

MINUTES OF PUBLIC MEETING  
New York City Loft Board Public Meeting

May 21, 2020

**The meeting began at:** 2:35 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 May 21, 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's 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.

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**VOTE ON MEETING MINUTES:**

**April 13, 2020, Meeting Minutes**

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

**Mr. DeLaney** asked if the Emergency Rule the Board adopted at that meeting had been signed by the Mayor.

**Ms. Balsam:** It had been signed on April 30<sup>th</sup>.

**Mr. DeLaney:** There's some comment in these minutes and in the subsequent minutes as to the actual effective date. Because I think that turns on publication?

**Ms. Balsam:** Actually, it doesn't. Because it's an Emergency Rule, it's effective the date the Mayor signs it. I was incorrect about that. So, it's effective as of April 30<sup>th</sup>.

**Mr. DeLaney:** It's effective as of April 30<sup>th</sup>, and that means it's good for sixty days, so it runs through June 29<sup>th</sup>?

**Ms. Balsam:** Yes.

**Mr. DeLaney:** Alright, thank you. On page 3, halfway down the page, there's a parenthetical comment after Mr. Hylton asking Board members to identify themselves before speaking. The comment says, "This practice should be assumed in these notes from this point forward." I'd like to suggest we change these "notes" to "minutes."

**Ms. Balsam:** Yes.

**Mr. DeLaney:** On page 6, two-thirds of the way down the page, I'm making a comment, if the Board members have read the comments from David Brody and Michael Kozek, they have the principle arguments. I think we need the other principle: P-a-l. And beyond that, these minutes are as excellent as they always are.

**Mr. Hylton:** Thank you, Mr. DeLaney. And by the way, the Emergency Rule is also posted on our website.

**Mr. Hylton** then asked if there were any additional comments or corrections to the April 23, 2020, meeting minutes. As there were none, he called for a motion to accept the minutes, and for a second.

**Mr. DeLaney** moved to accept the April 13, 2020, meeting minutes; and **Mr. Roche** seconded.

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**April 23, 2020, Meeting Minutes**

**Mr. Hylton** asked if there were any comments or corrections to these minutes?

**Mr. Barowitz** mentioned he had made note of a grammatical question, and **Ms. Balsam** suggested he send it to her by email.

**Mr. DeLaney:** In the Executive Director's Report, on the bottom of page 3, the comment is made about – in the 475 Kent decision – there's a comment about, the court has ordered a framed hearing. Can anyone explain what a framed hearing is?

**Ms. Balsam:** It's not actually a legal term that I'm familiar with, but I think it's only to deal with specific issues. The court is saying, we're going to have a hearing, and it's going to be on this issue, and this issue, and this issue. That's my interpretation of it.

**Mr. DeLaney:** I see. And then on page 4, I made several requests, and you did send some material, but I still do not have *475 Kent versus Pomeroy* or *Eighteen Properties LLC*, so I'm requesting those two decisions again.

**Ms. Balsam:** OK. I usually send things right after the meeting, so I don't know what happened.

**Mr. DeLaney:** You sent out two housing maintenance violations, and the NYCLT proposal, and one other case -- 383 8<sup>th</sup> -- but not the 475 Kent Pomeroy or ...

**Ms. Balsam:** The Eighteen Properties. Ok, I'll send it.

**Mr. DeLaney:** OK. On page 5, the conclusion box at the bottom of the page for case number 1, I think we're missing a word there: "The 2015 Determination is modified to retroactively extend Owner's to comply....?" Maybe deadline?

**Ms. Balsam:** Yes, I guess, deadline. OK. I'll take a look and see what it said in the Order.

**Mr. Hylton:** What else could we extend but a deadline?

**Ms. Balsam:** Yes, I want to see exactly what it said in the Order. The conclusion is from the Order, itself.

**Mr. Hylton:** OK. Ms. Balsam will fill in whatever it says on the Order.

**Mr. DeLaney** then called attention to a formatting issue with the conclusion box on page 6, and **Ms. Balsam** said she would adjust it.

**Mr. DeLaney:** And in this meeting, I did inquire about the Conflict of Interest and DOI forms. Is there any update on that?

**Ms. Balsam:** No. They haven't reached out to us yet.

**Mr. Hylton:** No one. Neither of us.

**Mr. DeLaney:** OK.

**Mr. Hylton** asked if there were any additional comments or corrections to the April 23, 2020, meeting minutes. As there were none, he called for a motion to accept the minutes, and for a second.

**Mr. Barowitz** moved to accept the April 23, 2020, meeting minutes; and **Mr. Roche** seconded.

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**Mr. Hylton** then turned the floor over to Ms. Balsam for the Executive Director's Report.

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**EXECUTIVE DIRECTOR'S REPORT**

**Personnel**

**Ms. Balsam:** My first announcement is a personnel change. I'm announcing that I'm retiring, effective June 26<sup>th</sup>. So, next month will be my last meeting. It's been great. I'll have more to say next month. In addition, in the personnel department, we will not be having interns this summer for any number of reasons, largely related to the emergency – the corona virus emergency.

**Regarding the Emergency Rule and Proposed Rule Changes**

As I previously said, the mayor signed the Emergency Rule on April 30<sup>th</sup>. The rule is going to remain in effect for sixty days. As to the other proposed rules, the Law Department attorney who is assigned to it has begun reviewing it. He says he's approximately halfway through. And in terms of doing the public hearing, we've

been exploring various ways to conduct a virtual public hearing, and our Deputy General Counsel, Tina Lin, is going to talk to you a little bit about a virtual public hearing that she sat in on last week.

**Mr. Hylton:** Just to clarify, Ms. Balsam, are you talking about a public hearing that involves CAPA?

**Ms. Balsam:** Yes. City Administrative Procedure Act. CAPA.

**Mr. Hylton:** It has to be conducted a little differently than the way we do our public hearings here, because, of course, the public will have an opportunity to speak, and Board members, we will also respond. Go ahead, Ms. Lin.

**Ms. Lin:** This was for a public hearing with the Conflicts of Interest Board, COIB, and it was set up in a way that the audience could dial in by phone or use a web application, in this case, ZOOM. It was a pretty quiet affair, though. There wasn't much participation, as the hearing concerned a fairly minor rule change, but they clearly had a system set up and were prepared to field any questions or inquiries from the public. I don't think we can use the software that they used, but we are looking into the possibility of using another kind of software at our public hearing.

**Mr. Hylton:** Which one did they use? ZOOM?

**Ms. Lin:** They used ZOOM. Yes.

**Mr. Hylton:** I thought the City wasn't using ZOOM?

**Ms. Balsam:** Well, they used ZOOM.

**Mr. Hylton:** OK. Thank you, Ms. Lin.

**Ms. Balsam** thanked Ms. Lin and continued:

#### Appointments to the Board

We did reach out to the Mayor's Office of Appointments, and they are still working on them. When that will happen, I don't know, as the Deputy Mayors are quite pre-occupied these days.

#### Revenue

The unofficial revenue for the Loft Board for April was \$5,100.

#### Litigation

**New Cases:**

There were no new cases filed, as it is prohibited by the Governor's Executive Orders. But the statutes of limitations for filing cases have also been extended, so we may see a rush of cases when that's lifted.

**Decisions:**

We had one decision in a case that's been floating around for a while: *Nazor and Mickle versus the Loft Board and Sydney Sol Group*. This was a case where the tenants brought an Article 78 petition, asking the court to annul a Loft Board Order that denied coverage because only one person resided in the building during the Window Period. The case went to the Appellate Division, First Department, which denied the petition. The petitioners moved to reargue for leave to appeal to the Court of Appeals, so this is the decision from the First Department. In a decision dated April 30, 2020, the Appellate Division denied that motion. So now they have moved in the Court of Appeals for leave to appeal for the Court of Appeals, and the Law Department has filed papers opposing that motion.

**Mr. Hylton:** Thank you, Ms. Balsam. I, too, will have some more to say next month, after you speak about your retirement, but I really want to thank you in advance for your time here and for literally holding my hand through this as chair, even as we both started these positions together. You will be sorely missed, not just on a personal level, but for the tremendous job you do, and have done. I greatly appreciate it.

**Mr. DeLaney:** Excuse me.

**Mr. Hylton:** Go ahead, Mr. DeLaney.

**Mr. DeLaney:** I have a couple of questions for the Executive Director.

**Mr. Hylton:** She's on leave from questions...

**Ms. Balsam:** No, that's OK. Go ahead.

**Mr. DeLaney:** You'll forgive me, but I have to tell a story before I ask my question. There was an Executive Director, not your immediate predecessor, but another Executive Director, some years ago, who called me and said, hi Chuck, I'm just calling to tell you that I'm resigning from the Loft Board, and what a pleasure it was to work with you. And I said, gee, I don't know what to say; and this Executive Director said, why don't you lie, like I did, and say it was a pleasure working with me? In this case, I only learned of your plans, Helaine, a few moments ago, so I am also at a loss as to what to say, but when I get around to saying it, I won't lie.

**Ms. Balsam:** Thank you.

**Mr. DeLaney:** You've done a great job. Now let's go to the grilling. There are two questions, I think, the first one being that I've had some concerns expressed to me that the Loft Board is contemplating possibly trying to initiate narrative statement conferences using some kind of online format. And I wonder if you can comment on that.

**Ms. Balsam:** Yes, that is absolutely correct. We have had requests from both sides to do that, but we'll only do it on consent from both tenants and owners. There are a few buildings where we've had that consent, and we are trying to figure out exactly how to do it. So, yes, we are looking into doing that, but only if everyone agrees.

**Mr. DeLaney:** So, if you have a building with twenty tenants, you'd need all twenty tenants to say OK?

**Ms. Balsam:** To be perfectly honest, I don't contemplate using it for a building with twenty tenants. I think that would be very difficult. We could hold a narrative statement conference with some of the tenants that say OK. I don't know that I want to do that, but we do have several small buildings with three tenants, four tenants; or larger buildings, where there are only a couple of IMD tenants. For those buildings, it might be feasible, and if we can move legalization forward, I think that's good for everybody.

**Mr. Hylton to Ms. Balsam:** Is there any possibility to have people who are willing join remotely? And then the others in person? Is there any way to split it like that?

**Ms. Balsam:** We could have more than one narrative statement conference.

**Mr. Hylton:** A conference like we're doing now, where you and I are in person, and others joining remotely. Is there a possibility to do it that way? And for those who object to the remote hearings, having them come in person?

**Ms. Balsam:** But the whole point was that we didn't want to have people here in person. You don't want to have to bring people in, both for our safety and for theirs.

**Mr. Hylton:** So, your reservation is about in-person conferences?

**Ms. Balsam:** Yes.

**Mr. Hylton:** Not the remote?

**Ms. Balsam:** Right. I mean, we're supposed to stay home. So...

**Mr. Hylton:** I see. To the extent, though....

**Mr. Barowitz:** How many narrative statement conferences do you anticipate before September?

**Ms. Balsam:** That's hard to say. I think we have at least four or five in the queue, at this point. We can report back on that next month, if you'd like.

**Mr. Barowitz:** OK. It would just be good to know that we are moving along. That's all.

**Ms. Balsam:** Yes. It's very frustrating for everybody, I know.

**Mr. DeLaney:** The reason I ask is, primarily, to find out what the actual circumstances are, and secondly – and again, this is at the encouragement of the some of the professionals – at our first meeting, in April, on the special rule, I was adamant, and we did change the rule to state that, the Loft Board “shall not schedule...” So even if the parties agree, how does one get around that?

**Ms. Balsam:** It's a good question.

**Mr. Hylton:** We probably can't get around that. Thank you for reminding us.

**Mr. DeLaney:** At that point, I pressed for that language because of the concerns that I heard from professionals and tenants, who thought the idea of attending a narrative statement conference in person would be risky. Similarly, I've heard comments expressing uncertainty as to how effective the review of plans and documents would be with ZOOM. But if, indeed, the circumstances are going to be such that the Loft Board will be doing its business virtually for the remainder of the summer, perhaps into the fall -- depending on how things go and what happens with the curve, etc. -- certainly I would be open to revisiting that after the current Emergency Rule expires. I'm not trying to play gotcha here; I'm just trying to understand.

**Mr. Hylton:** Unless the Emergency Rule is extended. At which point we'd have to have a public hearing anyway.

**Ms. Balsam:** Yes, we would have to have a public hearing if we're going to extend it.

**Mr. DeLaney:** Could we supersede it with a new Emergency Rule?



**Ms. Balsam:** We could, but I'm hesitant to go... Well, we'd still have to have a public hearing, regardless; but, I'm hesitant to go back to the Mayor for a superseding rule. If it comes down to having to have a public hearing to extend the Emergency Rule, then fine. But you can't just keep going back to the Mayor. It's not good form.

**Mr. DeLaney:** I'll take your word for that. I know people who have gone to the Mayor a few times.

**Mr. Hylton:** That doesn't mean it's good form.

**Mr. DeLaney:** Well, I guess citizens sometimes have different senses of propriety than government employees, city employees, do sometimes, so, Ok. And my other question concerns the Law Department being halfway through the rules. Will we get them back in June or July? Would a public hearing be August or September?

**Ms. Balsam:** That's how it's looking. In the best of all possible worlds, I would get the comments back and have the opportunity to review them and work on them before I leave. But I can't guarantee that's going to happen. I have been pushing him, but it's a lot. It's eighty-one pages. Even if most of it isn't changing, it's still eighty-one pages.

**Mr. DeLaney:** OK, thank you. Oh, I'm sorry. Three is such a lovely number. Let me add a third question: With the registration renewals coming due July 1<sup>st</sup> -- has the staff given any thought to how to handle mailing all that stuff? Are we going to stick to that deadline?

**Ms. Balsam:** We have to stick to the deadline. It's in the rules.

**Mr. DeLaney:** Right.

**Ms. Balsam:** And we're going to do the mailings. The invoices are computer-generated, so we've already started. Ms. Rivera starts working on this months in advance. She's sitting here shaking her head, and she does an excellent job at it. So, yes, we will be doing mailings, and people can mail in their checks.

**Mr. DeLaney:** OK, thank you.

**Ms. Torres-Moskovitz:** I'm just recalling that in the meeting notes from April 13<sup>th</sup>, I had asked if the staff could track how long it's taking for applications to be married and complete. I think something has to be mailed in, and something can be done digitally? I'm just wondering...

**Ms. Balsam:** Yes, the application can be filed digitally, and the check can be mailed in. I don't think it's been taking more than a couple of days. People have been really good in terms of sending in their checks. They really have not been an issue.

**Ms. Torres-Moskovitz:** OK. I guess I'm asking if you could just be prepared to report on it, with numbers of matched cases or ones that are falling away, for the next meeting. It sounds like it's not an issue, but it would be good to have confirmation at the next...

**Mr. Hylton:** That should be easy enough. I don't think there's been any to worry about. I'm in the room with Ms. Rivera, and she's shaking her head, no.

**Mr. Hylton:** Are there any other questions? We're still at questions for you, right?

**Ms. Balsam:** For me, yes.

**Mr. Hylton:** Yes. Are there any other questions for Ms. Balsam? Any comments? Any tears?

**Ms. Torres-Moskovitz asked if an** interim director would be named and how the process to find the new Executive Director would work.

**Mr. Hylton:** At this time, the department will begin a search for a new Executive Director, and I'm sure Ms. Lin will be very competently stepping in as an interim, acting Executive Director.

**Ms. Torres-Moskovitz:** OK, thank you.

**Mr. Hylton:** Even though she may be shaking in her boots right now. But she's fine. Mr. DeLaney has agreed not to ask her any questions, while she acts.

**Mr. DeLaney:** I'm shaking my head. Taking a page out of the Ms. Rivera playbook.

**Mr. Hylton:** Any other comments for Ms. Balsam? So, let's now turn to the first case, right?

**Ms. Balsam:** No. Number four.

**Mr. Hylton:** Number 4, Code Compliance?

**Ms. Balsam:** Yes, Code Compliance.

**Mr. Hylton:** OK, I was confused because Ms. Lin spoke before. She's also going to speak on item number 4 on the Agenda, which is the Code Compliance Deadlines for Buildings Covered under the 2019 Amendments to the Loft Law. Ms. Lin, can you lead the discussion on that please?

**Ms. Lin:** Thank you. Under the 2019 amendments to the Loft Law, units covered under MDL§§ 281(5) and 281(6) have to file an Alteration application by March 25<sup>th</sup>, 2020; they have to obtain a permit by June 25<sup>th</sup>, 2020; achieve 7-B compliance by December 25<sup>th</sup>, 2020; and obtain a C of O by June 25<sup>th</sup>, 2022. Since there is currently no owner's representative on the Board, the Loft Board staff has received inquiries from owners with approaching compliance deadlines on whether and how the Loft Board will address the current situation.

As you all know, due to the COVID-19 emergency, nonessential construction in New York has been halted since March, and the Loft Board's Emergency Rule allows the Loft Board staff to delay narrative statement conferences. Well, as Mr. Delaney pointed out, we're not holding narrative statement conferences, and pursuant to the Governor's EO 202.8 and 202.28, some filings with the Loft Board, including any tenant responses to narrative statements, have been tolled. The consequence of all this is that some owners have been legally unable to proceed with legalization during this time.

The code compliance deadlines, they are set by the Loft Law, which the Board cannot amend. The Loft Law authorizes the Board to grant extensions where owners have made a good faith effort to legalize but are unable to comply with the deadlines due to conditions or circumstances out of its control. And one would need to consider that right now our rules currently state that owners can only receive one extension per deadline. We are passing these concerns along to the Board members for the Board to determine what, if anything, should be done in this situation.

**Mr. DeLaney:** Can I just ask Ms. Lin to go over that again a little more slowly?

**Ms. Lin:** Yes. Sorry.

**Mr. DeLaney:** Alt application March 25<sup>th</sup>, 2020.

**Ms. Lin:** Right. They have to obtain a permit by June 25<sup>th</sup>.

**Mr. DeLaney:** 2020.

**Ms. Lin:** And those are probably the two most important deadlines; although, obviously, they will also impact deadlines down the road which is to achieve 7-B compliance by December 25<sup>th</sup>; C of O by June 25<sup>th</sup>, 2022.

**Mr. DeLaney:** OK, and now owners are making inquiries. You mentioned the unfortunate lack of an owner representative. What's the nexus there? It's just that they don't have a representative to raise these issues, as I did with the narrative statement conference?

**Mr. Hylton:** Correct.

**Ms. Lin:** Right.

**Mr. DeLaney:** OK. But it's the suspension of construction other than construction that's deemed, whatever it is, critical or essential that's really creating the issue. Not the lack of an owners' representative?

**Mr. Hylton:** Correct.

**Ms. Lin:** No, that's just the reason why we think they're approaching the Loft Board staff. It's the halting in construction in addition to the tolling of some deadlines that we have that's creating the situation

**Mr. DeLaney:** Right. And the concern applies to buildings covered under the Chapter 41 of the laws of 2019, both new buildings under §§ 281(5) and 281(6), because those are the only ones that have deadlines yet to expire.

**Ms. Lin:** Right.

**Ms. Torres-Moskovitz:** I'm sorry, one question. Could you repeat the March 25<sup>th</sup> deadline, what that's for?

**Ms. Lin:** That's for the owner to file an Alteration application, by March 25<sup>th</sup>.

**Ms. Torres-Moskovitz:** And that can happen prior to a narrative statement?

**Ms. Balsam:** Yes. Actually, they have to file the Alteration application before they can schedule the narrative statement.

**Mr. DeLaney:** OK. So then, the question you're putting before the Loft Board is, what do we make of this, and do we have a thought on how to proceed?

**Ms. Balsam:** I think we felt that since there was nobody on the Board to raise those concerns, that we should pass them along to you. How do you want deal with it, discuss it? I think it's really up to you. The law constrains a lot of what they can do, so....But we felt that as there was no one to voice these concerns, we should bring them to you.

**Mr. DeLaney:** And you mentioned some other provisions of something, that I didn't get.

**Ms. Lin:** Yes. The Loft Law also authorizes the Board to grant code compliance deadline extensions where owners have made a good faith effort to legalize. So, we do have that provision; that's provided in the MDL. And, as I mentioned earlier, we also have in our rules that the owner can only receive one extension per deadline.

**Mr. DeLaney:** Right. Well, I have to say that I didn't know what this agenda item entailed, and this is really the first time, I think, that any of us have had this question posed to us, so I'm hard-pressed to have any immediate comment.

**Mr. Hylton:** That's fine. We can bring this up again at next month's meeting.

**Ms. Torres-Moskovitz:** I have a couple of questions just to understand it a little better, because as an architect, I'm trying to analyze what of these benchmarks they can still do, even though construction is closed to non-essential and only emergency construction permits are being issued. Architects are still working, so I'm just trying to understand which of these phases... December 25<sup>th</sup>, 2020, compliance is...what?

**Ms. Lin:** That's to achieve 7-B compliance.

**Ms. Torres-Moskovitz:** 7-B compliance. And that is just by submitting to the Loft Board? It's not a construction check of an amount completed on site?

**Ms. Lin:** I believe construction is involved to achieve 7-B compliance. It's not just a filing.

**Ms. Torres-Moskovitz:** It's achieved on-site?

**Ms. Balsam:** There's a list at the back of Article 7-B that says what you have to do. I can look it up.

**Ms. Torres-Moskovitz:** Is that the one where the architect gives an affidavit of completion or something?

**Ms. Balsam:** Yes. The owners can do it one of two ways. Either they get a TCO, or the architect can file an affidavit saying that the building is in compliance with Article 7-B. There's a check list they have to complete.

**Ms. Torres-Moskovitz:** OK. Thank you.

**Mr. Hylton** asked if there were any other comments about this.

**Ms. Torres-Moskovitz to Mr. Hylton:** Yes. I have one more question on the June 25<sup>th</sup>, 2020, permit. An architect could get approval now for a project, but pulling a permit is not allowed right now, I think, unless it's emergency work. But our milestone stipulates it's like a permit being pulled by a contractor, not just approval.

**Ms. Balsam and Mr. Hylton:** Yes, that's correct.

**Ms. Torres-Moskovitz:** Thank you.

**Ms. Balsam:** The law actually says that.

**Mr. Hylton:** So, I guess the question here is, can the Board do anything around that? No. I don't think the Board can override the law.

**Ms. Balsam:** No.

**Mr. Hylton:** Well, let's keep thinking about it. Any other comments, questions?

**Ms. Torres-Moskovitz:** I would just add, to research and think about it. Because I understand the one extension per deadline, multiple deadlines, but we're being told we might have a dance – it's called hammer in the dance. We might go in and out of levels of shut down over the next few years. So, I just want to think about that. Is it June 7<sup>th</sup> that the DOB's going to make more announcements?

**Mr. Hylton:** June 7<sup>th</sup> would be the end of the Mayor's current Emergency Order. Whether or not there will be any other announcements or be any other changes before then, I don't know. And a lot of it rides on the Governor's direction on all of this also, so we shall see. But yes, June 8<sup>th</sup> would be the new Order taking effect. Unless the emergency's ended before then, which I doubt.

**Ms. Torres-Moskovitz:** Because there's something May 29<sup>th</sup>? There's one other date...

**Mr. Hylton:** That is the Governor's

**Ms. Torres-Moskovitz:** Governor's. OK. Thank you.

**Mr. DeLaney:** Just to give this a minute's thought, at this point in time: For the owner who really hasn't done anything but wants to have an architect drawing plans. If properly masked and socially distanced, would an architect be able to come to an IMD unit, measure the place, and do an inspection?

**Mr. Hylton:** If that's considered work, I guess one person could do it. It's not really construction. I guess you're right. They could do that.

**Mr. DeLaney:** I'm just trying to think in terms of whether the different milestones are impacted differently by this circumstance. Or whether it's an equal problem at every step of the way.

**Mr. Hylton:** That's why we have to think about it, because it's all going to be different. Did we answer that for now, Mr. DeLaney?

**Mr. DeLaney:** I think we're all feeling our way here.

**Mr. Hylton:** We're all feeling our way. That's why we just wanted you to be thinking about these things. These issues are arising, and no one has any real answers, or even the authority to do anything. So, just be thinking about it. We could probably add this to the agenda again for next month. Is that Ok with everyone?

**Ms. Balsam:** We can.

**Ms. Torres-Moskovitz:** Yes. One final question. In addition to the calendar dates for the benchmarks, isn't there also another rule or law that stipulates the overall timeframe? Thirty-six months or thirty months?

**Ms. Balsam:** Yes, we put in the calendar dates. We calculated the calendar dates from the effective date of the law just to make it easier for everybody; but actually, if you read the section, it says, "...within thirty-six months from such effective date." It's § 284(vi)(d): "...shall take reasonable and necessary action to obtain a Certificate of Occupancy as a Class A Multiple Dwelling for the residential portions of the building or structure..." I want to find the right one. "... for units that became subject to this Article pursuant to the chapter of the laws of 2019 that amended this paragraph, within thirty-six months from such effective date." So, we calculated that date.

**Ms. Torres-Moskovitz:** OK, thank you.

**Ms. Roslund asked Ms. Balsam:** Can that be put in an email and sent to the Board members, so we have something to refer to?

**Ms. Balsam:** Sure. Absolutely.

**Mr. Hylton:** Ms. Lin, this is your discussion, so if you have anything more to add or say...

**Ms. Lin:** Not at the moment. I can send along the relevant MDL provisions and the specific rules that we'll be encountering as we try to resolve this issue.

**Mr. DeLaney:** That would be helpful, kind of a reading list of things to factor into this.

**Mr. Hylton:** As we said, this was really just presented for the Board's consideration, for as Helaine mentioned, there's no other voice, currently, to bring it to your attention.

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**THE CASES:**

**Appeal and Reconsideration Calendar**

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

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
1	Katalin Junek and Koppel Verma	394-400 South Second Street, Brooklyn	R-0377

**Ms. Lee** 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?

**Mr. DeLaney:** I have a comment or two.

**Mr. Hylton:** Go ahead, Mr. DeLaney.

**Mr. DeLaney:** I plan to vote no on this. I think reconsideration should be granted, and I also take issue with the procedural grounds. This is a somewhat complicated case. The underlying Order found a number of units in this building covered, but singled out these two units. While I voted in favor of the Order, I filed an opinion, stating that I thought the evidence was sufficient to find residential use in these two units. In this case, what the Board has done is something I have continually objected to. We're finding a reconsideration application to be not acceptable because of a failure to include a copy of the Order from which reconsideration is sought. As I understand it, that is in our current rules, which were written in the early 1980s, though the Executive



Director mentioned during the private session that it's her recollection that it's not in the revised rules that are pending.

I can understand that we would reject an application if it's untimely or had some other significant deficiency, but in this digital era, the fact that I don't attach a paper copy of the Order, which the Loft Board has on file, which you can get online, just seems as meaningless as requiring an affirmation that the applicant is not a donkey. I mean, it just seems absurd. However, if the Board wants to take that position, then, in my view, the Board should not devote the time and energy to saying, we're going to reject this application on procedural grounds, but if we didn't reject it on procedural grounds, we'd still be against it for X, Y, and Z reasons. I don't think that's an efficient use of staff's time in an era when they are not by any means overstaffed.

However, since this argument has been presented, I would say the issue really turns on the term that we haven't really defined, which is "consecutive." The question was posed during the private session: If there were three different occupants, each for let's say five months, and one occupant moved in the same day the prior occupant moved out, and that happened again, then I guess that's consecutive. But what if there's a two-day lapse? Or a five-day lapse? Then that, I'm told, is not consecutive. To me, if the place is outfitted for residential use and has the appurtenances, then it seems to me the public interest is served by acknowledging it to be an Interim Multiple Dwelling Unit, and getting it brought up to code. For both of those reasons, I plan to vote no on this Order.

**Mr. Hylton:** Thank you, Mr. DeLaney. Are there any other comments? I normally don't comment on these cases, but I do think there is something to be said about the Loft Board taking the time to do the analysis of this case, regardless of the ridiculousness, as Mr. DeLaney would say, of the rule, in 2020, that rejects something due to a missing paper copy of an Order that is easily retrievable. But I think there's something to be said that we took the time to do the analysis and still would not find in favor here. So, I feel a little better about this decision.

### **The vote**

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

**Members dissenting:** Mr. DeLaney

**Members abstaining:** 0

**Members absent: 0**

**Members recused: 0**

Conclusion: For the reasons stated above, the Reconsideration challenging Loft Board Order No. 4860 is denied. Loft Board Order No. 4860 remains in full force and effect.

**The Summary Calendar**

**Mr. Hylton:** There are five cases on the Summary Calendar, and they’re voted on as a group. Before we vote, I note here some changes to two of them. On case number 5, Amanda Eli, the words, “without prejudice” will be added to the last sentence, so it will read: “The Loft Board deems tenant’s application withdrawn without prejudice.” On case number 3, Tiye Massey, at 1099 Flushing, Avenue, the last sentence of this Order will be read: “The application is deemed withdrawn with prejudice. The Loft Board neither accepts nor rejects the additional terms in this stipulation.” With that said, the following cases are voted on as a group:

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
2	241 Bedford Associates, LLC	156 through 170 North 4 <sup>th</sup> Street a/k/a 239 through 247 Bedford Avenue a/k/a 159 through 179 North 3 <sup>rd</sup> Street Brooklyn	LS-0246
	Conclusion: The application is deemed settled.		
3	Tiye Massey	1099 Flushing, Avenue, Brooklyn	PO-0083
	Conclusion: The application is deemed withdrawn with prejudice.		
4	Victoria Hurst And Sean McNulty	467 Troutman Street, Brooklyn	PO-0091
	Conclusion: The Loft Board deems Tenants’ application withdrawn with prejudice.		
5	Amanda Eli	54 Knickerbocker Avenue, Brooklyn	TA-0254
	Conclusion: The Loft Board deems Tenant’s application withdrawn without prejudice.		
6	Melissa White, George Allison and Tim Murray	467 Troutman Street, Brooklyn	TA-0255
	Conclusion: The application is deemed withdrawn with prejudice.		

**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. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Torres, Ms. Roslund, Chairperson Hylton

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**The Master Calendar**

**Mr. Hylton:** There are three proposed cases on the Master Calendar, but number 8 is being tabled.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
7	Meghan Folsom, Garrick Ambrose, and Jackson Lewis	250 Moore Street, Brooklyn	TA-0234, TA-0238
8	595 Broadway Associates, LLC	595 Broadway, Manhattan	LE-0699, RA-0014
9	Dellis Realty Corp.	83 Leonard Street, Manhattan	LE-0716

The first case is:

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
7	Meghan Folsom, Garrick Ambrose, and Jackson Lewis	250 Moore Street, Brooklyn	TA-0234, TA-0238

**Mr. Argov** 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?

**Mr. DeLaney:** Yes. Chuck here. In the history of totally bogus 286(12) sales, I think this is the first time that an owner has presented a document that shows that the tenant paid the owner the princely sum of \$10. How one could have the --- I'm not sure what the right word is – chutzpah? -- to provide such a document is a bit beyond me. I think otherwise the analysis in this case is correct. And while the rents are slightly higher than the tenant claimed, and the over-charge is somewhat lower, I think this has been reported to correctly, to the best of my ability to determine, and I'll vote for the case.

**Mr. Hylton:** Thank you, Mr. DeLaney. Are there any other 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 finds the Tenants were overcharged rent. The Loft Board does not have jurisdiction over Tenants' claims for security deposit refunds. We find that the base rent of Unit 206 was \$2,225, and after the applicable milestone increase, the maximum permissible rent is \$2,358.50. Therefore, Folsom and Ambrose, the protected occupants of Unit 206, were overcharged by \$31,350.50. We find that the base rent of Unit 204 was \$2,000, and after the applicable milestone increase, the maximum permissible rent is \$2,120. Therefore, Lewis, the protected occupant of Unit 204, was overcharged by \$23,580.

**Mr. Hylton:** The next case is a removal case.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
9	Dellis Realty Corp.	83 Leonard Street, Manhattan	LE-0716

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

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

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

**Mr. DeLaney:** This is a pretty straightforward legalization case; however, a couple of things I take note of that are common both with this and other legalization – or as the Board speaks of them – removal cases. The first is, for years we’ve put a footnote on each of these cases that says, owner must register the building with HPD, if required under MDL 325, before the building can be registered with the DHCR. And I think, in fact, we had agreed to change that “if” to “as required”?

**Mr. Hylton:** Correct.

**Ms. Balsam:** I want to review the law, but assuming you’re correct, then, yes.

**Mr. DeLaney:** OK. And MDL § 325 is quite explicit that an owner has to register the building with HPD in cities of a million or more. And if the owner doesn’t do that, the owner can’t collect rent. I’ve read §§ 301 and 302 a lot, and obviously 7-C; but I never had the pleasure of reading § MDL 235 [sic]. It’s reasonably short. I would encourage each of the tenants to review it. That’s point number one.

The other point -- which I’ve asked the Loft Board staff about and requested be put on the Agenda for the June meeting -- is this: I think the Board is going about this the wrong way. When a building is legalized – for some tenants, this may be some years away; other tenants could be close to completion -- the Loft Board directs the owner to provide the occupants with residential leases, subject to the provisions of this Order, the ETPA of 1974, and the rent stabilization law and code, except to the extent the provisions of Article 7-C are inconsistent. Then we go on to say, effective thirty-five days from the mailing date of this Order, the building is no longer an IMD, and it’s no longer under the jurisdiction of the Loft Board. But it’s my impression that there are a not-insignificant number of buildings where the owner doesn’t do any of these things. The Loft Board says, well, it’s thirty-five days since we mailed the Order, so you’re no longer an Interim Multiple Dwelling. Gee, we directed the owner to provide the occupants with leases. We directed the owner to register with HPD, but after thirty-five days, we’ve got nothing to do with this anymore.

Some owners follow the letter of that directive, but as I said, it’s my impression that a substantial number of owners do not. And it seems to me that -- and as I say, I’ve asked the Board to put this on the June agenda --

that we should think through an approach that might be more responsible to the public, such as not releasing a building from our jurisdiction until the owner can demonstrate that they have done those things. And I will make this comment regularly going forward as these legalization-removal cases come before us; because there are too many instances, I believe, where the owners do not do what we direct them to do. I don't think we should take off the leash until we can be assured that these directives have been followed. That's all.

**Mr. Hylton:** Thank you, Mr. DeLaney. I'm sure we'll pick this up again next month. Are there any additional 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 finds that Owner is in compliance with MDL § 284(1). Pursuant to 29 RCNY § 2-01(m), the Loft Board directs Owner to register:

1. The Building as a multiple dwelling with the New York City Department of Housing Preservation and Development ("HPD"), and
2. The 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floor units as rent stabilized units with the New York State Homes and Community Renewal ("DHCR")<sup>1</sup> or any succeeding regulatory agency. See, MDL § 286(3).
- 3.

The rent stabilized tenants and the initial legal regulated rents for the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floor units are as follows:

Unit	Tenant	Initial Regulated Rent	Initial Regulated Rent Period
2 <sup>nd</sup> floor	S. Max Miller and Carla Hoke-Miller	\$2,505.10	10/1/2019 through 9/30/2021
4 <sup>th</sup> floor	Rodrigo Salomon	\$969.77	10/1/2019 through 9/30/2020
5 <sup>th</sup> floor	Jeanette Stoner	\$887.60	10/1/2019 through 9/30/2021

Further, Owner is directed to provide the occupants of the above units with residential leases subject to the provisions of this Order, the Emergency Tenant Protection Act of 1974, the Rent Stabilization Law and Code, except to the extent that the provisions of Article 7-C are inconsistent. See, MDL § 286(3) and 29 RCNY § 2-01(m). Effective thirty-five (35) days from the mailing date of this Order, the Building is no longer an IMD and is no longer under the jurisdiction of the Loft Board.

**Mr. Hylton** asked if there were any additional comments before he closed the meeting (none), and so stated:

This concludes our May 21, 2020, Loft Board meeting. Our next public meeting will be held on Thursday, June 18, at 2PM, again by teleconference. I wish everyone a safe and happy time, month, between now and then. And I ask the Board members to please sign and email your attendance sheets. Thank you all, and be well.

The End