MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

October 15, 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; Samira Rajan, Public Member; Renaldo Hylton, Chairperson Designee; and Tina Lin, Loft Board, Acting Executive Director.

INTRODUCTION:

Chairperson Hylton welcomed those present to the October 15, 2020, public meeting of the New York City Loft Board, and explained that the meeting was being held via teleconference due to the coronavirus 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:

Before I get started, I have a short announcement for the public. The Board has decided to schedule an additional Board meeting in the month of October devoted to rulemaking. That meeting will take place next week, Thursday, October 22nd, at 2pm. And it will be virtual, like we are doing now.

VOTE ON MEETING MINUTES:

July 16, 2020, Meeting Minutes

Mr. Hylton asked if there were any corrections to, or comments on, the minutes of the July 16, 2020, public meeting. As there were none, he asked for a motion to accept the minutes and for a second. Mr. DeLaney moved to accept the July 16, 2020 meeting minutes and Mr. Hernandez seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

September 17, 2020, Meeting Minutes

Mr. Hylton then turned to a vote of the September 17th public meeting and asked if there were any comments on or corrections to the minutes of that meeting.

Mr. DeLaney: I have a couple. I appreciate the staff taking the time to put the results of the cases in the July minutes. In the September minutes, and also in some of the discussion in the July minutes, I noticed that we've had an informal policy not to include a summary of removal cases. But I'd like to ask the Board and the Board staff to consider, going forward, including a summary of removal cases, as Ms. Lin did, extemporaneously, in the July minutes. And for example, the calendar that we're going to turn to for October in a few minutes has a removal case that is quite interesting in many ways. So, I think it would be good for the public to have a brief summary of the removal cases as well.

Mr. Hylton said he would let Ms. Lin respond but asked if that information was not available to the public via the Order.

Mr. DeLaney: The Order would be available to the public if they searched by the name of the parties, because at the time we discuss the case, an Order number has yet to be issued. So, I think having a brief summary in the minutes would be a good idea.

Mr. Hylton asked if that summary was not what is stated in the Order.

Mr. DeLaney: As you know, in the past, some of the Board members have also expressed interest in how many regulated units are in this removal. So, just some short summary.

Mr. Hylton replied that he had no objection to it, other than the additional burden it would place on the staff at this moment.

Ms. Lin said the staff would do their best to accommodate the request, but she also reminded the Board of the dire staffing situation they were in at the moment.

Mr. DeLaney: Thank you.

Mr. Barowitz then offered his thoughts about a conversation on pages 16 and 17, regarding the use of the term withdrawn.

Ms. Lin and Mr. Hylton noted that the Board would be discussing that later and asked if he would mind waiting until then to address it.

Mr. Barowitz was fine with that, and Mr. DeLaney continued with his comments on the meeting minutes.

Mr. DeLaney noted a place on page 10, at the fifth line up from the bottom, where it is noted that he said public opinion when, in fact, he said – or meant to say -- public policy.

Mr. Hylton noted the correction to be made and asked if there were any other comments on the minutes. As there were none, he asked for a motion to accept the minutes of the September 17th meeting with that correction, and for a second.

Mr. Hernandez moved to accept the September 17, 2020 meeting minutes and Ms. Torres-Moskovitz seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

ACTING EXECUTIVE DIRECTOR'S REPORT

Mr. Hylton introduced Acting Executive Director Tina Lin, who gave the report.

The Governor's Emergency Order:

Ms. Lin: On October 4th, the Governor issued Executive Order 202.67, which extends the statutory deadline through November 3rd, 2020. So, in accordance with his EO, initiatory filings to the Loft Board are tolled through November 3rd. EO 202.67 also extends the Governor's suspension of the in-person meeting requirement of the Open Meetings Law to November 3.rd

Revenue:

The unofficial Loft Board revenue for September was $72,112.50.

Annual Registrations:

In terms of annual registrations, yesterday, the Loft Board staff sent out notices of failure to register to owners of Interim Multiple Dwellings (IMDs) who have failed to renew their Annual Registration with the Loft Board. Sixty-one notices were sent out, and we expect to bring Proposed Orders imposing penalties on the remaining owners who have not renewed to the Board for approval at the November 19th Board meeting.

Litigation:

In terms of litigation, we received a decision in *Saifi versus New York City Loft Board,* index number 161150 of 2019, which denies the tenant's Article 78 petition. This case was filed by the tenant in unit 401-2 at 83 Canal Street, New York, New York, challenging Loft Board Orders number 4811, dated October 18th , 2018 and 4882, dated July 18th, 2019. Here, the tenant had entered into a settlement agreement with the owner, allegedly agreeing to sell his rights in the unit. However, because owner did not file a sales record, in Order 4811, the Loft Board directed the owner to register the unit as an IMD and the tenant as a protected occupant. Owner filed for reconsideration. Tenant did not file for reconsideration but filed an answer in response to owner's reconsideration application, arguing that his settlement agreement with the owner should be rejected as void against public policy.

In Order 4882, the Loft Board denied owner's reconsideration. Tenant then filed an Article 78 on both Orders 4811 and 4882. The court has now denied the tenant's petition, finding that tenant's challenge of Order 4882 was improper, because it was a denial of owner's reconsideration, and that Order 4811 should be upheld, as tenant was not aggrieved by the Order, as it had directed the owner to register the unit and register the tenant as the protected occupant.

Mr. Hylton thanked Ms. Lin and asked for a clarification of the revenue number.

Mr. Hylton: So, approximately $72,000. Thank you. Does anyone have any questions for Ms. Lin?

Mr. DeLaney expressed his appreciation for the staff's efforts at this time to move forward with notifying owners who failed to provide their renewal information.

Mr. Hylton: Thank you, Mr. DeLaney. I don't normally do this, but I happened to have been here a couple of nights very late and, while walking around the building, noticed a couple of our staff still here working on those notices. I want to commend them for their hard work, led by Ms. Lin, of course, to get those out. We are extremely short staffed at the Loft Board, but their commitment to that was great. I appreciate it. Thank you. And thank you, Amy, and thank you, Mr. Clarke, and Ms. Rivera and everyone else at the Loft Board. Thank you very much. Any other questions or comments for Ms. Lin?

Ms. Torres-Moskovitz: Yes, I had one. I'm not sure if this is the right time, but at our last meeting, we discussed having a session with DOB (Department of Buildings) regarding the letter I wrote in April of 2019. I want to thank you for arranging that meeting, which, unfortunately, had to be rescheduled. But I'm looking forward to it being rescheduled in November.

Mr. Hylton: Yes, as soon as this meeting is over, I'll work on rescheduling it for early November. Hopefully, the DOB executive we were to meet with will be available early November.

For the record, a few essential Board members were not available, and only four members of the Board are allowed to have this meeting, to ensure that it's not an official meeting of the Board. Missing one person is significant for this meeting, so that's why we had to reschedule.

Ms. Torres-Moskowitz: And just so it makes sense in the meeting notes, this is regarding my letter about self-certification and Loft Law.

Mr. Hylton: Yes. Miss Moskovitz's letter raises some issues she and members of the Board want to discuss with the Department of Buildings regarding the self-certification of projects in Loft buildings. And DOB has agreed to listen to their concerns. Any other issues, concerns, for Ms. Lin before we move on? Thank you, Miss Lin. Thank you Board members. So, we now turn to a vote on the cases.

THE CASES:

Appeal and Reconsideration Calendar

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

	Applicant(s)	Address	Docket No.
1.	Water Holdings LLC	44 Water Street, New York, NY	AD-0090

Ms. Lin presented this case.

Conclusion:

Owner appealed an administrative determination issued by the former Executive Director, which granted owner's extension application deadlines. Owner objected to a portion of the determination which states that Owner had until April 1, 2019, or 18 months from obtaining the permit, to achieve 7-B compliance, whichever is earlier. Owner alleged that the language "whichever is earlier" unlawfully limited owner's right to achieve 7-B compliance within 18 months of issuance of permit, and referenced a pending Supreme Court case on this issue. That case has now been decided and, although owner filed notice of appeal, it failed to perfect the appeal. The supreme court judge upheld the Loft Board's interpretation. Owner did not automatically have 18 months from issuance of permit to achieve 7-B compliance. Order finds that "18 months" is a maximum permissible time, not a minimum.

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

Mr. DeLaney moved to accept the case, and Mr. Barowitz seconded.

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

Ms. Roslund asked if, for the record, Ms. Lin could repeat how the rule regarding the Executive Director's discretion reads.

Ms. Lin: The rules state that the Executive Director has discretion to grant the deadline. And she exercised her discretion and granted the owner what they were asking for.

Mr. Hylton: So basically, the Executive Director, by rule, has the discretion to give an extension to the code compliance deadline, correct?

Ms. Lin: Yes.

Ms. Roslund: And the length of an extension?

Ms. Lin: Up to eighteen months is the maximum.

Mr. Hylton: … is the maximum.

Ms. Lin: Yes

Mr. Hylton: In this case, the owner asked for up to April of…

Ms. Lin: 2019

Mr. Hylton: …of 2019. And the Executive Director granted that request. It's not an automatic eighteen months. They got exactly what they asked for. Is that sufficient, Ms. Roslund?

Ms. Roslund: Yes. Thank you.

Mr. Hylton asked if there were any further other comments on this case. (None)

The vote

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

Members dissenting: 0

Members abstaining: Ms. Roslund

Members absent: 0

Members recused: 0

Mr. Hylton: The next case on the Appeal and Reconsideration calendar is a reconsideration of a removal from the Loft Board. Order number 4981. Miss Lee will present this case.

	Applicant(s)	Address	Docket No.
2.	Rodrigo Salomon	83 Leonard Street, New York, NY	R-0384

Ms. Lee presented the case

Conclusion:

Tenant filed a reconsideration application seeking review of Loft Board Order No. 4981. Tenant asserts that the Loft Board erroneously omitted his election of RGB (Rent Guidelines Board) Increases applicable to two-year leases from the underlying Order. Tenant also claims that owner should not have required him to submit his marriage certificate in order to add his wife as an affected party to the underlying proceeding and to have his wife be recognized as a residential tenant of his unit. Tenant's reconsideration application is granted only to the extent that tenant's election of RGB Increases applicable to two-year leases is accepted.

Mr. Hylton thanked Ms. Lee and 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: Do we have any discussion on this case?

Mr. DeLaney: Yes. My one question concerns the apparent loss of this tenant's filing, requesting a two-year period. I know that as we digitize things, we're taking more and more steps to keep things organized, and I like the way the pages are numbered in the background materials that we receive for cases. But have we been able to put anything in place in recent months or years to guard against this kind of problem? I know there's a lot of paper flying.

Mr. Hylton: You're talking about digitizing our records, right? The notes in the record?

Mr. DeLaney: When something comes in like this, does it get scanned?

Ms. Lin: It's supposed to, yes. I believe this came in last year. Especially now with a pandemic going on, as soon as things come in, they're scanned and saved to our shared network drive. So, there should be less of a chance of this happening. The real problem we have is with filing space. But I do think things are becoming more streamlined now, and we're getting into the habit of scanning things as soon as they arrive.

Mr. DeLaney: Good. Thanks.

Mr. Hylton: It is our standard operating procedure to have it scanned, Mr. DeLaney. Are there any other comments? (None)

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Summary Calendar

Mr. Hylton: There are two cases on the Summary Calendar, which are voted on as a group.

	Applicant(s)	Address	Docket No.
3.	Thor 734 Broadway LLC	734 Broadway, New York, NY	LT-0016
Conclusion: Owner filed application to terminate harassment finding entered in 1990. Tenants consented to the termination. Owner has met all other requirements for terminating the harassment finding, therefore owner's application is granted.			
4.	Anna Holmgren, John Cannon, and Jaymee Lynn Domingo	58-60 Grand Street, Brooklyn, NY	TA-0259
Conclusion: Tenants' rent overcharge application is settled; parties agreed on a legal regulated rent amount and owner paid tenant an amount in satisfaction of their claim. Application is deemed withdrawn.			

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

Mr. Hernandez moved to accept these cases, and **Mr. Roche** seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Master Calendar:

Mr. Hylton: There is one Proposed Order on the Master Calendar, and it's a removal case.

	Applicant(s)	Address	Docket No.
5.	Hoffman & Partners LLC	28 Locust Street, Brooklyn, NY	LE-0719, RG-0209
Conclusion: The building is removed from Loft Board jurisdiction. One unit has been deregulated through a sale of improvements and rights. Ten units remain rent regulated. For these ten units, the owner and the tenants of each unit had negotiated a preferential rent. Although occupants of IMD units are free to bargain for a lower rent, the initial regulated rents set by the Loft Board would be set according to the Loft Law and the Loft Board's rules.			

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

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

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

Mr. DeLaney: I would just point out that, as I mentioned at the start of the meeting, this is a legalization slash removal case, that has some interesting aspects. And it's part of the reason I think a brief summary

of these cases would be useful, particularly here where the Board tackles the question of how to address an agreement by a prior stipulation between the landlord and the tenants with regard to settling some rent disputes and creating a preferential rent system in the building that the Loft Board does not recognize. And again, this includes the March 2018 stipulation, (which) was one of the ones that the Loft Board neither accepted nor rejected. And here we stake out our own interpretation of what the legal initial regulated rent should be.

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

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

Mr. Hylton asked Ms. Rivera to repeat the vote tally for case number 1, which she did: seven in favor; one abstain.

Mr. Hylton: Before we take a break and then go into the rulemaking, I think Mr. Barowitz had a point of discussion?

Mr. Barowitz: I think we should wait until we get into rulemaking. As I said earlier, I don't want to belabor the issue of the term withdrawn, but I would like to get a legal opinion.

Mr. Hylton: We'd better do that now, because rulemaking is a separate issue.

Mr. Barowitz: Okay. To me, it says that the tenant has given up, when in fact, they have not, necessarily, given up. So, I'm just not comfortable with that term.

Mr. Hylton asked Ms. Lin if she could put this in context for the public.

Ms. Lin: Mr. Barowitz is referring to situations where the owner and tenant settle. They come into an agreement, and often, what has helped has been to mirror the language they use in the stipulation. So, the party will often submit something to us that says, basically, I'm withdrawing my application. So, in accordance with what the parties have chosen to do, we will say this application is withdrawn, because that's what the party is telling us they're doing.

Mr. Hylton: And Mr. Barowitz's concern is not using the word withdrawn on our Orders?

Ms. Lin: Yes. That is my understanding.

Mr. Hylton asked Ms. Lin what the legal significance of the term withdrawn is.

Ms. Lin: In court, if you withdraw a case, the court no longer has jurisdiction over it. Similarly, in some [Loft] cases, the parties may not want their agreement to remain under Loft Board jurisdiction. They may choose to enter into a private agreement, which they can enforce outside of the Loft Board. So, that's why we tend to honor what the parties have in their agreements. And instead of saying, no, this is resolved or settled, we choose to mirror the language the parties, themselves, decided to use.

Mr. Hylton: And the language we use to express that is, the case is now deemed withdrawn?

Ms. Lin: Most of the time, the tenant will say, I withdraw my case. Or, sometimes the stipulation will say, the tenant wishes to withdraw. Often the tenant will email us and say, I withdraw my case. So, those are the situations that we're seeing; we're seeing the word withdrawn. Which is why that word is there.

Mr. Hylton: So, Mr. Barowitz, the question is, is there another way we can phrase those actions?

Mr. Barowitz: Heather suggested perhaps using the word settled. I had a small case before the courts, and it was settled before it went into trial. And I would be damned if I heard it said that I withdrew rather than settled that particular case.

Mr. Hylton: Mr. Barowitz, I'm not a lawyer, but let me say something…

Mr. Barowitz: It really sounds as if the tenant has given up. And that's what the word withdrawn means to me. I'm interested in the English language, but I don't know what the law requires. And from what Tina said, it can be a legal term.

Ms. Roslund: In the one case we had before us today, the OATH letter says, "After conferencing, the parties reached agreement to resolve this matter. Accordingly, the application has been marked as withdrawn."

Mr. Hylton: So, doesn't that make it very clear that the parties agreed to a settlement?

Ms. Roslund: So, they used both words, resolve and withdrawn. Is there an application (for withdrawing a case from the Loft Board)? For instance, if an architect makes an application to DOB, and then doesn't want it there anymore, you have to actually withdraw. And there's a whole set of paperwork that goes with the withdrawal, which officially closes out your responsibility for the application.

Mr. Hylton: And you could be withdrawing for any number of reasons, right? There's a reason why the situation leads to withdrawal. It's similar here. You could withdraw because of a settlement, or you could withdraw because I just don't want to be bothered with it anymore. There could be many reasons for the withdrawal.

Ms. Roslund: But do you have to fill out a withdrawal application? Does the Loft Board have an application for that action?

Mr. Hylton: No, I think it's just indicated in writing, either by email or by letter. We wouldn't take it on the phone, that the tenant or the owner withdraws. Whoever it is, it's got to be in writing in some way.

Mr. Roche: One of the benefits of having a virtual meeting is that I have Black's Law Dictionary here in front of me.

Mr. Hylton: I should have thought of that before you did.

Mr. Roche: The Law Dictionary says, to support; to take away what has been enjoyed; to take from; to remove, as a deposit from a bank; or to remove oneself from competition or candidacy. And that's all it

says. So, I leave you with that, for the sake of clarity for whatever position. I have no strong position one way or the other.

Mr. Hylton: All right. So, these are simple definitions. My point, though, is there could be multiple reasons that lead up to withdrawal. Withdrawal is the action of taking it back, right? But you could be withdrawing for any number of reasons. Mr. Barowitz, you're saying it sounds like they're giving up, but it's not necessarily giving up. And actually, the Board Order does say why it's withdrawn. It says it's because they settled, right? So, would it be okay to keep that word, as long as there is at least a hint or an indication of the reason for withdrawal? If there is one.

Ms. Torres-Moskovitz: If I'm interpreting Elliott correctly, and in the interest of educating the public, as a non-lawyer, whether it's the landlord or the tenant, I could picture it either way. It's withdrawn. But what does trouble me, as a non-lawyer, is that it sounds like the case just ended. But for lawyers, they probably know right away, oh, no, it might pick back up and go this way or that way. But when we lay people read it, it sounds like it's settled and done. Not, something happened, and it's over. That's not necessarily the case.

So, I'm wondering if there could be a footnote on those cases. Maybe we could resolve it that way, just to educate someone like myself. Something that indicates this case may continue, may end, or it may continue in another court. So that we understand that it might move and continue.

Mr. Hylton: Ms. Lin, maybe you can answer that. But what I'm thinking is that the case, as it is before the Loft Board, before you, is withdrawn. It could be active somewhere else. They could have taken this fight somewhere else. But is it clear in our Order that the case before the Loft Board is being withdrawn?

Ms. Lin: It doesn't say, before the Loft Board. But I would say there's a very strong implication, when it says the case was withdrawn -- the tenants' case was withdrawn, or the owner's case was withdrawn – that's a pretty specific reference to the Loft Board.

Mr. Hylton: Because it's on your Order, but maybe we could just make that clear in the Order; just to remove all doubt. Ms. Roslund, could you read that last Order again?

Ms. Roslund: "The above-referenced matter was referred to this tribunal for adjudication. After conferencing, parties reached agreement to resolve this matter. Accordingly, the application has been marked as withdrawn, and I am returning the work folder with a copy of the settlement agreement to the Loft Board." That's from OATH.

Mr. Hylton: That's from OATH. But what did our Order say?

Ms. Roslund: Our Order said, "The tenants also agreed to withdraw their application with prejudice. The Loft Board neither accepts nor rejects the remaining terms of the stipulation. The application is deemed withdrawn."

Mr. Hylton: Okay, but can we just say, application is deemed withdrawn before the Loft Board?

Ms. Roslund: The Loft Board application is deemed withdrawn.

Ms. Lin: This is an application before the Loft Board. It's somewhat extraneous; like saying, this application before the Loft Board, located in New York, is withdrawn. It's specificity without really adding anything.

Mr. Hylton: Right. I agree that we're only deciding a case before us. So, there is no real need to say that. I'm just trying to answer Julie's concern.

Ms. Roslund: If I may, this started because I asked the question, why? Why is the application withdrawn? You go to court. OATH is court. So, you go to court; there's a settlement; the settlement is the resolution. So, that was the question: why isn't the resolution, the resolution? Why is the resolution to delete the application?

Ms. Lin: I can try to answer that. I can answer why the Loft Board staff writes that. As I previously explained, we're trying to honor the parties' agreement. From the parties' perspective – and I don't know this with a hundred percent certainty; I can call litigators and practitioners to get their perspective on this, if the Board members would like -- but from my past experience in housing court, this is what I can say. Sometimes we'll withdraw a case instead of settling it. We may not want the housing court to continue to have jurisdiction over that specific case for a variety of reasons. So, instead of settling a

stipulation in housing court, where, if there's a breach of the stipulation and if you bring it back to court, where that specific entity would mediate the dispute, you might want the ability to get to a different forum. So, that might be something that the practitioners have in mind when they're withdrawing the case, though I can't say that for sure. Again, if the Board members are interested in getting a practitioner's perspective, we can try to arrange that.

Ms. Torres-Moskovitz: Maybe if we define what withdrawn is. Richard Roche explained his definition, and that's not how we're using it. But, I guess my issue is still the same. Because I'm an architect, I understand how to withdraw from the DOB and then file in a different manner. It's saying, okay, this approach might not have been the best way to file. Let's withdraw it and try again. I think that's what lawyers are doing here, right? Maybe the tenant or the owner gets different advice from their lawyer, and that it's better to withdraw sometimes and try a different approach. I think sometimes that might be what's happening.

Ms. Roslund: No, I would disagree, because there's a resolution. If you withdraw your application from the DOB, you don't ever want anyone to look at it again, right? You're saying, we're not going to do this; we're not doing anything. And then you file another application and say, instead, we're doing this. But in these cases, it would be as if somebody approved it outside of the DOB somehow, until you're allowed to do it…without DOB's approval. Right? So, there's resolution outside of the application.

Mr. Hylton: I understand the correlation you're trying to draw, but remember, DOB is not a court. And in the legal world, there's a difference -- withdraw with or without prejudice. (To Mr. Clarke and Ms. Lin) Maybe one of you can explain that, because withdrawn here doesn't mean it's completely gone. If it's with prejudice…without prejudice…

Ms. Lin: Yes, more often than not, the tenants or the owners are withdrawing with prejudice, which means they're agreeing to not refile this claim. They're giving up their legal claim to whatever it is they're withdrawing. Without prejudice is when they say they're reserving the right to bring it back again. With prejudice, they're not going to bring it back again.

Ms. Torres-Moskovitz: In any form at all? Or just the same form that it was?

Ms. Lin: I would assume in any form, but I suppose that would depend on the specific language they use in the settlement agreement. If they say, I withdraw this application with prejudice from the Loft Board, I would interpret that to mean just the Loft Board. If they say I withdraw my claim with prejudice, that could be interpreted to apply to any forum.

Ms. Torres-Moskovitz: Maybe it's getting too granular, but I seem to remember buildings that withdrew, and then the landlord files the building as a protected... It just seems like semantics. It was listed one way, and then, okay, we'll remove this, and then we'll go ahead…

Mr. Hylton: Yes, but that action is probably the result of some kind of settlement. A settlement that gave the landlord the ability to do something else, right?

Mr. Roche: I would be curious to hear our resident historian's perspective. Has this term been used since the inception of the Loft Board in the early 80s? What is your particular take on this from a historical perspective, Mr. DeLaney?

Mr. DeLaney: I can't tell you with any specificity when the withdrawn phraseology first started to appear. I don't think it was right away, but I'd have to go back and look at some early Orders to see when it cropped up. But while the discussion was going on, one thought did occur to me. (In) Article 7-C, which establishes the Loft Board, which is the Loft Law and which establishes the Loft Board, the function of MDL 282, establishment of a special loft unit, which defines the Loft Board -- the opening sentence is, "In order to resolve complaints of owners of interim multiple dwellings and of residential occupants…" So, maybe a term that would be better than withdrawn would be to say that it's resolved.

Ms. Lin: I think that's possible. If the Board members would like, we'll start writing it as, the application is resolved. That should not make a difference; but we'll see. I'm sure we'll get applications on it, if someone objects to what we're using in our Loft Board Orders.

Mr. Hylton: The matter is resolved? Or the matter is deemed resolved?

Ms. Lin: Yes, I think that could work.

Mr. Barowitz: If we use the term resolved, and then say, with prejudice or without prejudice, that would make a whole lot more sense to me.

Ms. Lin: We would probably have to say, the application is resolved, because if they do withdraw the application without prejudice, if we say the matter is resolved, it might be an implication that it's being done with prejudice. It just depends on how you define the matter. We're getting into semantics, but we're probably safer if we just say, the application is deemed resolved.

Mr. Hylton: All right. So, Mr. Barowitz, I think we got you here, thanks to Mr. DeLaney, as far as agreeing on something. But I just want to say to Board members, I don't want to necessarily vote on this language, because I may get another Legal Director here that may say something different or may not want to do this. So, I don't think this should be a resolution for the Board. But I think we're going to work through that language in the future -- using the word resolve, somehow, to express that. Without any formal resolution of the Board. Is that all right, Board members?

Mr. Barowitz: Yes

Mr. Hylton: Good. Thank you. That concludes this section, this portion, of the Board meeting. Right after a two-minute break, we'll be back and start the rulemaking process. Mr. Clarke will lead the discussion. So, we have a short adjournment. Thank you.

Mr. Hylton: We're back on the record, and we have a quorum; so, we're going to resume the next segment of this meeting, which is a discussion of rules. And Mr. Clarke will lead this discussion.

Mr. Clarke: Thank you, Chairperson. Board members, if you recall, we're working from a sheet with OATH comments for our proposed rules. At the top of the sheet is 1-12 definitions. There are four sections to the sheet, and at the last Board meeting, we went over the first section, and I think we came up with a definition for adjudicator. I would just like to remind everybody what I wrote down and what I have. It's the adjudicator. And if you're following along, we have it on the sheet, but it also correlates with page five of the proposed rules -- the big packet of the proposed rules. But it's also on the sheet, the one-pager.

Mr. Hylton and Mr. Clarke clarified for the Board and the public the two separate documents. The one-page sheet of comments and the larger set of proposed rules.

Mr. Clarke: In the rules, it's on page five, under the definition section, and we're trying to define adjudicator. Based on our discussions at the last Board meeting, we defined adjudicator as, "An administrative law judge or hearing officer of the Office of Administrative Trials and Hearings for matters before that tribunal or a Loft Board staff member assigned to conference, hear, or decide an application for matters before the Loft Board." And I think we all agreed to that, so we were moving on to the second section.

We had some discussion about the second section, which is 1-27, the hearings. We didn't make a final decision, but we talked about it. The issue here in 1-27(b) is that OATH would like the Loft Board to revert back to its original language, which says that the Loft Board will provide notices for scheduled hearings.

We discussed it; we didn't take a vote; but I think at the conclusion, Mr. DeLaney thought that we should probably push back against OATH on this matter and continue to use the term adjudicator. But staff advised the Board that the way the language is currently written, the Loft Board is named as the party responsible for mailing out these notices. But OATH has been doing it, and OATH has told us that they will continue to do it, while we are in this situation where we're severely understaffed, and it would be extremely difficult for us to mail out all these notices. So, that's where we are right now.

I'm not sure if the Board members want to comment on this any further. We can open it up for discussion and find out where we are after a month of thinking about it. Are we fine with just reverting back to the original language? OATH is already mailing out these notices, and they committed to doing so while the Loft Board is in the current situation, staff-wise and resource-wise. Does anyone feel one way or the other with respect to having the language revert back to the Loft Board being responsible for these notices?

Mr. DeLaney: I'll just reiterate, I'm against the idea. I understand that, probably for the next few years, every city agency is going to be constrained in terms of staffing, and budget, and everything else; however, even if we had a large staff at the Loft Board, as I was discussing last month, it seems to me that, if the case has been assigned to OATH, it makes more sense for OATH to take care of the

scheduling, and rescheduling, and changes, than for us to get caught in a crosstalk situation, where we'll just be on the phone with them all day long. It seems like, if it goes to OATH, OATH should handle it.

Mr. Hylton: How does it work in the regular court?

Ms. Lin: The courthouse sends out notices.

Mr. Hylton: The court sends them?

Ms. Lin: Well, in housing court they do. I'm not going to speak to any other court. When you file papers in court, the court papers will tell you the return date. And then the court usually follows up with a postcard. So, in one sense, it's the parties who send out the court date.

Mr. Hylton: So, to avoid a conflict, if we at the Loft Board were to ask for IT support to develop a notification process, where you basically type in the applicant's and all the affected parties' names, and then a new date comes up -- in other words, setting up a database that spits out these notices, like a mail merge. Would that suffice?

Mr. Clarke: We would probably have to change our rules for service.

Mr. Hylton: Why?

Mr. Clarke: I don't think our rules right now contemplate electronic service.

Mr. Hylton: No, not electronic. Just a database that spits something out.

Mr. Clarke: Okay

Mr. Hylton: And then we mail it.

Mr. Clarke: I see.

Ms. Lin: I'm not sure that will really solve anything, because a lot of it is also has to do with the packaging. It takes a surprising amount of time, from what I understand, to package and prepare all of this material. And that means someone has to do it.

Mr. Hylton: Isn't it just one piece of paper going out? Your next court date is…

Ms. Lin: There are a lot of notices in these big buildings. You send out a copy to every single person. That's a lot of notices for one case.

Mr. Clarke: Then you would have to do that every time they schedule a conference or any time they need notice. You'd have to do it again.

Mr. Hylton: Okay, so my point is, OATH is doing it now.

Ms. Lin: Yes

Mr. Hylton: Are you saying it's that burdensome for OATH to do?

Ms. Lin: Yes

Mr. Hylton: Is it very burdensome, manually?

Ms. Lin: Yes. And it's burdensome for us, too.

Mr. Hylton: It probably would be, right?

Ms. Lin: Yes. But OATH is in the same situation now.

Mr. Hylton: I think the city needs to solve this, right?

Ms. Lin: There are also bigger financial issues that we can't resolve. And as much as I would love to make it magically go away, we can't. All we can do is deal with this rule before us and decide; figure out what we're going to do.

Mr. Hylton: I understand your points, Mr. DeLaney, but the way I see it is, I don't want to go down this road of fighting, because the Mayor's Office has directed us to get OATH's clearance and input on this rule, and this could further delay us getting Mayor's Office approval on these rules, which is necessary before we can get final approval, I think, right? They have to sign off on it. And they're the ones who asked that OATH also clear it, because it touches on their processes.

So, seeing that we currently have in our rules the way OATH wants it to remain, I don't know if we want to make a fight on this right now, before we come up with a solution. And then we can always bring this

to a high level. Either it's going to be staffing or technology to do these kinds of things, which could benefit not just the Loft Board but any other tribunals that are in the city. Maybe somebody can do some research on that and find out if there's not some software that can do this quickly.

Whatever it's going to be – staffing or technology -- it has to be solved for the city. The Loft Board is the city. And so is OATH. So, the city has to find a way to solve this. Right now, the burden is on us by rule. And as much as we want to shift that burden to another agency, to me, it's not a fight worth having at this time. Especially considering where we are in these rules, and with the pandemic. That's just my take.

Mr. Clarke: Thank you Chairperson. Any other Board members have a take? I think it might be an issue that we have to put a pin on and come back to.

Mr. Hylton: No, let's resolve it.

Mr. Clarke: Want to resolve it? Okay, any other Board members with an opinion on this?

Ms. Torres-Moskovitz: I like the definition of adjudicator now, what you described earlier; and so I'm okay with it saying adjudicator here, under 1- 27 hearings. I'm more concerned with how you get fifteen-days' notice in the mail when everyone's complaining about the mail.

Mr. Clarke: That's actually the issue that we're having with this definition. If we use adjudicator, and if OATH is actually adjudicating the matter, then OATH would be responsible for mailing out all of the notices. So that's why OATH wants to take out adjudicator and use Loft Board. The way that we already have it written in our rules, it says Loft Board. So, OATH is saying, we want it to continue to say Loft Board, and do not put adjudicator in there.

Mr. Hylton reminded Mr. Clarke of the issue of fifteen-days' notice that Ms. Torres-Moskovitz had asked about.

Ms. Torres-Moskovitz: Mr. Clarke, I think I understand your point. I'm fine with the adjudicator definition, and I get the quagmire you're in, but I think that we should move forward. The reality is OATH is a much bigger entity, and as you said, the Mayor's Office asked them to participate, and we

have to listen to them. So, if the Loft Board has to keep sending these out, but as a courtesy, OATH has agreed to continue to do it, then okay, fine. If the Loft Board will provide fifteen-days' notice, my question is, how do you do that when the post office is completely off-the-rails with timing and deliveries?

Mr. Hylton: If we have a backlog, we just give them more time, I think? No?

Ms. Lin: Well, we're not getting the notices out right now, but can I estimate…

Mr. Hylton: No, what Ms. Torres is saying is that the fifteen days may be problematic right now, even in a pandemic. Say the pandemic is over tomorrow. It's just, at least. Even if we could do it, it doesn't have to be fifteen days, right? We're saying fifteen-days' notice to protect the parties, but the discretion would be the court's, to tell us we're going to have this in a month. You understand? So, it's just, at least. It's not less than fifteen days. We could make it any amount of time they possibly want -- that's a reasonable amount of time between the parties.

Mr. Clarke: And I would assume that if it was the court, and OATH gave us a conference date, and it was unreasonable for us to mail the notices out in time, then we would ask for a later conference date.

Mr. Hylton: Understand? What Mr. Clark is saying is, if there are ninety-five parties that need to get these mailings, and the court says, our next conference date is in three weeks, we're going to say no, no, we can't do that. Can we get six weeks, for example, to get these notices out? So, it's at least. I don't know if we want to change that number; if that can make it any better. But that doesn't mean we're stuck with that.

Ms. Roslund: Is there a little bit of a potential loophole, though? If fifteen-days' notice of a hearing is required, but the method of…It doesn't say they have to be mailed; just that they have to be given, right? But the method of delivery is not within our control, whether we mail them, or whoever mails them. And if the fifteen days isn't met, does that open a place for someone to say, for instance, the notice came to me at fourteen days. Can I then stop the hearing? Can I, as a citizen say, I haven't gotten my fifteen-days' notice? And this nullifies, or voids the trial?

Ms. Lin: I don't know the answer to that.

Mr. Clarke: I'm not sure, but I know that they would have an argument, potentially, that they had inadequate notice, even though it's just one day. When you write something down in the rule, you are bound by it. So, if they didn't have their fifteen days, somebody could potentially raise an argument -- even if they had fourteen days -- that there was inadequate amount of time.

Ms. Roslund: Are the notices sent return receipt? Is there any proof that affected parties have received notice?

Mr. Hylton: The burden on us is not to prove receipt of the piece; it's just to send it out regular mail. And we need to prove that we did send out a notice within those fifteen days. Within fifteen days of the hearing, correct?

Ms. Lin: At least fifteen days before the hearing.

Mr. Hylton: Yes, I'm sorry. At least fifteen days before the hearing.

Ms. Roslund: It doesn't say we have to mail it fifteen days before the hearing; it says it needs to be received fifteen days before the hearing.

Mr. Hylton: Does it say that?

Ms. Lin: It says provide at least fifteen-days' notice of a scheduled hearing.

Mr. Barowitz related his own experience with first-class mail being lost or delayed, and continued: Now, with the pandemic, is it's all very difficult. So, if we happen to send it out by the thirteenth, they get it the fourteenth, then we're in arrears of law. Which means that if you wait until the fifteenth to send it out, to make sure it's fourteen days, and then it takes two weeks, the whole thing is then messed up again.

Mr. Hylton: Now we're getting into too much nitty gritty. The law and the rules are saying, to legally meet the requirements for notice of a hearing, you have to put the notice in the post office at least fifteen days prior to the date of the scheduled hearing. What happens after that, we have no control over. There could be a flood or some other event at the post office; somebody could steal the letters. We can't account for any of that.

There is a court where someone can raise an objection later if, for some reason, they didn't get their notice. And a judge would decide. Moreover, what I know, and what Miss Rivera just pointed out to me, is that OATH, as a standard, uses thirty days, not fifteen. They're using a minimum thirty days. Not by rule, just by practice. So, that's what we would also want to do, if it comes to us. So, I don't want to get bogged down in this kind of stuff, because this is not just the Loft Board; this is throughout all legal practice. There is a standard, and the standard for service is regular mail.

Mr. DeLaney: Again, just to reiterate my point. We're going to be living with this rule, hopefully, long after the pandemic is over, as well as with whatever problems the post office has, whatever their source. Assuming everything is working just fine, though, we'd still be in a situation where every time we get a response from anyone who says, I can't make that date, we're going to have to call across to OATH to find out if there's another date available. And then, maybe the judge isn't available….

It just seems to me that scheduling these kinds of events should be in the wheelhouse of the agency that's handling it. And to have it across the street or down the lane with us is going to create an incredible amount of work. The staff is already overworked, and there are things we'd really like to be doing that we already don't have the bandwidth to do. So, to start being the paper people for cases that are at OATH just seems to me to be, logistically, a nightmare.

Ms. Lin: Mr. DeLaney, I completely agree with that assessment. In an ideal world, this is what we could pass, as we've written. But again, please keep in mind that our current rules say that the Loft Board will provide fifteen days. But if you pick a fight with OATH over this, what I think they could do is walk away from this and say, you know what, if your rules say you have to do this, we're not doing it. And that is absolutely something our staff cannot take on right now. This is not the right time to pick this battle. In my opinion.

Mr. DeLaney: I guess in response to that, what I would say is, believe me, I've had ample temptation to pick more substantive battles with OATH over the way they do things. But in this case, I think Renaldo is barking up the right tree. This isn't our problem. It's not OATH's problem. The Mayor's Office should take a look at this, and whoever's going to do it, will need help.

Mr. Clarke: I agree with that as well, but the question is, when are they going to take up that issue? It might be two or three years down the road, and we need to pass something and get it to the Mayor's Office sooner rather than later.

Mr. Hylton: Mr. DeLaney, we can add that to an agenda for discussion with the Mayor's Office.

Mr. DeLaney: Fair enough

Mr. Clarke: Is there anybody else that would like to comment on this particular rule? Ok, if not, would it be appropriate to take a vote?

Mr. Hylton: No. Mr. Barowitz, as a point of order, do we need to vote? Or do we just take a vote at the end? I don't think we necessarily need to vote on each of these, as an agreement. We just have to vote on our complete rules, what we agree upon, at the end, right?

Mr. Barowitz: At the very end, yes.

Mr. Hylton: Great, thanks.

Mr. Clarke: With that said, we can move on. We're still in 1-27 hearings, but now subsection (e). This provision starts with OATH hearings and says, "Where OATH conducts a hearing, and Loft Board rules conflict with OATH's procedural…." I'm going to read it the way that OATH would like it to read… when the "Loft Board rules conflict with OATH's procedural rules, OATH's procedural rules or practices will apply, unless otherwise provided by law." So, we'll start with that sentence. What OATH is basically saying with that sentence is, with respect to the procedural rules, if the matter is before OATH, then OATH's procedural rules will be applied.

It's not talking about any substantive law, meaning Loft Law; getting into the rules; analyzing a fact pattern based on what our rules say; and coming up with a legal conclusion. OATH is not talking about those substantive, factual issues. This is merely procedural. OATH is saying, if it's in front of their tribunal, all procedural matters will follow OATH's rules for procedure.

Ms. Torres-Moskovitz: That sounds okay to me. What does the staff think? Do you have any concerns?

Mr. Clarke: The staff agreed to remove that whole part about substantive rules. We agreed to take that part out, which is in the brackets, and leave in, if it's before OATH, their procedural rules will apply. We agreed with that.

Mr. DeLaney: I guess my first question would be, given the frequent reminders that the former Executive Director would always make with regard to the Board being the people who set the policy and make the decisions, where do staff have the leeway to agree with that? With OATH?

Mr. Clarke: With this particular change, we wouldn't have any leeway. As long as the case is before OATH and that tribunal, we would have to follow all of OATH's procedural rules.

Mr. DeLaney: Follow them or swallow them?

Mr. Clarke: Whichever you choose.

Mr. DeLaney: For the most part, I can fill in a few blanks, but I think in large measure, Mr. Clarke, what we really need to do is highlight for the Board members areas where there is a conflict between the Board's procedural rules and OATH's procedural rules. I believe we have some differences with regard to defaults and how to cure a default. For example, we have expedited timetables for access and harassment cases. Which discrepancies between our rules and theirs are procedural? And without that, how can we possibly make any kind of meaningful assessment of what the consequences of this change would be?

Mr. Clarke: I think in the example you gave with respect to the harassment timetable, that would be more substantive, right? We'd have to look at the facts and make a substantive determination based on our rules. That kind of timeframe wouldn't necessarily fall under anything procedural. I believe the procedural timeframes would be things like when documents need to be submitted; when notices need to be sent out. Things of that nature, that basically set the playing field for a fair fight on the facts.

Mr. DeLaney: Well, we've had our procedural rules in place for many, many years, and we have always taken the position that if there's a discrepancy between ours and OATH's, that ours control. So, I think this is a pretty significant proposed change, and I don't think we're really equipped with enough

information to proceed. It's been quite a while since I've read OATH's procedural rules, but I'm certainly going to do that in the near future. I think it's incumbent on us.

Mr. Hylton: The point that OATH raised is that all other agencies … I know we're special, don't get me wrong… but they say all other agencies that come before them do submit to their procedures. And so it is in most courts. When a court hears a case, they have their own procedures, otherwise, they would have to learn and implement the rules of all the other agencies that come before them.

Mr. Hernandez: Do we even have a say here? Based on what you just said, Renaldo, OATH has a protocol that they follow, that's applicable to all agencies and authorities that come before it. So, do we have any say here? Because then my concern is, we're going to argue a point that we're not going to get anywhere with. OATH is just coming back with a different version of the same thing. And we can engage in a discussion and delay time, but I don't see this is winnable. OATH's going to say, this is what it's going to be. That's my gut reaction. I don't know if that's legitimate or not.

Ms. Roslund: I had a similar thought slash comment as to how we could be commenting on another agency.

Mr. Hylton: We're commenting on our own rule. We're not commenting; we're discussing what they have said about our rules, because they have a right to comment on our rule; because it's rulemaking.

Ms. Roslund agreed with Mr. Hernandez.

Mr. Hylton: I don't know if we can do anything, but it goes back to my earlier argument. The court – OATH -- is, right now, our fact-finding agency, right? They're our court. We're using them, because we don't have our own tribunal. They're saying, if you're going to use our tribunal, then it is incumbent on you to submit to our procedural rules. They're saying all other agencies do this. When they bring cases to OATH, they abide by OATH procedural rules. So, what makes the Loft Board special, for them to have to come and look up our procedural rules to see if they click with whatever they're trying to do before they make a ruling?

And then the problem we're going to have is, we need them to OK this before the Mayor's Office will, okay? That's been made clear to us. And what we're telling you now is the result of our staff meeting

with them and some other agreements we've worked out, because they had other objections, but we talked them off the ledge on those. So, this is an agreement between staff and them, and we're bringing it back to you, the Board, for your buy-in.

Mr. Clarke: So, a compromise.

Mr. Hylton: This was a compromise that we came to, and I'm agreeing with you there.

Ms. Roslund: So, should we just see who's in agreement?

Mr. Clarke: If anybody else wants to make a comment on it, we can have a discussion and then save it for the vote.

Mr. DeLaney: I don't see how on earth anybody who's a Board member can say, let's set our procedural rules that disagree with OATH's aside, without our knowing is that three things? Is it fifteen things? Remember, we set up our process during the ten years that the Board had hearing officers. The processes that we set up were designed to make sense for the situation that Loft buildings find themselves in. If the staff, who's apparently got some kind of handshake deal with OATH, could provide us with a list of how many discrepancies there are between our procedures and theirs, then we'd be in a position to make an informed decision. I think this is the wrong way to go about it.

Mr. Hylton: But Mr. DeLaney, in the course of all your experience at the Loft Board with OATH, have there ever been any conflicts between our procedures and OATH'S procedural rules?

Mr. DeLaney: Yes

Mr. Clarke: I'd be interested in hearing about that.

Mr. DeLaney: Well, I'll be happy to comment, when you do what I think would be due diligence on the part of the staff and come up with a comparative list of where our procedures differ.

Mr. Hernandez: I would argue that it's going to be very difficult for the staff, because they're going to have to imagine every situation where even the language, itself, is somewhat ambiguous. Where there is no OATH rule of practice, the Loft Board rule will apply. That creates a lot of ambiguity, that I don't think that they're equipped to address. I also think we're imposing on our own team requirements that

we don't control. And I get the concern. Yes, if we could control for that, it would be fantastic, and we would understand, and everything would be great. But we don't.

We fall under OATH's jurisdiction, at least for this, and so we can scream and cry all we want, but they're just going to say, well, that's nice, this is what we're going to do. And that's more my concern. With the limited resources and time that we have, what's the battle that we want to pursue? Is it battling something that we know we're not going to win? Or is it just saying, all right, we get this, and let's continue with the rest of what we need to do. I'm not trying to be difficult; I'm just trying to be a little bit more realistic about what we're trying to accomplish here.

Mr. Clarke: Thank you, Mr. Hernandez. Are there any additional comments?

Mr. DeLaney: I would just point out that OATH has yielded to and followed our process in places where ours differs from theirs.

Mr. Hylton: Yielded to the Loft Board?

Mr. DeLaney: Yes

Mr. Hylton: So, is our discussion moot?

Mr. DeLaney: No. I think this is a significant change. And I think that this is one where, if the staff doesn't have the time to come up with a coherent list of the differences between the two sets of procedures, then perhaps we could petition some of the practitioners who work at both, through landlords and for tenants, to come up with that list, so that we know what we're dealing with here. Otherwise, this is a pig in a poke.

Mr. Clarke: Your comments are definitely duly noted, Mr. DeLaney. But I also I know that what Mr. Hernandez said is accurate; that it would be an arduous task for the staff to go through, line by line, and look for every difference there is between OATH's procedures and the Loft Board's procedures. So, it's something that the Board members will have to consider as well, with our limited staff and our limited resources.

If nobody else has any more comments on this, then we do have a couple more sections we can discuss. And hopefully, we can get through this by 4:30. That's my goal. So, we're going to move on to section 1-30, which is settlements. And this part of the rule pertains more to the Summary Calendar, when there are settlements reached at OATH.

Our current language says that a summary report should be created whenever there is a settlement. OATH says they do not really have the resources, nor do they feel the need to write summary reports for the settlement. They think that should be the burden of the Loft Board. If the Loft Board wants to write up a summary, or if staff wants to write a summary and present it to the Board members for the settlement, then that's the Loft Board's responsibility. OATH says they don't need to write summaries. So, that's the first section of the red underlined part. If summary reports are going to be written, it's going to be written by Loft Board staff.

That's part (a). Part (b) is, OATH does not feel that the Loft Board can require them to remand issues or reopen matters. So, the language that we compromised on with OATH is the last sentence, which says "The Loft Board may direct its own staff to reopen a matter for further investigation or may have its staff seek a remand." Which means they can ask OATH for a remand, but the Loft Board cannot demand or direct OATH to remand a matter.

So, those are the first two issues. Let's start with the first one, which is, in an instance where there is a settlement, we have in our rules that a summary report should be written. Are we fine with saying that that report should be written by the Loft Board staff?

Mr. DeLaney: How does that differ from current practice?

Mr. Clarke: The current practice is…actually, Ms. Roslund read it earlier. OATH will basically say, the party sent an email; they want to withdraw; so, we're going to deem this application withdrawn and send it back to the Loft Board. And what we do then is write up our Proposed Orders for the Summary Calendar and present them to you. That's the current practice.

Ms. Roslund: Which is basically what the proposed change is saying.

Mr. Hylton: Do what you do now.

Ms. Roslund: Right. To revise the language to reflect the current procedure.

Mr. Hylton: Yes. Plus, they're asserting themselves as a court. I don't know if they would consider a higher court, but they're making the recommendation to us. I guess they're saying, you can't just say, here, take this case back and reopen it. We can ask that it be done, or we can reopen it ourselves and send it back to OATH, but we can't demand that they reopen it.

Mr. Clarke: That's a second issue.

Mr. Hylton: A second issue, yes. But the first issue is no problem, because that's what we've been doing.

Mr. DeLaney: How would this affect what comes over from OATH?

Ms. Lin: It doesn't.

Mr. Hylton: No effect

Mr. DeLaney: So then, how is this changing anything? We write up our Proposed Order…

Mr. Hylton: It's fixing the language.

Mr. Clarke: Right. Now, it says that a summary report should be written. But it doesn't say by whom. OATH is saying the Loft Board staff is responsible for writing up that report; not us.

Mr. Hylton: They're just saying, don't put it in writing that we have to do it. You have to do.

Mr. DeLaney: Right now, OATH returns the case to us, if it's been settled, with a cover letter that basically says what the sample Heather read earlier says? That is a standard example, correct?

Mr. Clarke: Correct

Mr. DeLaney: So, the summaries that are currently being written are really being written by us in the form of Proposed Order.

Mr. Clarke: That's correct.

Mr. DeLaney: So, this really is not a change.

Mr. Clarke: Exactly

Mr. DeLaney: This is more clarifying…

Mr. Clarke: …the process, yes. So, if everybody is fine with that…. I don't see anybody in any disagreement. I think the next issue we should address is that OATH is saying the Loft Board can ask OATH for a remand; and if there's any further investigation after the settlement that needs to be done, it needs to be done by the Load Board staff.

Ms. Torres-Moskovitz: This one I had a question on so, I thank you for the summary report. I'm glad that that's how you do it. And there seems to be no controversy there. It's just clarifying. Regarding the second part, I've noticed in the last couple years that you do challenge OATH's findings sometimes. So, what do you think about this, Mr. Clarke and Ms. Lin? What's the concern? You have to seek a remand rather than demand a remand? Does that mean they're implying they're going to reject it, and say, sorry, we're done?

Mr. Clarke: Yes, that is somewhat the issue. We really don't have that many cases -- summary cases -- for which we've asked for a remand. Since I've been here, the only time I can remember that happening is when there's been a case where there's an agreement between the parties, and they agreed the coverage case. The parties agreed that they'd withdraw the coverage application and allow tenants to continue living in an illegal building. So, we stepped in and said, that's against public policy, to allow tenants to withdraw a coverage application and continue to live in a building without the protection of the Loft Law. That's the only settlement I've ever seen us reject and send back to OATH.

Mr. Hylton: Did they reopen it?

Ms. Lin: I think they ultimately settled the case.

Mr. Clarke: So, with this language, what OATH is saying is, the Loft Board can't direct us to reopen anything. But they can ask us to revisit an issue. But we can't be told that we must reopen an issue.

Mr. Hylton: Now, in courts, usually a higher-level court, an appellate court, can tell a lower court to remand and say, you have to reopen this case, right? How does that play out here?

Ms. Lin: I think that's the exact scenario that OATH is trying to avoid -- us treating them like a lower court. They don't want to be reversed on legal findings, where we're just unhappy or in disagreement. I don't think they're trying to avoid further fact-finding, which is their function in this. I think they're trying to avoid the appellate court and lower court distinctions, where the appellate court says, you got it wrong, try again, give us a different analysis. They don't want that happening. And we wouldn't want that either. Because we would just make a determination ourselves. We don't need to go back for another legal analysis. We can do that at the Loft Board.

Mr. Hylton: Remember, you are the final adjudicator here.

Ms. Torres-Moskovitz: So, it sounds like the staff is okay with the clause? While you weren't expecting it, you understand why?

Mr. Clarke: Right. Yes. We've come to an understanding. We're not asking OATH to re-do fact-finding. If there is something that we feel they got wrong, then we can ask them to look at it again.

Mr. Hylton: Can we also just reject it outright?

Ms. Lin: Fact-finding? I don't know if that's ever happened before. I guess, in theory, we could have something in the record that's clearly, obviously, wrong. Yes.

Mr. Clarke: But then we'd have to find a trier of fact. A new trier of fact.

Ms. Lin: Unless there's enough record to establish the fact. You can make factual determinations from the record if the Board so chooses, if it's clear. Again, I don't think that's happened before. But yes.

Mr. Hylton: So, it seems like we have a couple options, right? If the Board does not agree with OATH's decision or whatever is in a settlement, we can reject it outright; or, if we have enough information, we can try it outright as, what? The trier of fact? The Loft Board?

Mr. Clarke: Yes. They would be the ones to review the information and make the finding.

Mr. Hylton: And we can make our own determination and reject OATH's. But if you really wanted a proper hearing between two parties, you'd have to ask OATH, could you please…And perhaps make a

point of what was missing; that something egregious needs re-examination. I don't see how they would not agree to it; but they're saying we can't demand of them that a case be reopened in their tribunal. It's not a big issue, in my opinion.

Ms. Lin: I think OATH just doesn't want to have language in there saying the Loft Board may direct OATH to do X, Y and Z.

Mr. Roche: Mr. Chairman, this might be a sidebar, but unless I'm hearing you wrong, I keep hearing OATH say, basically, respectfully, we're not going to do it. But if the Loft Board wants to do it, that's great. Again, this may be a sidebar, but I'm wondering if any of this can be used by the Loft Board and its staff to leverage the appropriate staffing to handle some of these things.

Mr. Hylton: Well, again, as Mr. DeLaney pointed out, this is basically the city of New York, and the Loft Board is the city, and so is OATH. They are their tribunal. So, whatever is mandated by law or rule, we have to have resources for that. And there are situations in the Department of Buildings and its relationship with OATH where we compromise on who does what in the best interest of the city, the best interest of the citizens of the city of New York. So, in the end, whatever comes of this, it has to get done. The rules rule. And yes, we'll be able to get staff to accomplish the rules, though perhaps not in a pandemic.

There are legislatively funded mandates that must happen. We can't put something in the rules and then not allow for it to happen. We'd almost be in contempt of our own rule. So, there will be funding. Just who gets it, and does it, is the issue. But right now, it doesn't matter how we write this rule, it's going to have to get done by one agency or another. And we will work it out. The Loft Board is co-located with the Department Buildings; if it means that the Buildings Department has to support the Loft Board in doing something…. I don't want to speak on behalf of the Commissioner, but I'm sure it will get done.

That's how it works. We come together to get things done. And I don't think these changes are so serious that we wouldn't be able to work it out between the agencies and staffing. And I'm sure we can elicit the use of technology to get this done. But as I said before, Mr. DeLaney, we will look at putting

this on the Mayor's Office agenda, because they're the boss, right? They rule both us and OATH, essentially.

Ms. Torres-Moskovitz: Thank you for explaining that. If we're thinking worst case scenario, let's say the Loft Board staff looks into something, and they seek a remand, and OATH says no, we're not going to look at this again. What you're saying our recourse is at that point is, the Loft Board can….what?

Mr. Hylton: If there's enough information there, we can make our own determination. Or we can start a new case, right? Isn't that what the rule says? Or reopen the matter for further investigation?

Ms. Lin: Or we can investigate it, hold a hearing on our own, if we ever have the capacity to do so. We're not bound to go to OATH, necessarily.

Mr. Hylton: Right. We can just have a hearing on our own.

Ms. Torres-Moskovitz: Or you can send it back to OATH in a different way?

Mr. Hylton: Making a new case

Mr. Clarke: Not with the same facts

Mr. Hylton: Not with the same facts, according to Stephan. But it's not going to happen. It hasn't happened. It happened once, and it was settled. And it's also a burden on these litigants to go back again. We really don't want to do that. Lawyers are expensive.

Mr. Clarke: Okay, so are there any more comments on this?

Mr. DeLaney: Yes, I have a question for you, Mr. Clarke. This section 1-30 deals with settlements. And it's quite clear that OATH's preference would be that we could not remand settled cases back to them for further investigation. We could ask them, and they might or might not, but we don't have the right to send it back. But the same language or similar language appears in 1-31 decisions in section (d), I believe. And that was not questioned? So, OATH is saying that on a Master Calendar case, where there's a decision being rendered, we can remand for them?

Ms. Lin: Yes, the sentence says the Loft Board may accept, reject, remand, defer, or modify the decision recommended by the adjudicator.

Mr. DeLaney: So, they're drawing the line just on summary cases, where there's a settlement, as opposed to cases where there's a decision?

Ms. Lin: No. To be honest, it was probably just an oversight. And now that it's raised, it's probably going to be an issue as well.

Mr. Clarke: They didn't raise that to us.

Mr. Barowitz: This seems to be an academic exercise that we really don't have to go through at this point. How many times has this happened?

Mr. DeLaney: We remand cases to OATH occasionally. I would say…

Mr. Barowitz: Once in a great while. I can't remember one.

Ms. Lin: There's been two or three.

Mr. Hylton: Yes, there were a couple this year.

Mr. Clarke: There were a couple of Master cases remanded, because there was insufficient evidence to say a building was covered.

Mr. Hylton: Maybe this wasn't an oversight. Maybe OATH said, well, the case is settled, and you're going to have a remand on having a new hearing on a settled case. Maybe they felt it's a different story for the Master calendar.

Ms. Lin: No, I think there's a discussion that came up with…

Mr. Clarke: …the whole remand

Mr. Hylton: The whole fact about us sending things back?

Ms. Lin: Yeah

Mr. Hylton: So why don't we not raise it?

Ms. Lin: It is public now.

Mr. Clarke: Yeah

Mr. Hylton: I'm sure OATH is not listening to us.

Mr. Clarke: But that's a good point, Mr. DeLaney. Any other comments? Okay, so, Mr. DeLaney brought us into the next section, albeit not section (d). OATH had comments on 1-31 decisions for sections (b) and (c). So, we'll start with section (b). And the first change that OATH wanted to make is in the second sentence, where it addresses on what the adjudicator must base their report and recommendations.

After a fact-finding or hearing, there's a report and recommendation by the adjudicator, and what OATH had an issue with is what the report must be based on. So, we and they attempted to work on some language about that. The first thing OATH said was, we have to take out must. The report must be based on certain things. So, we took out adjudicator must base the report, and we said, the report and recommendation shall be based on the administrative record.

We also took out the word exclusively and "on the administrative record of the case and relevant authority, including but not limited to decisions of the courts of competent jurisdiction, statutes and rules." So, what OATH is saying is, we don't want you to modify what the report and recommendations should entail. Before we said, it must be based on; and now they're saying, it shall be based on the administrative record, relevant authority, including but not limited to decisions of courts of competent jurisdiction, and statutes and rules.

The point that we have to highlight is, they want to remove Loft Board decisions, and instead, have it read, the report and recommendation shall be based on relevant authority. Now, Loft Board decisions are relevant authority, including, but not limited to. They wanted to make sure that they encompassed all relevant cases, hearings, and decisions that could have a bearing on their report and recommendation. So that's the issue that we have in section (b).

Ms. Roslund: That makes sense to me. What I'm going to ask about right now is the first sentence that isn't modified.

Mr. Clarke: Okay

Ms. Roslund: It takes us back to our definition of adjudicator. It's not specific in terms of which of the people listed in the definition of adjudicator is submitting this recommendation.

Mr. Clarke: So, with our first definition of adjudicator, it can either be the administrative law judge, a hearing officer, or Loft Board staff member. It can change, depending on who the issue is in front of. It can be in front of an administrative law judge; it can be in front of a hearing officer; or it can, theoretically, in the future, be in front of a Loft Board staff member.

Ms. Roslund: So, the sentence is intentional in terms of leaving it open-ended?

Mr. Clarke: Yes

Ms. Roslund: Thank you.

Mr. Clarke: Are there any other comments on this modification that OATH and staff members have compromised?

Mr. DeLaney: I think taking out Loft Board decisions is a huge mistake. Even if we think it's incorporated in relevant authority.

Ms. Torres-Moskovitz: The city's Law staff is also reviewing this, right?

Mr. Clarke: The Law Department

Ms. Torres-Moskowitz: The Law Department. I feel like we're in a situation where we're at odds with OATH or something. As a tenant, my experience was great at OATH. Their system functioned very well for me. So, I understand that we're supposed to have our guard up, and we're writing rules here, but I'm wondering, if the city Law Department is cleaning up language, and it's making it more functional, which seems to be one approach, if I read the OATH changes…They're not taking away Loft Board power; they're just cleaning the language. We don't have to keep mentioning Loft Board, if the whole

set of rules is based on Loft Board law. It puts me more at ease, that we're just cleaning up, making it more clear. But I want to hear what Mr. DeLaney has to say, if he's feeling that it's taking away power from the Loft Board.

Mr. Clarke: Thank you. Mr. DeLaney, did you want to explain to the Board members and everybody why you think, specifically, taking out Loft Board decisions is a big mistake? And why you don't think it would be included in the phrase relevant authority?

Mr. DeLaney: I would presume that it is included in the phrase relevant authority. However, I think the central nature of Loft Board decisions to future cases is something that we use all the time. As you know, in our Proposed Orders, we frequently cite prior Loft Board decisions relative to the authority in background. In backup materials for cases, there are frequently half a dozen or a dozen prior Loft Board decisions that are included in the case, because either one of the parties, or the Loft Board itself, sees precedents in those decisions. And it just seems to me that those should be highlighted. I don't think it does any damage to do so. And I think to take it out is a mistake.

Mr. Clarke: Thank you, Mr. DeLaney. Ms. Lin or Chairperson Hylton, correct me if I'm wrong, but this is specifically for the report and recommendations, and not necessarily for the Proposed Orders that come before you, which the Loft Board staff writes. I think you are correct in that we do frequently cite to Loft Board precedents, when we write our Proposed Orders to submit to you. We do value that and consider that a heavy authority. And those are frequently used and relied upon for our arguments. But this is…

Mr. Hylton: It's not only heavy authority; it's final authority…that rests with the Loft Board, correct? Unless we go to appellate, when we get sued. But we are, you are, the final adjudicator at this level, because OATH is only writing report and recommendation.

Mr. Clarke: Are we good? Any other comments? If not, I think we can get to the last comments on this page, which can be found in section…

Ms. Torres-Moskowitz: I'm sorry. I missed a piece of that. Were you saying that the precedents are at risk of not counting if the words Loft Board decisions are removed? Precedents are always a part of law, so, would taking that out hurt the fact that we use precedents? I'm just trying to understand.

Mr. Clarke: What I was explaining to Mr. DeLaney before was this particular part of the rule talks about the report and recommendation that OATH is writing. Mr. DeLaney thought that we should leave in Loft Board decision, because it is a heavy authority that the Loft Board relies on when the Board members are voting and making their final decisions. And I just pointed out to Mr. DeLaney that, even though OATH can write the report and recommendation, the Proposed Orders that the Board members vote on are the final authority. And that's the final say.

And the Loft Board staff members frequently rely on previous Loft Board Orders to write these Orders to present to you, because we do find that previous cases and precedents set by the Loft Board are heavily relied upon for the arguments that were presented. They constitute heavy authority in the Proposed Orders that we write and the issues that we present before you. So, the Loft Board staff is always going to use Loft Board data to support our arguments. And as Chairperson Hylton said, the actual cases that we cite are heavy authority, because they are the final word from the Loft Board in that particular case and that matter.

Mr. DeLaney: All the more reason to leave Loft Board decisions in. You're basically saying that heavy authority is a notch above relevant authority.

Mr. Hylton: I hear you, Mr. DeLaney. So, let me ask you, Mr. Clarke: if this were to say, shall be based on administrative record of the case, comma, and other relevant authority, including but not limited to Loft Board decisions, decisions of the courts of competent jurisdiction, statutes and rules. What's wrong with that?

Mr. Clarke: I wouldn't necessarily have a problem with that.

Mr. Hylton: Change it. Let's read it back. Let's see what it says.

Mr. Clarke: Chairperson Hylton suggested the following language for that the sentence. The report and recommendation shall be based on the administrative record of the case and relevant authority, including but not limited to Loft Board decisions, decisions of courts of competent jurisdiction, statutes and rules. Does everybody feel a little bit more comfortable with that wording?

Mr. Hylton: Would that be okay, Mr. DeLaney?

Mr. DeLaney: Yes

Mr. Barowitz: I basically agree. Maybe we ought to put Loft Board decisions at the very end, rather than somewhere in the middle of that sentence.

Mr. Clarke: Okay, at the end of the sentence. So, it would read, the report and recommendation shall be based on the administrative record of the case and relevant authority, including but not limited to decisions of courts of competent jurisdiction, statutes and rules, and Loft Board decisions.

Mr. DeLaney: I would favor it being the first thing rather than the last thing.

Mr. Hylton: I like it first, too, but why did you want to put that at the end, Mr. Barowitz?

Ms. Roslund: It flows better when it's first.

Mr. Hylton: Okay. I just want to hear Elliott's reasoning as to why he wanted it last.

Mr. Barowitz: It flows better when it's first, but when it's last, it feels more like it's the determining decision. The Loft Board.

Mr. Hylton: Because it comes after statutes and rules? Statutes and rules seem like the most significant, though, don't they? It seems so to me that statutes and rules would be the strongest authority. So, if you're thinking about how it should be at the end-- statutes and rules -- maybe if you want to put it before statutes and rules. That's fine with me.

Ms. Torres-Moskovitz: Isn't it already there when you say decisions? Decisions of the court of jurisdiction and Loft Board?

Mr. Hylton: But the Loft Board is not a court.

Ms. Lin: The decisions of the Loft Board and courts of competent jurisdiction.

Ms. Torres-Moskovitz: Yeah

Ms. Roslund: Then to Renaldo's point, it should be, shall be based on the administrative record of the case, statutes and rules, and decisions of courts of competent jurisdiction, and the Loft Board.

Ms. Lin: We need to include the relevant authority part, though.

Ms. Roslund: Oh, did I miss that?

Ms. Lin: But not limited to.

Mr. Hylton: Yeah, all the relevant…

Ms. Roslund: Right.

Mr. Hylton: Can we just agree that we're going to fix it? We're going to put it in. It's just a matter of putting it at the end or at the beginning. We'll work it out. Insert it somewhere. Can you email it to the Board members?

Mr. Clarke: Sure

Mr. Hylton: What do you think? Is that okay? We'll put it in there and email you a fresh set of language, reflecting what we agreed upon. In the interest of moving this thing along, I'd like to just document what we agreed upon, so we don't have to revisit this piece again next week.

Mr. Clarke: Right

Mr. DeLaney: I'm not prepared to agree on this, with regard to the open question I have on 1-27(e). And I will not vote either yes or no, until I've had a chance to research that, since the staff hasn't.

Mr. Hylton: Okay, we won't vote on it. And we'll see what we can find out from any research we're able to do. We just don't want to commit to that. Okay, Mr. DeLaney, for now?

Mr. DeLaney: I'm not going to vote on that piece or any of this until I've had a chance to do that research myself.

Mr. Hylton: Okay

Mr. Clarke: Okay. But I think we just have enough time to touch on the last issue on this page. It's section (c) of 1-31 decisions. It's dealing with the report and recommendation again of the Loft Board adjudicator. So, OATH is saying, we don't want to be told what to put in our report and recommendation. So, if we're going to lay out 1, 2, 3, and 4, everything that needs to be in the report

and recommendation, OATH is saying, this is what the Loft Board adjudicator must include, not necessarily OATH. OATH would be under (b), the one we just discussed. But if the Loft Board wants to be very specific about what they want in there, OATH wants us to put in the Loft Board adjudicator here.

Mr. Hylton: Who's writing the report and recommendation?

Mr. Clarke: The adjudicator

Ms. Roslund: We just touched upon that.

Mr. Clarke: It could be the Loft Board staff, it could be the administrative judge, but Ms. Roslund just asked a question about who the adjudicator is. And it can be different, depending on what tribunal the issue is in front of.

Mr. Hylton: So, they're saying we can't tell them what must be in their report and recommendation. But we can tell our adjudicator, if we want. So, they're saying section (c) does not pertain to them.

Mr. Clarke: Are there any comments on that?

Mr. DeLaney: So, they would like no instruction or minimum requirements imposed on what they write up?

Mr. Clarke: Other than (b), which we just discussed. So, they're saying if you want to go into (c) and give us all these specifics, use the Loft Board staff. That pertains only to the Loft Board staff.

Mr. Hylton: So, if they write a report and recommendation to the Board, (c) is what we would have, if they don't include what we'd like to ask for? And if they didn't, we would have to supplement it with this?

Ms. Lin: If we wrote the report and recommendation, yes. If we wrote it, this is how it would look.

Mr. Hylton: What does their report and recommendation look like right now?

Ms. Lin: Practically speaking, they already include all this. They just don't want the rule saying they have to do it.

Mr. Hylton: So, here's another example where they're doing it already; they just don't want anyone telling them how to do things or mandating what they must do. But a lot of it is common sense. It has to be included in a report and recommendation. It's there already. They're just saying, don't impose your rule on us. Am I right?

Ms. Lin: They're saying you can't impose your rule. We're a different agency, which is correct.

Mr. Hylton: Or get your own adjudicator?

Ms. Lin: Right

Mr. Clarke: All right. Any other any comments on that?

Ms. Torres-Moskovitz: I think that sounds okay. To me, I'm wondering, I'm back to 1-27(e), where Mr. DeLaney was going to research on his own.

Mr. Hylton: I'm sorry, you're going back to another section? Just hold that point one second. Does anyone have any further comment on the report and recommendation issue?

Ms. Torres-Moskovitz: We're at the end, and I just wanted to ask if the city Law Department can give us some feedback, because they deal with all of the agencies that go to OATH, and so they would have a better perspective on the procedural issues.

Ms. Lin: The Law Department hasn't seen this version, yet. They looked at our old version, and they had issues with the way we were directing OATH to do things. So, they also asked us, in conjunction with the Mayor's Office of Operations, to ask for OATH's input. They have not looked at this yet, because it hasn't been approved by the Board. We wanted to take it to the Board first to get your approval, before we submit it to the Law Department. If the Board members would like guidance from the Law Department, we certainly can ask for that.

Ms. Torres-Moskovitz: Yes. I think that now that you explain it, that helps. I would appreciate city Law Department telling us their thoughts.

Mr. Hylton: Yes, I got you, and I appreciate that. Except Ms. Lin is saying that Law Department, prior to this, did have some concerns about the way our rule was directing OATH.

Ms. Torres-Moskovitz: That's good to know, as well. But rather than Mr. DeLaney having to spend every night studying this, it would be better to have city Law Department weigh in on it. Because they have a better perspective on how every agency works with OATH.

Mr. Hylton: I understand.

Mr. Clarke: I think I'm out of time now.

Mr. Hylton: Does anyone have anything else to say on this?

Mr. DeLaney: On 1-31(c), I thought, Ms. Torres, where you were going was, yes, that's also something I want to look at, in terms of what those processes for the writing of cases are. So, to me, it's a similar topic.

Mr. Hylton: You mean, whether or not some of these items are actually already in their rules?

Mr. DeLaney: Yeah

Mr. Hylton: Okay. There's indication that they are, because they already are contained in what they're sending us. So yes, but that's a good point. Let's look at that. Absent any other discussions can we move to end the meeting?

Mr. Clarke: I'm not sure if the Board members want to discuss the agenda for next Tuesday, which is all rulemaking, on how we're going to proceed.

Mr. Hylton: Tell us what you're planning.

Mr. Clarke: We've gone through all of these comments today, and we have a week to try to address some of the issues. Mr. DeLaney mentioned subsection 1-27(e). And also, a little bit more research on 1-31 decisions, 1-31(c). We can try to get a little bit more information and do a little bit more research on our end. And we can bring that to the Board members next Thursday.

Aside from that, I'm not sure we'll be ready to vote on this piece. I think it would warrant a little bit of a discussion at the start of the rulemaking session next Thursday. If we can come to a consensus, I think it would be okay to have a vote at that point. And then we'll prepare the next set of comments we received from the Law Department. We'll prepare a sheet and send it out to the Board members on the issues that we'll be discussing at the next rulemaking.

Mr. Hylton: When is that going to go out?

Mr. Clarke: We'll try to have that out by the end of business day on Monday.

Mr. Hylton: Is that okay with you, Board members? By Monday? It will be all in a summary sheet, similar to what you have before you right now, so that it's more concentrated

Ms. Lin: I think we can get the list of what we're going to assess in the Law Department comments. I don't know about the research aspect.

Mr. Hylton: No, not the research. Just a list of the comments from Law back out to you by Monday, close of business, so that we know what we were talking about on Thursday, correct?

Ms. Lin: Yes, that should be doable.

Mr. Hylton: Right. Bear with us. You know, these guys have to get some sleep.

Mr. DeLaney: Before we end, I have two questions.

Mr. Hylton: Sure.

Mr. DeLaney: The first is that we have a one-hundred-and-eighty-one-page document that was distributed, I would say, in May or June of this year, that has Law Department comments, which we've been advised is a confidential document. Have there been any subsequent comments provided by the Law Department?

Ms. Lin: Yes. They did provide one in August. I don't remember whether that was transmitted to the Board members or not. If I did not, that's an oversight; I thought I did. But it was only to one section. 1-18.

Mr. DeLaney: I don't think I've gotten anything after that big document that came with the track changes.

Ms. Lin: Okay, so it's the same type of document, but with only a one-to-one section. So, I'll send that out.

Mr. DeLaney: Okay. And then my second question is with regard to 1-31 decisions. I find it hard to believe that having gone over these rules and come up with all this, that they missed 1-31(d). But it seems to me we should seek some kind of clarity. I don't see how they could have missed it. Maybe they don't care. Maybe they think in decision-based cases they should take it that we do have the right to remand to them. But to just leave that as an open question, and gee, they didn't raise it, so let's not talk about it, that doesn't seem very sportsman like.

Mr. Hylton: So, you want to open that up to them?

Mr. DeLaney: I don't know. I mean, it's just common sense. If they've got their knickers in a knot over remands on Summary Calendar cases, what are they going to think about decision-based cases?

Mr. Hylton: All right. You know it cannot go in our favor?

Mr. DeLaney: I'm just trying to be it transparent.

Mr. Hylton: I understand. You're try to do the right thing. So, we'll ask them. Okay. I want to thank you, Board members, for your patience, and I thank you, Mr. Clarke, for leading that discussion. That was really good. And I'm happy that we've actually come to some finality with this last section of the rules. Did anyone have any other issues, comments?

Ms. Torres-Moskovitz: Real quick, when you mentioned Monday you would email us, and Executive Director Lin also mentioned sending the Law Department 1-18 update --- are you sending us an agenda for what we're covering at the rulemaking meeting, so, we know where to focus?

Mr. Clarke: Yes. It's going to be a document that will show, in order, the comments from the Law Department. We're going in page-number order.

Ms. Torres-Moskowitz: Okay. Over the last couple of years, I've felt like we've just been randomly picking sections. But you're saying now we're going to start at the beginning of the rules?

Mr. Clarke: Right, but some of the comments the Law Department sent back to us require further research from the Loft Board staff. And we don't want to present that to the Board until we get some more information. So, just the comments we feel are ready to present to the Board. We'll put those in a document and go over them in chronological order.

Ms. Torres-Moskowitz: Thank you

Mr. Hylton: Right. Is that settled? All parties are clear on our intentions for next week? Thank you. So, this will conclude our October 15th, 2020 Loft Board meeting. Our next public meeting will be held on Thursday, October 22nd, 2020, at 2pm. The Governor's suspension of in-person meeting requirements of the Open Meeting Law is in effect until November 4th, 2020. So, next Thursday's meeting will be conducted virtually. But remember, the next official monthly Board meeting will be held in November, and we don't know what format that will be yet. But we know that next week's meeting is still virtual. Please sign your attendance sheets and email it to us. Thank you, and everyone have a nice week. Thank you.