

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting

April 23, 2020

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 23, 2020, public meeting of the New York City Loft Board, and explained that the meeting was being held via teleconference due to the corona virus emergency, pursuant to the Governor Executive Order 202.1. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board; and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

Mr. Hylton welcomed back the Board members and members of the public and said he hoped everyone is keeping well and safe during the crisis. He then turned to a vote on the meeting minutes of January 30, 2020.

Mr. DeLaney asked the Chair if, before the vote, he could confirm that the meeting was, in fact, being recorded; as an automated voice had announced earlier that the meeting was no longer being recorded.

Mr. Hylton confirmed that it was being recorded, and that a back-up recording was also engaged.

VOTE ON MEETING MINUTES:

January 30, 2020, Meeting Minutes

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

Mr. DeLaney stated he had sent to Ms. Balsam, via email, miscellaneous minor corrections (typo's etc.), for both January 30th and March 19th.

Ms. Balsam acknowledged that she received them, had marked them up, and would make the corrections.

Mr. DeLaney: With regard to the January 30th minutes, one of the topics that came up on page 1 was Julie's question about self-certification. Mr. Hylton had replied that there no further updates, but would inquire. I'm just wondering if we have any new information on this.

Mr. Hylton replied that after that meeting he did ask for a meeting again, but since then, obviously, new, pressing issues had arisen. He apologized, and said he would ask again.

Mr. DeLaney: Mr. DeLaney replied that he completely understood; but just wanted to be sure it wouldn't fall off the list during the crisis and be forgotten.

Mr. Hylton assured him it would not, then asked if there were any additional comments.

Mr. DeLaney: Yes. I said in the private meeting, and I want to repeat it again for the public: These are extraordinarily clear and thorough minutes, and if you have an hour or so and want to know what we discussed on rule 2-09, it's all here and very clear and informative.

Mr. Hylton: Thank you. They are on the web site.

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

Mr. Barowitz moved to accept the January 30, 2020, meeting minutes; and **Mr. Roche** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: Mr. Hernandez

Members absent: 0

Members recused: 0

March 19, 2020, Meeting Minutes

Mr. Hylton then turned to a vote on the March 19, 2020, meeting minutes; noted that it had been the first meeting via teleconference; and asked if there were any corrections of comments.

Mr. Barowitz noted for the record that his name had been misspelled throughout. It should have two L's and two T's.

Mr. Balsam said she would make the correction.

Mr. Hylton asked Mr. Barowitz if he would make the motion to accept the March 19, 2020, minutes with those changes.

Mr. Barowitz so moved, and **Mr. DeLaney** seconded.

The vote:

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

Members dissenting: 0

Members abstaining: Mr. Roche

Members absent: 0

Members recused: 0

Mr. Hylton noted that both the audio and the word-for-word transcript for that meeting are posted on the web site.

Mr. DeLaney asked if the minutes were also posted, in addition to the word-for-word transcript.

Ms. Balsam: The minutes will be posted under Minutes, and the transcript will be posted where the recordings usually are. Normally, we would have a video recording, but since now we can't have that, we'll post the audio together with a transcript.

Mr. Hylton then turned the floor over to Ms. Balsam for the executive director's report.

EXECUTIVE DIRECTOR'S REPORT

Ms. Balsam: The unofficial Loft Board revenue for March was \$7,894.

Regarding the emergency rule, we have received sign-off from the Law Department, and it's currently awaiting the Mayor's signature.

Regarding the general proposed rules, the Loft Board staff and the Mayor's Office of Operations have finished polishing the language, and we are waiting for the Law Department to send comments.

Litigation

New Case:

MZBJ Holdings LLC v. NYCLB: Here, an owner commenced this proceeding seeking an order of mandamus to compel the Loft Board to issue a forty-five-day clock; and then once the clock had run, to issue a letter of certification if the owner cleared all DOB objections and no alternate plan was filed.

Decisions:

475 Kent Owner LLC v. Pomeroy, et al (including the Loft Board), The owner is asking the court to enforce a settlement agreement entered into between the owner and the tenant association. The owner amended its plans to require the decommissioning and removal of all gas lines and the installation of a new gas riser to supply gas fixtures on the roof, such as a fire pits, as well as an electric HVAC system to provide heat, hot water and electric cooking stoves. The tenants objected and filed an alternate plan, claiming the existing gas lines could be legalized. The owner claims the agreement bars tenants from commenting on the amended plans or filing an alternate plan unless the amended plans involve layout changes to tenant units. The owner asks the court for damages; for an injunction barring tenants from interfering with the owner's legalization of the building; for an order to the tenants to provide access so the owner can measure for new windows; and for an order annulling the Loft Board's decision to reject the members' waiver of the Amended Narrative Statement. The court issued an interim decision on the issue of the injunction, and it denied the request for a preliminary injunction, finding that the owner was unlikely to succeed on the merits. The court found that many of the proposed changes fell within a waiver clause in the agreement that allowed the tenants to contest unit configurations and changes that would diminish services. The court also found that the tenants did not waive their right to comment on changes that were not necessary to legalize the property. So the court has ordered a "framed hearing" to take testimony to resolve issues of fact pertaining to those issues.

Eighteen Properties LLC v. BSA, DOB, et al. This decision involves a building under the Loft Board's jurisdiction, 255 18th Street, Brooklyn, although the Loft Board was not a party to the action. It already had a C of O (Certificate of Occupancy). Because of when the C of O was issued, they were still eligible for coverage under the Law. The tenants asked the Department of Buildings to have the C of O revoked, and the Department of Buildings brought an action at the Board of Standards and Appeals (BSA), which did revoke the C of O. The owner challenged that in court in an Article 78 proceeding. In a Decision and Order, the Court upheld the BSA's determination, finding that it was based on substantial evidence and that it was not arbitrary, affected by an error of law, or made in violation of lawful procedure. So the revocation of the C of O for that building stands, and the owner is proceeding with legalization.

Mr. Hylton: Thank you. Are there any comments or questions for Ms. Balsam?

Mr. DeLaney: I have a few. First, I would ask for copies of the two decisions, and your report on 255 18th Street, *Kent v. Pomeroy*. And what is the address for the mandamus seeking a forty-five-day clock?

Mr. Clarke said it was 250 Moore Street, Brooklyn.

Mr. DeLaney asked for a copy of those papers as well, and **Ms. Balsam** said she would provide it.

Mr. DeLaney: And I would note in passing that at the March meeting, I had asked for copies of 383 8th versus the Loft Board, and I don't think I've received that, which I understand, because everybody's been running around. So I would like to reiterate my request for the 383 LLC versus Loft Board.

Ms. Balsam: OK. I apologize.

Mr. DeLaney: I understand completely. We're all dealing with a new way of doing things. So naturally things are going to fall between the cracks. And I also had asked for copies of the three housing maintenance violations that you reported on that the March 19th meeting.

Ms. Balsam: OK, I'll check again.

Mr. DeLaney thanked Ms. Balsam, and said he had a couple of more questions.

Mr. DeLaney: Usually this is the time of year when we received requests for the filing of disclosure forms from the Department of Investigation and the Conflict of Interest Board. I'm just curious if those are coming or if they have been delayed.

Mr. Hylton and Ms. Balsam explained that this had been delayed until May by Executive Order.

Mr. DeLaney: OK, so normally, we have about a month to do them. And some of the questions are related to the filing of taxes for the prior year, which has been delayed until July. So when the filings come out, we'll be given an adequate time to complete them?

Ms. Balsam: Yes.

Mr. Barowitz: And will the forms be mailed to us, rather than our having to come down to pick them up?

Mr. Hylton: We will make whatever accommodations are necessary to get them to you. All we know right now is that it's been delayed. And when we get them, we'll get it to you.

Mr. Barowitz: OK.

Mr. Hylton: Any other questions for Ms. Balsam? Alright. Let's move on.

THE CASES:

Appeal and Reconsideration Calendar

Mr. Hylton: There are two cases on the Appeal and Reconsideration Calendar. The first one is:

	Applicant(s)	Address	Docket No.
1	SMCB Associates LLC	329 Greenwich Street, Manhattan	AD-0082

Ms. Lin presented this case.

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

Mr. Barowitz moved to accept this case, and **Mr. Roche** seconded.

Mr. Hylton: Are there any comments on this case? (none)

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

Conclusion: The 2015 Determination is modified to retroactively extend Owner's deadline to comply with code compliance deadlines to December 20, 2018, one year from the conclusion of the ejectment action. As the deadline in the 2015 Determination has been modified, the appeal challenging the Administrative Determination is denied as moot.

Mr. Hylton: The next case is

	Applicant(s)	Address	Docket No.
2	383 8 th LLC	383 8 th Avenue, Manhattan	R-0374

Ms. Lin presented this case.

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

Mr. Hernandez moved to accept this case, and **Ms. Roslund** seconded.

Mr. Hylton: Are there any comments on this case?

Mr. DeLaney: I did have one comment. I'm going to vote in favor of this motion. There was considerable discussion in the private session which elicited the fact that, apparently, this building has not made much progress on code compliance, other than having a one-year permit; but hasn't done any work based on that permit, which, in fact, expired not too long ago. When the Board reinvigorates its enforcement effort, I feel strongly that this building be considered a candidate for a Board-initiated signing of non-compliance.

Mr. Hylton: Thank you, Mr. DeLaney. Any other comments? (none)

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

Conclusion: The Owner bore the burden of proof to show it was entitled to the relief sought in its abandonment application. As it failed to make out a case for relief, the Loft Board properly denied the application. Owner's argument that proving a necessary component of their case could not have been anticipated is unpersuasive. The Loft Board denies Owner's application for reconsideration. The original Order remains in full force and effect.

The Summary Calendar

Mr. Hylton: There are ten cases on the Summary Calendar. They're usually voted on as a group. One of these cases, number 3, 241 Bedford Associates, LLC, will be voted on separately. Number 10, 467 Troutman Street, the applicants being Melissa White, George Allison, and Tim Murray, will be tabled for a later Board meeting. And Ms. Balsam would like to make a comment regarding what was discussed in the private session on number 11, which is 356 Arlington Avenue.

Ms. Balsam: On number 11, docket number TR1388, we're going to change the conclusion to indicate that the Loft Board views the tenant's application withdrawn with prejudice. The rest of the Orders stay the same.

Mr. Hylton; Outside of 241 Bedford Associates and Melissa White, George Allison, and Tim Murray, the other cases will be voted on as a group. The cases are:

	Applicant(s)	Address	Docket No.
3	241 Bedford Associates, LLC	156-170 North 4 th Street a/k/a 239-247 Bedford Avenue a/k/a 159-179 North 3 rd Street, Brooklyn	LS-0246
4	475 Kent Owner LL	473-493 Kent Avenue, Brooklyn	LS-0251
Conclusion: Owner's application for an access order is deemed withdrawn.			
5	475 Kent Owner LLC	473-493 Kent Avenue, Brooklyn	LS-0252
Conclusion: Owner's application for an access order is deemed withdrawn.			
6	475 Kent Owner LLC	473-493 Kent Avenue, Brooklyn	LS-0256
Conclusion: Owner's application for an access order is deemed withdrawn.			
7	Karen Woelki	950 Hart Street, Brooklyn	PO-0089
Conclusion: The Loft Board deems Tenant's application withdrawn with prejudice.			
8	Nicolas Matar	59 Grand Street, Brooklyn	PO-0094
Conclusion: The Loft Board deems Tenant's application withdrawn with prejudice. The Loft Board neither accepts nor rejects the remaining terms of the Stipulation.			
9	Octavio Roscioli	151 Kent Avenue, Brooklyn	PO-0097
Conclusion: The application is deemed withdrawn with prejudice.			
10	Melissa White, George Allison, And Tim Murray	467 Troutman Street, Brooklyn	TA-0255
11	Victoria Reyes and Wilmer Roche	356 Arlington Avenue a/k/a 3075 Fulton Street, Brooklyn	TR-1388
Conclusion: The Loft Board deems Tenants' application withdrawn with prejudice. The Loft Board neither accepts nor rejects the additional terms in the stipulations of settlement.			

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

Mr. Hernandez moved to accept this case, and **Ms. Roslund** seconded.

Mr. Hylton: Are there any comments on this case?

Mr. DeLaney: Excuse me. I'm sorry, I was on mute. I'm going to vote yes on all these cases; however, I do plan to file an opinion on number 5, 475 Kent. This is another in a series of circumstances where the access that was granted by the tenant is pursuant to a stipulation which, in my view, the Loft Board usually sidesteps by saying it neither accepts nor requests (sic). The specifics of the stip in 475 Kent states number 5, which is unit 510, occupied by Mr. Craig Edsinger, in the stipulation, Mr. Edsinger agreed to waive his right to reapplication of the Loft Board's rules on access if there should be another dispute. I'm of the opinion that Mr. Edsinger should not and cannot waive that, and the Board's sidestepping this kind of thing is something I've commented on in the past, and that I continue to call it to people's attention. I think if the Board wants to take that sort of posture, they could at least bright-line the areas on a stipulation that are subject to question, so that the tenant doesn't mistakenly rely on being asked to waive something that they're not in a position to waive. And I plan to file an opinion on the case.

Mr. Hylton: Thank you, Mr. DeLaney. Are there any other comments? (none).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

Mr. Hylton: The next case on this Summary Calendar, which is being voted on separately.

	Applicant(s)	Address	Docket No.
3	241 Bedford Associates, LLC	156-170 North 4 th Street a/k/a 239-247 Bedford Avenue a/k/a 159-179 North 3 rd Street, Brooklyn	LS-0246

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

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

Mr. Hylton: Are there any comments on this case?

Mr. DeLaney: I have a comment, as I asked that it be taken up separately. I also need to backtrack and state that, actually, I believe my concern about the waiver of access rules applies to this case.

Mr. Hylton: Yes. I thought so, yes.

Mr. DeLaney: Yes, so, I apologize to Mr. Edsinger. Actually, now that I sort my papers, I realize that Mr. Edsinger actually departed his unit pursuant to a 286-12 stipulation,-- a 286 sales agreement -- which was my concern in that

case. So I apologize for muddying the record. It's this case where I plan to vote no, because I don't think the Board should be blessing the waiver of tenants' rights that are conferred by the law.

Mr. Hylton: Thank you, Mr. DeLaney. Are there any other comments? (none)

The vote

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

Members dissenting: Mr. DeLaney, Ms. Torres, Ms. Roslund

Members abstaining: Mr. Barowitz

Members absent: 0

Members recused: 0

Mr. Hylton: This motion has not passed, and as we said before, number 11, which is 356 Arlington, is tabled.

The Master Calendar

Mr. Hylton: We have three Proposed Orders on the Master Calendar. The first case is

	Applicant(s)	Address	Docket No.
	Scott Levell, Yaniv Zion Sarig and Ryan Fix	151 Kent Avenue, Brooklyn	PO-0034 and TA-0221

Mr. Clarke presented this case.

Mr. Hylton asked for a clarification of the last line of Mr. Clarke's presentation, to which **Ms. Balsam** replied: The applications of the remaining applicants. There were originally ten of them, and some of them settled.

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

Mr. Barowitz moved to accept this case, and **Mr. Roche** seconded.

Mr. Hylton: Are there any comments on this case? (none).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

CONCLUSION: The Loft Board grants Net Lessee’s motion to dismiss Ms. Raheem’s applications with prejudice for failure to prosecute pursuant to § 1-06(k)(4). The Loft Board denies Mr. Fix’s applications for protected occupant status and rent adjustment. The Loft Board grants Mr. Levell’s and Mr. Sarig’s applications for protected occupant status and rent adjustment. Mr. Levell is the protected occupant of Unit 301. The rent for unit 301 is \$3564.83. The amount due Mr. Levell for the overcharge is \$18,736.70. As to Mr. Sarig, the Board finds he is the protected occupant of Unit 302. The rent for unit 302 is \$3,090.00. The amount due Mr. Sarig for the overcharge is \$2,220.00. The other coverage claims on the application docketed PO-0034 and the other rent dispute claims on the application docketed TA-0221 are deemed settled. The Loft Board neither accepts nor rejects the remaining terms of the stipulations dated March 17, 2017, and March 21, 2017.

Mr. Hylton introduced the next case.

	Applicant(s)	Address	Docket No.
	Victoria Hillstrom	385 Greenwich Street aka 71 North Moore Street, Manhattan	PO-0062 and TR-1358

Ms. Lee presented this case.

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

Mr. Hernandez moved to accept this case, and **Ms. Roslund** seconded.

Mr. Hylton: Are there any comments on this case? (none).

The vote

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

Members dissenting: 0

Members abstaining: Mr. Roche

Members absent: 0

Members recused: 0

CONCLUSION: The Loft Board grants Owner’s motion to dismiss. The Loft Board dismisses Ms. Hillstrom’s Applications for lack of standing.

Mr. Hylton introduced the next case.

	Applicant(s)	Address	Docket No.
	Rune Knudsen	473-493 Kent Avenue, Brooklyn	PO-0074

Ms. Lin presented this case.

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

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

Mr. Hylton: Are there any comments on this case? (none).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

CONCLUSION: Based on the foregoing, the Loft Board finds that Tenant’s application for protected occupancy status is granted. Tenant did not waive his rights under the Loft Law, his immigration status does not preclude protection and he established he uses the unit as his primary residence.

Mr. Hylton: This will conclude our April 23, 2020, Loft Board meeting. Our next public meeting will be held on Thursday, May 21, 2020. And for now, we are saying it will be via teleconference, at 2PM.

Board members, you’ve been emailed your attendance sheets, and you may sign and return them. Thank you very much. Everyone be safe, and we’ll see you next time.

The End