

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting

April 13, 2020

This meeting was held via teleconference, pursuant to Governor Cuomo's Executive Order 202.1, which suspended Article 7 of the Public Officers Law to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

The meeting began at: 2:10 PM

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

INTRODUCTION:

Chairperson Hylton welcomed those present to the April 13, 2020, 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 Authorize the Chair to Sign the Finding of Emergency

Chairperson Hylton: I want to welcome each of the Board members and members of the public. We hope and wish that all is well with your families and loved ones. Our first order of business is an authorization of the Chair to sign the declaration of emergency. I convened this meeting to ask the Board members to pass an emergency rule; however, before turning to the rule, the Loft Board must first authorize the Chair to sign the finding of emergency on its behalf. The finding of emergency appears at the end of the rule. Do I have a motion to authorize the Chair to sign the finding of emergency on behalf of the Board? Please identify yourself.

Mr. Hernandez: Yes. Robinson Hernandez.

Mr. Hylton: Mr. Hernandez. Is there a second?

Mr. Barowitz: Elliott Barowitz.

Mr. Hylton: Mr. Barowitz. Thank you. Ms. Rivera, would you please poll the Board members.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: 1

Members recused: 0

Discussion and Vote on the Emergency Rule

Mr. Hylton: The motion is passed. We now turn to a vote of the emergency rule. As you know, some of the Loft Board's current rules, found in Title 29 of the Rules of the City of New York, require the filing of documents in person or by regular mail. Proof of service by regular mail consists of a certificate of mailing from the United States Postal Service; however, based on the current state of emergency due to the spread of the COVID19 virus, which constitutes an imminent threat to health and safety, the Loft Board wants to enact this emergency rule to allow for electronic service and filing of documents, including waiving of requirements for each original signature. This will alleviate the need for people to meet to sign papers and go to the post office. In addition, in order to minimize contact between people, the rule would temporarily suspend the requirement to schedule Narrative Statement conferences within thirty days of receipt of the Narrative Statement. This emergency rule will remain in effect, after the Mayor signs it, for sixty days. I will now open the floor to Helaine.

Mr. DeLaney: Before we proceed...

Ms. Balsam: You need a motion first.

Mr. Hylton: I need a motion to open discussion of the rule?

Ms. Balsam: Yes. A motion, a second, and then comment.

Mr. Hylton asked for a motion to accept the emergency rule, and for a second.

Mr. DeLaney moved to accept the emergency rule, and **Mr. Hernandez** seconded.

Mr. DeLaney made a point of order that he was in touch with **Mr. Roche** by email, who had not been called during the vote. He was going to call in again, and **Mr. Hylton** took a moment to connect him to the teleconference.

Mr. Hylton: Thank you for that point of order. Now we're going to continue. We just passed a motion to discuss this rule. Does Ms. Balsam or anyone else want to comment on or discuss this rule?

Mr. DeLaney: I have a few questions.

Mr. Hylton asked that all Board members identify themselves before speaking, and then recognized Mr. DeLaney. (This practice should be assumed in these minutes from this point forward).

Mr. DeLaney: Thank you. First, is the reason this is only for sixty days because that's the maximum allowed under 1043(i)(2) of the charter?

Ms. Balsam: Yes.

Mr. DeLaney: OK. Because when I read sixty, my first thought was, why not make it ninety or a hundred and twenty? So sixty is all we can do. I also see that in the explanatory language we acknowledge that there was a finding of emergency by the Federal government, the State government, and the City government. So as long as any one of those three stays in effect, this emergency rule will stay in effect? Do I understand that correctly?

Mr. Hylton: Ms. Balsam will correct me if I'm wrong, but I think as long as the City state of emergency is in effect, this will remain in effect for those sixty days.

Mr. DeLaney: OK.

Mr. Barowitz: I have just one short comment. This all sounds like it's boiler plate, so there's not going to be much discussion about it, am I correct? Because it uses "however" over and over and over. Can we contradict anything after however?

Ms. Balsam: You can, if you feel the language isn't sufficient, yes. If you have comments, you should express them. But we wanted to be consistent how we were phrasing things, so while the amended rule...

Mr. Barowitz asked if the Board had to vote on each addition to the emergency rule, or if they could vote on the whole thing at one time.

Ms. Balsam: You can pass the whole thing.

Mr. Barowitz: OK. Thank you.

Ms. Roslund: I have a couple of questions.

Ms. Roslund: Does the language of this document that we're voting on remain in our rules indefinitely? Or is it a temporary item?

Ms. Balsam: For it to stay, you would have to do a more regular public hearing. And to be perfectly honest, you're amending all of these rules with the current rule-making that's actually at the Law Department right now. So we don't really have to worry.

Ms. Roslund: OK. But I have a couple of other questions about email. I was wondering if it should be more of a generic statement about emergency situations, as opposed to, specifically, this emergency situation. Maybe that's something we want to talk about later. But just to clarify, for an applicant on either side, they can still mail an application, correct? Or any sort of documents? It doesn't supersede the regular way of filing something?

Ms. Balsam: Correct, this is supplemental to anything that's already there.

Ms. Roslund: OK. And then, who, there's a lot of language about recipients' emails and consent and I'm wondering who on the Loft Board side is emailing documents out. What if they don't have everyone's email? Who's responsible for obtaining emails? And how does....proof...Just because on my side it says it went through, doesn't mean that the recipient actually received it. What if it bounces back?

Ms. Balsam: If it bounces back, then you know they haven't gotten it. And that would not be valid. It's the same as sending a letter, and it comes back. You have to think of it that way. But if it gets to the email server, and you know this is a valid email address because, let's face it, you probably email each other all the time, so the proof that it got to the server should be sufficient. It's the same as a certificate of mailing. A certificate of

mailing just says you sent it. It doesn't say the other person received it. And that's pretty much consistent throughout the law. That you can prove you sent it is what matters; not that they received it.

Ms. Roslund: OK. So then, a very minor note, relative to what Mr. Barowitz had said. On page 24, the however is omitted before the beginning of the inserted statement, which makes it not consistent. However, I don't think the however is necessary.

Mr. Hylton: So page 24. Where are you looking? At the very bottom?

Ms. Roslund: Page 21. It's on the second line up under C in section 12.

Mr. DeLaney: That's section 12, 2-07.

Ms. Balsam: It's before (iv), right? Just before the capital C?

Ms. Roslund: Yes.

Ms. Balsam: Yes, we can put the however in there. That's not a problem.

Ms. Roslund: I thought that the however was unnecessary everywhere, but I don't think it changes the meaning one way or the other.

Mr. Barowitz had a question about the use of "effected" on page 5. He wondered if it shouldn't be "affected."

Ms. Balsam indicated that, as it's not part of the emergency, perhaps the Board didn't have to deal with that change right now.

Mr. Hylton: I think it's correct, Mr. Barowitz. Effected by personal service or certified mail. It is correct, because it's effecting service.

Mr. Barowitz: OK.

Mr. Hylton: Do we have any other comments from Board members about this? Anything to discuss?

Mr. DeLaney: Yes. There are a couple of places where you use the term, "a copy," as opposed to "one copy" being filed with the Loft Board. For example, section 2, 1-06(b)(2) says a copy; (b)(ii)(2) says a copy, whereas (b) says one copy; and it's cropped up in a couple places. I assume that, as with putting the however in, that was discussed earlier, and the Law Department's already seen this; but we can still make de minimis changes?

There was a brief pause as Ms. Balsam, who had been dropped from the call, was reconnected to the teleconference.

Mr. DeLaney: Helaine, my question was, I presume that this is going to go into effect immediately upon Renaldo's signature and the Mayor's signatures; that it's already been vetted by the Law Department?

Ms. Balsam: Yes.

Mr. DeLaney: But I also presume that making minimal changes, such as inserting the however, can be done without delaying anything?

Ms. Balsam: Yes.

Mr. DeLaney: OK. And I pointed out that there are several places where it says “one copy” needs to be provided to the Loft Board, while in other places, it says “a copy.” So I would just encourage you to go through all the “however’s” and make them all “one copy,” so it’s uniform.

Ms. Balsam: Yes. We’ll do that. Thank you.

Mr. DeLaney: OK, my next question: I had seen email comments from the public, coming in from attorneys Brody, Shapiro, Kozek, and Frazier. Is that what we’ve got in terms of public comments?

As Ms. Balsam’s response was cutting in and out, Mr. Hylton answered the question.

Mr. Hylton: Helaine, your call is a little sketchy, so let me clarify what you said for Mr. DeLaney. We have received some other comments, but basically, they just say, yes, we agree; yes, we agree; yes, we agree; nothing more substantive. And just the attorneys you mentioned, Mr. DeLaney?

Mr. DeLaney: Right. So if the Board members have read the comments from David Brody and Michael Kozek, they have the principal arguments as propounded by a landlord attorney and a tenant attorney.

Mr. Hylton: Correct.

Ms. Balsam: Yes.

Mr. Hylton: Ms. Balsam, would you go ahead and address the payment issue that came up, please?

Ms. Balsam: The payment system?

Mr. Hylton: The payment of fees.

As Ms. Balsam could still not be heard clearly, Mr. Hylton explained.

Mr. Hylton said that fees and applications sent to the Loft Board staff offices separately will be held until both have arrived, and then combined, and then asked Ms. Balsam if that was correct.

Ms. Balsam: Yes.

Mr. Hylton: Do any Board members have any comments or concerns about that?

Ms. Torres-Moskovitz: Yes. I was going to say it’s a bad connection; that I can’t hear what Helaine is saying. Is it that someone should drop it in the mail; they don’t have to go to a post office, necessarily?

Mr. Hylton: Right.

Ms. Torres-Moskovitz asked if payment could not be received online, as architects and owners can do on DOB NOW.

Mr. Hylton: I appreciate that, but our systems are not set up for Loft Board payments like that.

Ms. Torres-Moskovitz: Can we get on the list?

Mr. Hylton: Yes, we are on the list. But we're just not there yet, and for this temporary measure, I don't know if they're going to invest the resources. It requires a lot of work, a lot of programming. But we offer everyone the same method right now. The application will be accepted and held. It just won't be processed until payment is received.

Mr. DeLaney: Just to clarify, for myself and for the public. Ms. Balsam has explained that a couple of Board staffers go into the office a couple of times a week. So, if for example, I email an application on Monday, and mail a check on Tuesday, and the check arrives the following Monday, the receipt date would be the date the check is married to the application?

Ms. Balsam: Yes.

Mr. DeLaney: OK.

Mr. Hylton: Could it not be the date that the email came in?

Ms. Balsam: It can't because our rules say everything has to there.

Mr. Hylton: Could we do that in this rule?

Ms. Balsam: We can but [inaudible].

Mr. Hylton: I'm sorry, I missed what you said at the very end Helaine.

Ms. Balsam: We would have to redraft that section on [inaudible] actually do that [inaudible].

Mr. Hylton: OK, let me just say to the Board members and to the public, this is an emergency situation, so we really need to get something going here. Obviously, this is not a perfect rule; the proposals in this are not perfect; but I think it substantially alleviates the major problems of having to meet in person to sign and serve papers and go to the post office. So I would hesitate to delay this rule-making to another emergency meeting, to pass another emergency rule to make changes here, when this is really not going to be a big deal for us here. If people send in their payments right away, then it will be only a matter of a day or two delay from that time until we receive their email.

Ms. Torres-Moskovitz: I have a suggestion. It sounds like we have to meet in another sixty days. Between now and then, can the staff track how long it takes for the applications to be married and complete?

Mr. Hylton thought that was a good idea and ask Ms. Balsam if she agreed.

Ms. Balsam: Yes.

Mr. Hylton: Do the Board members agree?

Mr. DeLaney: So just to nail this down, I appreciate David Brody's comments, that if we want to try to minimize the number of times people –attorneys, applicants or respondents – need to go out and interact with other people, I would presume... Well, number one, it's OK with me that the check and the application get married at the office. I don't think anybody's concerned about the delay of a few days. Am I correct that in this circumstance the attorney could even pay with a personal check, with a notation as to what it's for?

Mr. Hylton: Yes.

Ms. Balsam: Sure.

Mr. DeLaney: So it's not like Fat Cat Realty, LLC, has to go in to find the corporate checkbook and write a check for the application. Whoever is writing the check can just say what it's for, and we'll match it up?

Mr. Hylton: Yes.

Ms. Lin: I'm sorry. It's Tina. I don't think the Loft Board can accept personal checks from the attorneys themselves; they may not be able to, due to ethics rules, to cover funds and such.

Mr. DeLaney: Hmm. Yeah.

Mr. Hylton: Maybe not the attorneys, but another member of their staff? We have to try to figure this out as best as possible for those who are affected here, because I understand there are going to be challenges to this. As I said before, it's not perfect; it doesn't treat everybody fairly; but this is really the best thing for everyone right, now under these conditions.

Mr. DeLaney: I understand, and I'm supportive of the change. And obviously, again, David Brody outlined some issues, but I don't think we should let the perfect be the enemy of the good. And as Julie very wisely points out, at the sixty-day mark, if New York City and New York State are still closed, we can flesh it out, and add some detail to the renewal of this, and work out the kinks we'll undoubtedly encounter along the way.

Mr. Hylton: Yes. Thank you. Absent any other comments...I'd like to give anyone else just a minute or two to say anything at all. Are there any comments on this rule?

Mr. DeLaney: I have a couple of more.

Mr. Hylton: Ok, go ahead, Mr. DeLaney.

Mr. DeLaney: The little grammatical pieces, where there's an "a copy" versus a "one copy," I've emailed my notes on that to the Board, so as not to waste time. The other two topics I would like to touch on are, first

the question of, Narrative Statement conferences may wait until the end of the emergency to schedule the conference. I have gotten some comments expressing concern that there could be a conference scheduled during this period, and that seems wrong. So it seems to me, in section 6 the language should say, "shall" wait until the end of the emergency to schedule conferences, rather than "may" wait.

Mr. Hylton and Mr. DeLaney tried to work out what page the passage was on in hard copy.

Ms. Balsam: Inaudible.

Mr. Hylton advised Ms. Balsam that there was something wrong with her connection.

Ms. Balsam said she would hang up and dial in on a different phone, and there was a brief pause in the meeting until she was reconnected.

Ms. Balsam: Is it better?

Mr. Hylton: Yes.

Ms. Balsam: It's page 8.

Mr. DeLaney: You're absolutely right. It's page 8. And on the bottom of the page, the last however paragraph there: "...the Loft Board may wait until the end of the emergency to schedule a conference..." I feel strongly that it should be shall wait.

Mr. Hylton: Helaine?

Ms. Balsam: I'm always in favor of flexibility, so I would argue for the may, but if the Board wants it shall, we can run that by the Law Department.

Mr. DeLaney: What the question really comes down to is, are you going to try to hold a conference or not? If we're all supposed to avoid groups of more than two people, then we're not going to be able to do it.

Ms. Balsam: Right. We've already put over all the conferences.

Mr. Barowitz: This issue with may and shall has come up several times, and I once proposed using "will." That would make it very specific. The Loft Board will wait until the end of the emergency.

Ms. Balsam: Will is the same as shall from a legal standpoint.

Mr. Barowitz: You may be right, but I think the emphasis is greater with will.

Mr. Roche: The Loft Board promises it won't....

General laughter

Mr. Balsam: Whatever the Board members want. It's an easy enough fix.

Mr. DeLaney: What I've heard professionals saying is, I don't want to go to a conference until it's safe to do so. And I think that's appropriate.

Mr. Hylton: But here's my concern. After this emergency is over, I don't want someone saying, well, I still don't feel safe. So, I guess, I don't have an objection to having it there until the City has...(To Ms. Balsam), I don't have a problem with us changing that language. I think it would be disingenuous for us to do anything until the emergency's over. However, I don't want anyone, after the emergency's over, saying, well, the emergency won't be in effect anyway. So we don't have to worry about that. So, let's go ahead and change that.

Ms. Balsam: OK. So I'll make it shall, and we'll see what the Law Department says.

Mr. Hylton: OK. Do we have any other comments?

Mr. DeLaney: Yes. As I said, I have two. That's one; and the other question I have is, early on, in the first couple sections, the first descriptions of filing delivery receipts --- my question is, I only know a couple of nerdy people who used to routinely send me emails requesting an acknowledgement of receipt. Is that fairly easy to do?

Ms. Balsam: Yes, it is fairly easy to do, but that's not what we're talking about. What we're talking about is a different kind of receipt, which says that the email arrived at the email server. And they're both the same. You click on options in your email program – although I'm not sure how all email programs work – but you click on options, and you ask for a delivery receipt and a read receipt.

Mr. DeLaney: A delivery receipt and a read receipt.

Ms. Balsam: Yes.

Mr. DeLaney: Does that happen commonly in correspondence with attorneys?

Ms. Balsam: Some attorneys make it a rule when they email to ask for them; others don't.

Mr. DeLaney: Maybe what would be useful, in addition to adopting this rule change, would be to think about putting some practical language on the web site that interprets what we want and gives people an idea how to do it.

Ms. Balsam: I'm not sure we have the technical expertise to do that. I can tell you how to do it in Outlook; I have no idea how to do in Gmail, or AOL, or any of the other programs that people use. So I'm leery of doing that.

Mr. DeLaney: I guess I'm just thinking about, do we get into a he-said, he-did, he-didn't, kind of thing here, where the person didn't get it, and we didn't go through.....and there's a confusion?

Ms. Balsam: It's a not a question of whether or not they got it. It's whether or not it was sent correctly. And sure, we may have those...

Ms. Roslund: [inaudible]

Ms. Balsam: That's exactly right. And we may have those issues. We'll deal with them if they come up, and I will say that we will be nimble in interpreting what people have. But until the situations present themselves, I don't know that we can make a blanket statement.

Mr. DeLaney: That's fair. I understand that.

Mr. Hylton: Thank you. Absent of any other comments, I'm going to end the discussion on the rules. Ms. Rivera, would you please poll the Board members.

Ms. Rivera: Mr. Barowitz?

Mr. DeLaney: I'm sorry, one second. This is to adopt the rule as amended by changing may to shall on page 8?

Mr. Hylton: Correct, and there was something else. I think there was another...

Ms. Balsam: Adding a however and changing the a to one.

Mr. Barowitz: There are three minor changes.

Mr. Hylton and Ms. Balsam: Right.

Mr. Barowitz: A to one, and...OK. Let's take a vote. A's, a's. I mean it's hardly amended so I don't know if we need to say that to be perfectly legal or not.

Mr. Hylton: OK, let me phrase it, Mr. Barowitz, so you can tell me if it's good. So we're going to take a vote now on approving this rule with minor changes. Mr. DeLaney has indicated changing where it says a to a one; and where Heather has suggested putting a however in one spot that Helaine has noted; and where we have may, changing it to shall, as Mr. DeLaney suggested. Mr. Barowitz?

Mr. Barowitz: Ok, so I move we move this question.

Mr. Hylton: Very good. Ms. Rivera, could you please poll the Board members.

Ms. Rivera: Mr. Barowitz?

Ms. Balsam: Get a second. You need a second.

Mr. Hylton: We already had a motion and a second on this, and we're now polling the Board members for passage of this rule. To remind you, at the very beginning, I asked for a motion to pass the rule, and I believe

it was Mr. DeLaney who made the motion and Mr. Hernandez who seconded. Ms. Rivera, could you please poll the Board members.

The vote:

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

Members dissenting: 0

Members abstaining: 0

Members absent: 1

Members recused: 0

Ms. Rivera: Six in favor; one absent.

Mr. Hylton: Not absent. There's Mr. Roche. I guess he's....Mr. Barowitz, what do you say here? Not available, or abstain, or...?

Mr. Barowitz: Not available.

Mr. Hylton: OK. Thank you. This rule has passed. Ms. Balsam, could you guide us on next steps?

Next Steps and Closing

Ms. Balsam: So I'll make the changes; we'll submit it to the Commissioner, the Chair, for signature; and we'll submit it to the Law Department to send over to the Mayor. Then we'll have to publish it in the City Record, and that will be the effective date.

Mr. Hylton: I just want to clarify, as the acting Chair, as the Chair Designee, I will not be signing. The Commissioner of the Department of Buildings will sign this rule.

Mr. Barowitz: Just one general question. Are we relatively convinced that this will land on the Mayor's desk and get signed?

Mr. Hylton: Yes sir.

Mr. Barowitz: OK.

Mr. DeLaney: And Ms. Balsam, you'll let us know what the effective date is, after it's been published in the City Record?

Ms. Balsam: Yes. We'll put it on the web site as well.

Mr. Hylton: And there is no publication timeline, right? After the Mayor signs it, it will become law. It will become rule.

Ms. Balsam: OK, I just got an email from Mr. Roche, saying, yes, yes, yes, yes. He doesn't know why (he missed the vote).

Mr. Hylton: OK, we changed it. Just for the record, we are going to change Mr. Roche's vote to yes.

Ms. Rivera: Seven in favor.

Mr. Hylton: OK, go ahead, Ms. Balsam.

Ms. Balsam: The effective date is the date it's published in the City record. So whenever the Mayor signs it, you then have to get it to the City Record for publication. I don't know how long it will take to be published. Usually, it's five days; but as this is an emergency rule, they may do it faster.

Mr. Hylton: We don't want to vote through this emergency, and then have them take their own time on it. There's no thirty-day requirement or anything like that?

Ms. Balsam: No. The effective date is the date that it's published.

Mr. Hylton: Very good. Before I close, I just want to extend continued well wishes for everyone through this crisis, and I appreciate the Board members coming together so quickly for this discussion. It was great, and I appreciate all the comments that were sent in. We hope we've addressed most of them, and we'll strive to improve this rule should there be an opportunity to pass another emergency rule.

This will conclude our April 13, 2020, Loft Board meeting. Our next public meeting will be held on Thursday, April 23, 2020, at 2:00 PM, via teleconference.

Board members, your attendance sheets will be emailed to you. Please sign and return to the Loft Board. Thank you. This meeting is now concluded.

The End