is getting a very large benefit, so (demanding) some amount of proof of primary residency is not unreasonable.

Ms. Torres-Moskovitz: And the two-year idea doesn't appeal to anyone?

Ms. Balsam: It doesn't appeal to me.

Mr. Carver: It's not correlated to the policies that the statute is getting at.

Ms. Cruz: If the effective date of the law and the date of the application are the two dates when a person would have to show that the unit was their primary residence…

Ms. Balsam: ….so the person who went to California and came back would be OK, because they're back.

Mr. Carver: It's a problem for owner consent, because once they're gone…

Mr. DeLaney: Maybe someone else was paying the rent, and I was just chipping in. And I'm not a prime lessee.

Ms. Balsam: Then you're not there with owner consent. If you're just chipping in for the rent and not paying it directly to the owner…

Mr. Carver: Why is the person who leaves being elevated? I don't think the intent of the legislation (was to protect people who leave).

Ms. Cruz: Right now, if there is no prime lessee, and you have three people occupying the space, all three of them are protected. If there's no prime lessee, and all three people were there prior to the effective date of the law, owner's consent is not necessary. All three are protected.

Ms. Torres-Moskovitz: Does that mean the prime lessee isn't trying to get coverage (protection)?

Ms. Balsam: Right. They're gone, they've moved on, there never was one. There could be many, many permutations.

Ms. Torres-Moskovitz asked about how the possible milestone system would work with the dates being considered and the terms of primary residency.

Ms. Balsam: I'm leaning more toward keeping the period longer, but tailoring the proof. I feel that's fairer. Because then you're still covering the required period of time, and you're not picking target dates, which are easy to manipulate. That's how I'm thinking, but the Board can reject that.

Ms. Torres-Moskovitz: Does tailoring the proof really reduce that burden at court?

Ms. Balsam: Yes, that's why we're discussing it. We could stop that. Yes. The Board could put in a rule about discovery in this situation – just addressing protection – and tailor discovery. OATH procedural rules say that if the agency referring the case has a rule, that rule takes precedence over the OATH rules. So if we tailor a discovery rule here, then OATH has to follow that.

Mr. Carver: That assumes we have legal authority to actually redefine primary residence, which we might not have. I read the Court of Appeals case differently than you; which is what I'm driving at.

Ms. Balsam: Both you and Mr. DeLaney read the same case differently than I do. Yes, I do understand that, and it is something that we might have to deal with. But I think in the interest of fairness to everyone, we should at least try – to tailor something that would work for the Loft Law, both owners and tenants. And to go back to *Lower Manhattan Loft Tenants,* it contains a clause with wording to the effect that there could be other policy reasons why you might want to do something different. And I think we have very different policy reasons. The Loft Law is a retroactive law. We look backwards; rent stabilization looks forwards. That's a big difference. That's my take on it. If you want to go that way, that's fine; we'll try and draft something. If you really feel you want the milestones, we'll try to come up with milestones. We'll take a look at the grandfathering provisions. I'm not familiar with it, but…

Mr. Carver: That was just an off-the-cuff suggestion…

Ms. Torres-Moskovitz: What about just one year of a tax return?

Ms. Balsam: Or one document for each year.

Ms. Torres-Moskovitz: 2010 seems more difficult to prove, as the farther you move away from a date, the fewer documents you might have. What could you use?

Mr. DeLaney: Why do you need it? What are we trying to accomplish here? Mr. Carver keeps citing the huge benefit that this law is, but for someone who's recently covered, whose rent is pretty close to market rate, I don't know how huge it is. He speaks of when the owner's obligation begins, but I'm not so sure about when it begins. I think we get further and further afield from, what are we trying to accomplish here?

Mr. Carver: If it's not a benefit, they wouldn't be applying. We're trying to establish primary residency.

Ms. Balsam: We're trying to protect people who are using their units as intended – as their primary residence. That's what we're trying to accomplish. How do we figure that out? I'm not saying it's easy, but there are different ways we can approach it. I like the one document for each year.

Ms. Torres-Moskovitz: That seems like too much.

Ms. Balsam: It does?

Ms. Torres-Moskovitz noted, as an example, how many years of income disability insurance looks at -- five years overall, two of which need to be simultaneous – and wondered if something similar could be applied in this situation. Tenants would only have to prove a few consecutive years. She felt that going back to the effective date of the law should be abandoned; that it would be too difficult to produce documents from that long ago.

Ms. Balsam: I don't know that it's too far back. The South Second Street tenants filed in 2015, so they were going back five years, and they managed.

Ms. Torres-Moskovitz: Perhaps seven years would be a good benchmark, as that's how long people are supposed to keep tax returns.

Mr. Carver: The staff really has to think hard about evidence. This notion of one document per year is a problem, because you want various things to be pointing in the same direction. One item isn't going to do it. So if you're going to limit the evidence, you have to think carefully about what it should be.

Ms. Balsam: I understand what you're saying. I just threw that out as an idea.

Mr. Roche: I think Ms. Torres-Moskovitz might be on to something with the seven-year suggestion, coinciding with tax returns, because at least it's aligned with a precedent that's already established.

Mr. DeLaney: But doesn't it seem like a bit of a stretch to say that you have to show primary residence for seven years because that's how long you have to keep your taxes?

Mr. Roche: I'm not set on this; I'm just saying there's already a legal precedent for a seven year period. It's recognized by the IRS as a period of time you have to retain records. I'm not saying we have to word it that way, but if there's a question, there's a legal precedent already established for that period.

Ms. Balsam: If we use the seven years, and the last application was filed on June 15, 2017 – which was the last application date at this point -- it would be almost seven years, from June 21, 2010 to June 15, 2017. Then the

question would be, do they have to go past that, to when the record closes. So I think we already have that seven year period built in by the way everything worked out. Obviously, if the law is amended, and we have a new Window Period, no one is going to have to back past 2015. So that issue more or less goes away.

Ms. Torres-Moskovitz: I just don't know how many people are applying right now for protected occupancy.

Mr. Bobick: Tenants right now are proving Window Period occupancy. They're going back ten years. So the same proof they're using to prove coverage is the same proof they're using for protected occupancy. Some are going back fifteen years. The proof is already there, without a seven–year limitation.

Ms. Torres-Moskovitz asked for clarification.

Ms. Balsam: Where there are simultaneous applications for coverage and protected occupancy, for the people trying their cases now at OATH for coverage, they're already going back to 2008 and 2009, because they have to, to obtain coverage.

Ms. Torres-Moskovitz: But we're done with those cases. You can't do that anymore.

Ms. Balsam: We can't accept applications, but we're still deciding cases.

Mr. Carver: Ms. Balsam's point is that it's possible, and it's happening.

Ms. Torres-Moskovitz: How many are still in the system?

Ms. Balsam: Somewhere around fifty I believe.

Ms. Torres-Moskovitz: Fifty since 2017?

Ms. Balsam: I have the statistics in the end of the year-end report. My recollection is it's about fifty, but I'd want to double-check.

Ms. Torres-Moskovitz: And how many are only applying for protected occupancy?

Ms. Balsam: I don't know. We can get those numbers for you again.

Ms. Torres-Moskovitz: I understand if the new law passes, it's a whole new ball game, but…

Ms. Balsam: That's why I suggest developing a rule flexible enough that we'll never have to discuss this again.

Ms. Torres-Moskovitz expressed her concern for the those applying only for protected occupancy; and **Ms. Balsam** assured her those were definitely much fewer than the (estimated) fifty combined cases.

Mr. Carver: If you're in occupancy on the date of the law, which is the kind of application you're talking about, you'd have to have a combined application. There would be no such thing as a protected occupancy application now that coverage is over, right? If the unit isn't covered, that's it.

Ms. Balsam: No. You can have someone applying for protected occupancy for a unit that's already covered. We had a case earlier in the year where the occupant was killed in a war. Someone else moved in, and the

owner alleged there was a sale, but we found that the new tenant was a protected occupant, because they moved in with the owner's consent, and it wasn't a sale.

Mr. Carver: But we're only talking about this narrow universe of people who were in occupancy on the effective date of the law.

Ms. Balsam: For section (4), yes.

Mr. Carver: Right. And I thought that was what our conversation was limited to.

Ms. Balsam: Right.

Mr. Carver: So coverage wouldn't necessarily need to be simultaneous, because you're not already covered if you're a single protected occupant under (4). No?

Ms. Balsam: Let's assume you were there, but for whatever reason, you didn't seek protected occupancy at the time. And the unit became covered. And now you want to be a protected occupant.

Mr. Carver: So is there coverage through means other than proof by the tenant?

Ms. Balsam: It could be proof by another tenant. Let's say there were two people living there. One person applied for coverage and protected occupancy, and for whatever reason, the other person didn't at that time. So the first tenant is covered and protected, and now the second tenant says, I want to be a protected occupant too. It could happen.

Mr. Carver: Agreed.

Mr. Roche: Mr. Chairman, given the hour it is, I suggest that we ask the staff to come back with three options…

Ms. Balsam: No, we're not doing options. It becomes too difficult for everyone to follow what we're talking about. We can come back with more information – as to milestones, or suggestions about what documentation would be best. That we could do, but not another draft.

Ms. Torres-Moskovitz: So researching possible milestones; and considering the fact that we're nine years from the date of the law?

Ms. Balsam: I have to say that I'm not that sympathetic to that argument, but yes, we'll consider it.

Ms. Torres-Moskovitz: It's almost a decade…

Ms. Balsam: Yes, I understand that. But if you're bringing this claim, there are certain things you have to prove. And again, you don't have to worry about people who are nine years out, because they've already filed. They can't re-file.

Ms. Torres-Moskovitz: But if there was another round, it would be the same conversation again.

Ms. Balsam: OK.

Ms. Torres-Moskovitz: So you're going to re-draft number (3); for number (4), you're going to look into milestones?

Ms. Balsam: Yes, we'll look into milestones.

Ms. Torres-Moskovitz: Number (5)…

Ms. Balsam: We didn't really get to. And I think that will more or less follow what happens with (4).

Mr. Barowitz asked Ms. Balsam if you she had any idea of the status of the law in Albany.

Ms. Balsam: My understanding is that it is in committee in the Senate, and that' it's going to stay there for a while --- until certain concerns are satisfied.

Mr. Hytlon: This will conclude our March 21, 2019, Loft Board meeting. Our next public meeting will be held at 22 Reade St. Main Floor, Spector Hall, on Thursday, April 18, 2019, at 2:00PM.

The End