

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting

October 22, 2020

The meeting began at 2:22 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 22, 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's Executive Order 202.1. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board; and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

Mr. Hylton continued: I want to welcome the Board back, after just a week, for this special meeting devoted to rulemaking, which is the only item on the agenda. Mr. Clarke will lead the discussion. But before we start, Ms. Lin (Acting Executive Director), do you have any comments?

Ms. Lin: No, I do not.

Mr. Clarke: Would the Board prefer to resume where we left off at the end of the last Board meeting? Or to go straight into the Law Department's comments; and if we have some time at the end, go back over any open items regarding those earlier comments?

Ms. Torres-Moskovitz: I like the idea of starting with the Law Department comments, because we might gain some insight that will help with the OATH comments.

Mr. Clarke: Is everyone else fine with that? Alright. So, we'll all be working from the four-page document you received, which I tried to make as clear as possible. I'm hoping we can review these nine issues today.

And of course, these are not all of the comments that the Law Department sent back to us. They're the ones the Loft Board staff was able to flesh out a bit, so we want to start with them. There are more to come, but today, we'd like to get through these nine.

For clarity, I numbered each issue and next to it put the section from the rules to which the comments relate. I also included the page number where the topic is located in the larger packet sent from the Law Department.

The first item is Administrative Certification. I actually should have put in the original definition. Administrative Certification was not defined by itself but was attached to the definition of Minor Modification. In the older rules Minor Modification and Administrative Certification were together as one definition. Now, we've split them up and given each its own definition. So, my first question is, does the Board approve of that?

Mr. Barowitz had a general question before starting: Does the Board have the ability to overrule the Law Department comments, or is their position final? If it's the latter, then he wondered why they should spend time going through them. However, if the Board can overrule Law Department comments, then they're worth discussing.

Mr. Clarke explained that, in the end, yes, the Law Department will have the final say on the rules in terms of their being written correctly and coherently for the public. However, some of their comments may have been made without a complete understanding of the details related to a particular rule. So, the Board's feedback may enlighten the Law Department, which may then change its view.

Mr. Clarke continued: The original, joint definition was, "...various procedures specified in the Zoning Resolution in addition to the grandfathering determinations of occupancy." Now, Administrative Certification has its own definition, which can be found on page 5 of the rules from the Law Department, and is defined, as found in MDL § 281(2)(i) (Multiple Dwelling Law) as, "...various procedures which may be specified in the Zoning Resolution in addition to the grandfather

determinations of occupancy concerning non-discretionary actions by the agency to which an application was made.” It's a very straightforward definition.

Minor Modification now has its own definition, which says, as found in MDL § 281(2)(i), “...various procedures which may be specified in the Zoning Resolution in addition to the grandfather determinations of occupancy concerning non-discretionary action by the agency to which an application must be made.” Very similar definitions but separated for clarity. In definitions, you don't want to have two separate terms defined together in one definition.

In trying to get these definitions together, when I realized they had separated Administrative Certifications from Minor Modification on the sheet I sent you, I didn't write down the definition of Administrative Certification. So, you're not seeing that. That first line, that has Administrative Certification in black, that's not the definition. That was notes I wanted to write down for us to discuss. I apologize for the confusion, but instead of me emailing the definition of Administrative Certification to everybody, I can read it out to you. It's the definition that's in the February rules and on page 5, if anyone has that. Not the new Law Department comments, but the ones that were already approved.

So, the definition of Administrative Certification from the already-approved proposed rules is, “Administrative Certification, as found in MDL § 281(2)(i), means various procedures which may be specified in the Zoning Resolution in addition to the grandfather determinations of occupancy concerning non-discretionary actions by the agency to which an application must be made.”

Ms. Roslund: That's the same definition that you have for Minor Modifications.

Mr. Clarke: Exactly. That's why, originally, they were both defined together. Because they both have the same definition. But we wanted to split them up and not have two terms together with one definition. Can the Board determine if it wants to revert back to having them together, because they are the same definition?

Mr. Hylton: I don't know if everyone else has the same question, but my question is, what is the difference? And why are we using two different words, two different phrases, to define the same exact thing?

Mr. Clarke explained that the only reason for separating them would be to make it easier for anyone who wanted to look up the definition of only one of the terms to find it.

Ms. Roslund: But doesn't the term Administrative Certification imply that there is an approval of some sort? Which would be minor, right? So, in the Zoning Resolution, you have items that require (inaudible) review, and items that can be certified in the same way...so a lot of city agencies have it. Landmarks has it. There are some things that you can do through a certification or at the staff level. It's very cut and dry now, and there's (inaudible) full review.

Mr. Hylton: Following on Heather's comment, I would ask for the same clarification. Mr. Clarke, in the old rules, they defined Administrative Certifications and Minor Modifications together, with the same definition. Where would you find those terms being used anywhere that would mean the same thing? It's obviously been done for a purpose. They appear somewhere else in the rules, right? So, are there places in the rules where Administrative Certification is used, and other parts where Minor Modifications is used?

Mr. Clarke: I understand the question, Chairperson Hilton, and throughout most of the rules, where these definitions appear, they tend to appear together. It's all related to coverage purposes. And it's basically defining how a building can come under coverage in the Loft Board's jurisdiction.

Ms. Torres-Moskovitz: I'm a big advocate of definitions. I love the definition section. It's where I figure out how to read these kinds of rules. And when I've seen this condition in other places, where there's two words with the same definition, what they would do is define Administrative Certification, and then at the end of that definition add, see definition of Minor Modification. So that they're separate, but also tied together.

Mr. Clarke repeated Torres-Moskovitz's suggestion to be sure he understood.

Ms. Torres-Moskovitz: Yes. It's a cross reference of sorts. Otherwise, it seems like an error -- that you have two words with the same definition. But this shows that you're aware of that. There are two different words; they're used in the same way; and there's a relationship between them. So, when you're reading the definitions, you understand that.

Mr. Hylton: So, going back to my question, where are they used in the rules? I'm not asking for specific citations; I'm just asking, are there places in the rules where the same exact thing that's referred to as Administrative Certification is also referred to as Minor Modification elsewhere?

Mr. Clarke: They are their own separate terms.

Mr. Barowitz: Why don't we put an s on Certification? Administrative Certifications; and take out Minor Certification and just go to various (inaudible) and procedures may be used. Wouldn't that be easier? Because if you're going to say, Administrative Certification, and one is a minor one, then the first one is a major administrative certification. But if we just put the word Certifications in, and take out minor, and leave the rest of the text in there, that should be fairly easy. Am I right, or not?

Mr. Clarke: Well, I think that my answer to Chairperson Hylton's question is that in the MDL, in the law, it specifically uses the terms Minor Modification and Administrative Certification. That's why they're in our rules. However, the MDL doesn't specifically define them. So that's why we came up with a generic definition for both of them.

Mr. Hylton: So, in this case, I don't really agree with the Law Department, then. Why are we separating this? If they're using the MDL in the same context, the same definition, why do we need to break these out? Are we, in our rules, using them separately? Calling them something different? No. It's the same. So, I don't necessarily agree with the Law Department here. I don't know how the Board members feel, but I think if it's just there, defined in the MDL that way, that's the superseding law, right? That's the superior law. We should just quote what they say in our rules if we need to.

Mr. Clarke: Yes, and I agree that it really doesn't add to our rules to have them split up into two separate terms, other than it could possibly add a bit more clarification, having its own term separated.

Ms. Torres-Moskovitz: I like it. Again, I advocate for definitions. Someone trying to read through the MDL and seeing Minor Modification and wondering, what does that mean? I think it's a good thing to have extra clarification. It's just a definitions section. You don't have to read it, but if you're trying to read through things and understand what they mean.... I can imagine myself looking it up and being happy it's in my definitions. I don't know how others feel.

Mr. Hylton: Actually, Ms. Torres-Moskovitz, I'm agreeing with you. I'm backtracking. I think we're actually making too much of a thing about this. Let's just move on with this. It's just two different places where it will appear with the two different words, phrases, meaning the same exact thing, correct? And it's pointing back to the MDL. The use of it in the MDL and what it means. So, is everyone good on this?

Mr. DeLaney: I have a couple of questions. First, Mr. Clarke, when you presented this, it sounded like you were saying we had the two terms together. But in the Law Department confidential draft from which we're working, they're already separated. So, it seems like... were they together in the 02 20 2020 document that was public?

Mr. Clarke: Yes, they were together in that document.

Mr. DeLaney: So, they were split apart, either based on your dialogue with ...they were split apart by the time they went to the Law Department, correct?

Mr. Clarke: I'm not sure if the previous Executive Director split them up before the Law Department's comments or if after working with the Law Department, they decided to split them up. But at some point, they were split.

Mr. DeLaney: Okay. So, they've already been split up for all intents and purposes. I agree. Personally, I don't have a problem with having them separate, because if you're looking up Minor Modification, you wouldn't necessarily know that it's up in the A's with Administrative Certification. But then, it appears that the Law Department is also of the opinion that saying, "as found in MDL § 281(2)(i)" in both of them.... We don't need to have that. But it looks like, at the moment, we have it in Administrative Certification, but we're taking it out of Minor Modification?

Mr. Clarke: Exactly. Absolutely correct.

Mr. DeLaney: So, we're taking it out of one, but not the other?

Mr. Clarke: No, we would take it out of both. Because once we split up the two definitions, the Law Department looked at Minor Modifications and determined that the part of the definition that says, "as found in MDL § 281(2)(i)" was unnecessary, because the MDL does not go into defining Minor Modification. There's no definition. It just says Minor Modification as well. So, the Law Department said

it's not necessary to refer back to the MDL. Only for the MDL to say the same exact thing. It doesn't define Minor Modifications. So, Mr. DeLaney's point is correct, that Administrative Certification should also delete, "as found in MDL § 281(2)(i)," because the MDL does not define Administrative Certification either.

Mr. DeLaney: So, what you're advocating is to split the terms up; give them both the same definition, but take out, "as found in MDL § 281(2)(i)" from both?

Mr. Clarke: That is correct.

Mr. DeLaney: Right, because you don't have that indicated at this point for Administrative Certification.

Mr. Clarke: Right. So, for Administrative Certification, the Law Department actually didn't strike out, "as found in MDL § 281(2)." When I was reviewing that before the Board meeting today, I noticed that they hadn't taken that out. But for consistency, I think that we should take it out. If they want to take it out of Minor Modifications, then it should also be removed from Administrative Certification.

Mr. DeLaney: You don't think they might have had a reason for having it in one, but not the other?

Mr. Clarke: From my research, I don't believe so. Because if you look back in the MDL, for the same reason, they don't want to include a cross reference to the MDL for Minor Modification, because the MDL doesn't define it. The MDL also doesn't define Administrative Certification. So, what I would say is, logically, they should both be excluded for the same reason.

Ms. Lin: Let me just add, Mr. DeLaney, if that's a concern, when we send it back to the Law Department, we can highlight that to bring it to their attention and say, this is what we've chosen to do, if that's what the Board members decide to do. That we're going to take out MDL § 281(2)(i) from Administrative Certification, for the sake of consistency.

Mr. DeLaney: I don't view it as a big concern, but in the same way that, if OATH wanted to get rid of remands in both Summary cases and Master cases, but they only spotted it in one and not the other, it does cause me to scratch my head in terms of how the people reading this are doing with it.

Mr. Clarke: Right. We said we would address that remand issue with OATH.

Mr. Hylton: I understand, Mr. DeLaney. It's just that, a lot of this is not going to be perfect. Even if it's the same person reviewing it, day after day, their brain may not be working the same way it was the day before. You know what I mean?

Mr. DeLaney: From page 5 to page 8, a lot can happen, right? Okay, and I have one other concern, and I apologize in advance for bringing this up, but my guess is that we'll hear about it sometime between now and the public hearing. At some point back in the 1980s, I was trying to explain some of the subtleties of the Loft Law to a meeting of the Village Independent Democrats, a long-time Democratic club downtown. And as I was going through it, there was a lady in front of the audience of about thirty people, who was waving her hand madly. When I recognized her, I had been explaining that certain people would be grandfathered in because of X, Y, and Z. And she said, I'm fine with protecting those people, but I object to the term grandfathering. It should be grandpersoning.

And that was back in the eighties. But there has been an increasing discussion bubbling up over the last few years about the appropriateness of the term grandfathering, not only for someone who could construe it as having a gender-unequal connotation, but it was also very popular after the Civil War and the Reconstruction Era. So, I think sooner or later we're going to have that pointed out to us by people who are looking to eradicate the term. So, I just bring that to everybody's attention, because we've got it in a lot of spots.

Mr. Hylton: All right. So, we'll deal with that when that happens. I think grandfathering may be a defined term somewhere, correct? I'm positive it is. It wouldn't be something that we would want to take off right now. But I got. I understand.

Mr. DeLaney: I just want you to see it before you step in it. That's all.

Mr. Hylton: Good.

Ms. Torres-Moskovitz to Mr. DeLaney: I like that. I support you. We don't need grandfathers...only.

Mr. Hylton: You know, I wonder if the same sentiment would arise if it was called grandmothering. Do you think it would be the same issue?

Mr. DeLaney: I'm not going to go near that.

Mr. Hylton: Thank you, Mr. DeLaney. I appreciate it. Keep me in line.

Mr. Clarke: Thank you, Mr. DeLaney. And grandfathering is, actually, a defined term that we're going to get to. The Law Department asked us to do a bit more research in defining grandfathering, so we will be presenting that to you at some point.

Mr. DeLaney: A lot of defined terms are out of favor. Every word has a definition.

Mr. Clarke: Right. So, I think, just to wrap up this section, we're saying the Board is fine with splitting up the definitions and taking out, "as found in MDL § 281(2)(i)" for both definitions. And the Loft Board staff will bring to the Law Department's attention that they did not strike out, "as found in MDL § 281(2)(i)" from Administrative Certification, as they did with Minor Modification. Is that where we are?

Ms. Torres-Moskovitz: Yes, I just wanted to add that I had suggested putting in parentheses after each definition, see definition of the other. So, someone will have an epiphany. Oh, wow, they're the same thing. That would be me. And by seeing that in the definition, I would understand, oh, it's the same thing. So, I suggest we do that.

Mr. Clarke thanked Torres-Moskovitz for the reminder and said, absent any comments or objections from other Board members, he would add that.

Mr. Clarke continued: So, the next item, number 2, is also in the definitions section. It can be found on page 9 in the larger packet. But it's basically the definition of private delivery service, and this is how it reads now: "Private Delivery Service means nationally recognized company whose business includes delivering documents and packages for a fee." The Law Department wants to delete the term, nationally recognized. They said that having the term, nationally recognized, would needlessly exclude local delivery services. But the Board had previously wanted to include some language, and it chose nationally recognized. So, we need to determine if the Board wants to continue to use a nationally recognized or take the advice of the Law Department and remove it.

Ms. Torres-Moskovitz: I like the advice of the Law Department. I don't think it makes sense to discriminate against small companies and promote corporations.

Ms. Roslund: Not only that, regardless of one's political view, it seems like that would be a way to nullify something or penalize somebody for not...it's sort of objective or subjective, right? Are they recognized; not recognized? It's an odd thing to say. If I send something to you, can you then say, well, I received it, but it's void, because you didn't use a recognized service?

Mr. Clarke: Thank you.

Mr. Hylton: I completely agree with that. It seems this is not something that we even need to debate. We just go with their recommendation here, correct? Unless... I'm sorry, I'm not taking anything away from anyone, but we need to move on, and this is very clear-cut. Right?

Mr. Barowitz: I must say, I have a problem with a lot of language here. If you hire a kid to deliver something, I guess that's not nationally recognized. But nationally recognized doesn't mean that it has to be an organization that's all over the country. It could be anywhere. Right? It starts to bog me down, because you get into one word after another, and you could never end it. I agree with Mr. Hylton that we should move on.

Mr. Clarke: Okay. So, I think your fellow Board members are also in agreement. And we're going to remove nationally recognized. So, we move on to the third item...

Mr. DeLaney: Before we do, I'd just like to ask one question on this. I'm fine with taking out nationally recognized. Obviously, the intent, as I recall it, was to avoid lucky Chuck's trucking service that doesn't get the job done. This is a discussion we had before. There's all this doubt about the Postal Service being able to function. So, my only question would be, if we run into service issues where Chuck's trucking service allegedly delivered the notification, but the party says, I didn't get it, how do we...? Obviously, one benefit to certain types of postal transmission and national delivery services is they have tracking, and they can call you up and say, oh, yeah, it was signed for by Richard Roche at 10:52 at 15 Metrotech or 20 Metrotech.

Mr. Hylton: Nine. Nine. Number nine.

Mr. DeLaney: Number nine. So, if it's just a company whose business includes delivering documents and packages for a fee, you know, that includes Grub Hub.

Mr. Hylton: I hear you. So, the fact that one, it is a company, and two, I would think, we're talking about the city of New York, then most companies would have to be registered that they're performing delivery service. And second, there are affidavits of service that we rely on in the post offices or UPS or FedEx. They use some tracking system, but I think we can get affidavits of service or affidavit of delivery from these companies – from whoever did the delivery. Does that address your concern, Mr. DeLaney?

Mr. DeLaney: Well, I guess maybe what you're saying is maybe we should say, includes delivering documents and packages for a fee and has the ability to provide tracking information.

Mr. Hylton: Tracking or affidavits of service?

Mr. DeLaney: Yes

Ms. Lin: I just want to highlight for Mr. DeLaney and Board members that we do define what's required from a private delivery service later on in the rules, on page 20. It might appear in other places as well, but on page 20 of the rules that you were transmitted, it says, "Proof of service by private delivery service consists of a copy of a receipt, showing acceptance of the delivery service for delivery to the address of the affected party." So hopefully, that clarifies that issue for you.

Mr. DeLaney: Okay, that makes sense.

Mr. Clarke: Unless there are any more comments, we can move on to the third item, which deals with lease information. When buildings come under the Loft Board's jurisdiction or when they're registered, the Loft Board requires lease information, so that owners or tenants can prove occupancy during the required length of time. So, we get leases. And sometimes the public – tenants or owners -- ask for copies of these leases. And this next section deals with the confidentiality of the leases.

There can be confidential information in leases, and this rule contemplates that. We already had a definition for the confidentiality of lease information, so when the Law Department saw it, they suggested we use the language from the Chief Privacy Officer staff which, based on our review of the language, says the same thing. It basically captures what's in our old rules, but it's just a little bit cleaner and clearer. So, our first question to the Board members is, do we want to adopt this version suggested by the Law Department?

Mr. Hylton asked Mr. Clarke if the Law Department suggestion had anything to do with consistency throughout the city.

Ms. Lin responded: I don't know about consistency. I don't know how many people have this provision. I do know it's a clarification of the language. It just reads cleaner than what we previously had. In my opinion, I don't think there's a change to substance.

Mr. Hylton: Okay, thank you. So, unless anyone has anything on this, it seems clear. Whatever we're presenting now, our legal folks have reviewed it, in essence, and are presenting it the way we feel it should be. If Mr. Clarke or Ms. Lin do not have any concern about it, I think we're pretty clean on it, and we should try to move on. I think this is very clear. I don't want to spend too much time on things that are clear-cut.

Mr. DeLaney: I'm sorry, I don't want to spend too much time, but I'd like to spend a minute if I may. One question I have is, personal information is not really defined as such. And my first question would be, what is our current practice, if we get a Freedom of Information request? Do we redact personal information?

Ms. Lin: That's a very good question. Mr. DeLaney. I would have to consult with our FOIL officer to double check.

Mr. DeLaney: Okay. Well, I'd find that helpful before signing off on this.

Mr. Hylton: Mr. DeLaney, we do redact personal information in FOIL. That is FOIL rules. I'm certain about that.

Mr. DeLaney: And how do we define personal information?

Mr. Hylton: Things like date of birth, social security numbers. I don't think you can redact the person's name, unless it's giving away certain things. The FOIL officer knows. But social security numbers, date of birth, and possibly exact addresses of the person. Bank account information, that kind of thing. There are FOIL rules and guidance here.

Mr. DeLaney: Okay. And my second question is, the way I read the existing language is “All personal, confidential information contained in leases, submitted together with the registration application forms...” And the way the Law Department suggestion reads is, “...will keep personal information and leases submitted with registration application forms confidential.” So, is the information in the registration application forms subject to the same redaction of personal information?

Mr. Clarke: It’s my belief that whenever anybody FOILs information, it’s all subject to that Freedom of Information Law requirement for what's going to be redacted. So, if somebody in the future wants to FOIL a registration application, they're going to be subject to the same FOIL requirements as somebody FOIL-ing a lease. That same confidential information will also be redacted.

Mr. Barowitz: This is the last time I'm going to make a recommendation. This is what I wrote: The Loft Board will keep personal information confidential in the leases submitted with their registration application forms. I think that that makes it clearer. We were asked to read this and comment, and that's my comment on that first sentence. To put the word confidential at the end of it just seems silly to me.

Mr. Clarke: Thank you for the comment Mr. Barowitz. I'm trying to follow what sentence you added.

Mr. Barowitz: The first sentence. The Loft Board will keep personal information -- and then I inserted confidential -- in leases submitted with their registration application forms.

Mr. Clarke: I’m sorry. Okay, Mr. DeLaney. You wanted to add something?

Mr. DeLaney: To what Elliott just said, no.

Mr. Clarke: Okay. So, I think it's fine for us to make the change and submit it to the Law Department. I don't think it changes the substance of it, but just makes it cleaner and more clear. We'll try to make that change and submit it to the Law Department for their feedback.

Mr. DeLaney: Can you read it as you're going to submit it, please?

Mr. Hylton read Mr. Barowitz’s suggestion: The Loft Board will keep confidential all personal information in leases submitted with registration application forms. Period. And the rest remains. Did I

get that right? I do have to put the word all just to make it feel better. Okay, Mr. Barowitz approves. Everyone else in agreement? Okay, Mr. Clarke, I'll just read it one more time for the record: The Loft Board will keep confidential all personal information in leases submitted with registration application forms.

Mr. Clarke: Okay. Great. So, unless there's any more comment, we'll move on to item number 4, which is the organization and voting section of the actual Board. This Law Department found this section a little confusing with respect to how we define the roles of the Board members and how we go about having a quorum of the Board. So, the Law Department made some suggestions for section (a), (b), and (c), and actually created a new section, (d), to clarify the language for the organization of the Board.

And at the end of this particular section, under Loft Board staff, Executive Director Lin added a brief summary of what changed from the current rules to the language that the Law Department suggests. The first, under (a) is what the Law Department redrafted to clarify what a specific interest group member is; and, it includes a short-term definition of designated members and public members. So now, there's an actual definition for designated members and public members, that is going to be referred to in the other portions of the rule they made changes to for clarification purposes.

So, we can look at (a), and I ask for any comments from the Board members with respect to the language that the Law Department suggested.

Mr. Barowitz: I think our (a) is clearer than their (a).

Mr. Clarke: Okay. Thank you, Mr. Barowitz. Does anybody else agree that the original language is better or more clear than what the Law Department suggested?

Ms. Rajan: The Law Department language also has this. I appreciate that they define the designated and the public members, but then they also put in the special interest groups. I don't know if that's something that they already defined somewhere else, because it wasn't in our version of (a). Or is it later on?

Mr. Clarke: The special interest groups we also mention again in our rules, in section (c).

Ms. Rajan: Just underneath this one, right? This comes first?

Mr. Clarke: Yes, exactly. And Executive Director Lin also pointed out that special interest groups is also underneath the definitions in the beginning of the section.

Ms. Rajan: Okay. But they don't put the designated members or the public members in the definition section?

Mr. Clarke: I don't think they do. You're right about that.

Mr. Hylton: I'm sorry. Mr. Clarke, what page in the big packet? So, I'm not quite sure. Are you clear as to why the Law Department would change...What was confusing about our definition?

Ms. Lin: I think what they were trying to do was to come up with a short term for designated members, but that plays into issues with the quorum later and how we count the vacancies for it. I think that was their primary goal.

Ms. Roslund: And to connect (a) to (c), yes?

Ms. Lin: Yes, I believe that is correct. Because we do discuss special interest group later on, in (c).

Ms. Roslund: Yes, but it doesn't say in (a) who that is.

Mr. Hylton: So, in (a), we have only ex-officio members referred to. And the next time we see any definition of the special interest groups, which are only those three others, is in (c)?

Ms. Lin: Under the current rules, yes. That's why the Law Department wants to redraft that to mention special interest group earlier on.

Mr. Hylton: But in our (a), we do have those special interest groups mentioned.

Ms. Lin: We just don't say the word special interest group in (a) under our current rules.

Ms. Torres-Moskovitz: What Elliott is saying is valid. When you're reading ours, it does read clearly, but I appreciate what the Law Department is doing by tying it into definitions, so that you don't have to repeat the definition each time of who's on the Board, like public member. And I think if I understand Samira, that logic, we would put designated members into the definition section. And then I'm fine.

Mr. Hylton: Right. I don't know if I'm saying the same thing you're saying, but it feels to me like they could have just added the word special interest....one representative from each of the following special interest groups in our (a), and it would have been fine. No? Is that what they did?

Ms. Lin: I think that's pretty much what they did, with the exception of adding...And then they went on to add more. To add designated members.

Mr. Barowitz: We have two of the three special interest group people on our Board. I have asked why we haven't appointed the third special interest group. Now here, the Law Department makes a very determined point to mention them, and yet one seat is still blind. So, I think we ought to just take out special interest groups and mention the three specific seats; two of which are currently held by Mr. Hernandez and Mr. DeLaney. But one is still empty. So, I don't know why they become special, when one seat of that special group is empty; and the rest of us are not special. It's just silly language.

Mr. Hylton: It's not a question of you being special or not special. It's a special interest. But yes, Mr. Barowitz, I get your frustration.

Mr. Barowitz: My interest is very special, because as a general Board member, I represent the majority of the people of the city of New York, and not some very specific little group. I don't want to take anything away from Mr. Hernandez and Mr. DeLaney, but...

Mr. Hylton: Do you want to change the words from special to specific interest? Mr. DeLaney, that's another one of those words that might be subject to revision by whomever... Mr. Barowitz obviously has a problem with it. So maybe that's a word we want to change from special to specific interest later on. Because everybody is special. I agree with you Mr. Barowitz. But for now, that's the way it's defined in the MDL. As to the other issue with the appointment of the owner rep, that is within the Mayor's Office purview, and I know they're working on it.

Mr. DeLaney: I agree with Elliot, to the extent that we now end up with a nine-member Board that has three different groups in it. We've got the three special interest groups; then you have two designated members; and then public members. The other thing I don't understand that Law Department added, which I would at least question, is the Commissioner of DOB (Department of Buildings) is defined as

...serving ex officio as Chair, but then the Fire Commissioner is tagged as representing the public. And it seems to me, that the reason for that -- and remember that the Fire Department was not on the Loft Board from 1982 through 2006....Was it when Bloomberg issued his executive order? 2004? It was only when the original executive order that created the Loft Board, issued by Mayor Koch, was superseded by the one issued by then Mayor Bloomberg, that FDNY got a seat on the Board.

Mr. Hylton: 2009 I believe, or 2010.

Mr. DeLaney: 2009. But Mr. Roche, do you see yourself as representing the public? That seems like they're giving you a mandate that...

Mr. Hylton: Well, don't put Mr. Roche on the spot. He does represent the public, as well as everybody else here. I think we all agree that we all represent the public; every single one of us. And I think that's one of the reasons I agree with Elliott in terms of there not being special interests, but maybe specific interest groups. But that's just the way it's defined. And I did have this conversation with the Law Department, when I wanted to say something about members of the public using them, saying that they're representing the public.

I forget the whole thing now, but we did have this conversation with Law Department. I remember being a part of it. But the answer I got from the Law Department is that everyone represents the public. And I think we would be better if we just said specific interest group here. Except it's in the MDL, right? And we really can't change that right now. But yes, Mr. Roche, I know, is representing the Fire Department; but the Fire Department serves the public. That kind of thing.

Mr. Roche: I just want to say that I do, at the end of the day... it's kind of semantics. But yes, I think I definitely do represent the public. It could probably be worded differently, in answer to Mr. DeLaney's question, I do consider myself a representative of all citizens of and visitors to the city of New York.

Mr. DeLaney: Ah, visitors. I like that. For the record, the Multiple Dwelling Law only says, "A special loft unit, referred to here as the Loft Board, will be established, which shall consist of from four to nine members..." -- not five -- "... four to nine members representative of the public, the real estate industry,

loft residential tenants, and loft manufacturing interests, and a chairperson.” So, the term special interest does not actually appear in the Loft Law to my reading of it.

Mr. Hylton: It’s in the executive order, I think. It comes from somewhere. We’ll check it out, and I’ll get back to you. But if it does appear in the executive order, we couldn’t necessarily change those terms in our rules either, right? We’d have to refer to the same. I don’t want to stop here to go online, but I think if we go to the Loft Board’s website, we’ll see those terms somewhere in the executive order.

Ms. Torres-Moskovitz: I agree with a lot of the points everyone’s making. Mr. Hylton, I like your point about it being a specific interest group. That does sound a little better. I think we’re just turned off by special interest, because there’s so much corruption in our country...

Mr. Hylton: I can promise you this. If the Law Department says we can change that word from special interest to specific interest; if they think we can legally do that in the rules, I think that’s such better terminology. If it says something different in the executive order -- it’s not in the MDL, but I thought it was....So, if we can put special in brackets, we’ll work it out.

Ms. Torres-Moskovitz: My other point is that I think one of the more beautiful parts of seeing how government functions I’ve encountered since being on the Loft Board is what the Board’s made up of. I think it’s very interesting and good for the public to understand. I had no idea. I just thought a Board is elite people. I think it’s really important that it’s made up of this mix of people representing tenants, manufacturing, landlords, and the public. It’s important, so anything we can do to clarify that, we should do. I don’t feel offended if someone’s special, and I’m not special. I think this is a beautiful part of our democracy, that a member of the public represents the public. So, any clarity there, I’m all for.

Mr. Hernandez: I agree with that all the way.

Mr. Hylton: Everybody is special. You’re all special. Okay, so, we’re in agreement, and we’ll try to address that term. If the Law Department agrees, we’ll make the change and come back to you. Okay?

Mr. Clarke: I’m not sure.... Were we also saying something about the public? Other members of the Loft Board representing the public? Did we decide that we were changing that? Are we saying that all

the Board members represent the public? Or are we leaving that language? I believe it's the last sentence from the Law Department.

Mr. Hylton: It does throw a monkey wrench here as to why we would need this. And I think this is where I disagreed with the Law Department, until they told me, get over it. I think this was the last sentence. All the members represent the public, and I brought it up to them and said, but don't we all represent the public? You know, and I think that's where they told me to kind of get over it.

Ms. Torres-Moskovitz: My only comment there... I do agree, of course, the Fire Department is protecting all of us; that's public. But maybe by calling that out in (a), where it says, and representing the public, it kind of questions whether the other people are representing the public. And then I don't have a problem with the last sentence, because we are public members, the ones that were designated that way, we're just random people from the public. We're not representing tenants; we're not representing landlords; we're just average citizens. So, I don't mind it saying public members at the end.

Mr. Hylton: So, the public in general? In the last sentence? All of the members of the Loft Board represent the public... generally or in general?

Ms. Torres-Moskovitz: In other words, I think it's fine. The way it's worded. If anyone else objects, I'd like to know why.

Mr. DeLaney: I'm fine with the public piece of it. But now that I read this for about the third, fourth time today, I see that... particularly when you read (b), they're saying there are five designated members. I thought the two... that only the ex officios were designated. There were two ex officios plus three special or specific interest and four public. But in (b), it's clear. It says, defined as the five designated members. So that means that Robinson and I are both special and designated.

Mr. Hylton: Mr. DeLaney, can you please repeat that. I missed something.

Mr. DeLaney: I got tripped up in (a). The way I read it, there were three separate groups: what Law Department is calling special interest; three of us designated members, which I took to be just you and Mr. Roche; and four public members. But actually, the three special, or specific, interest members are a subset of the designated member, because in (b) it says there are five designated members.

Mr. Clarke: Yes, that's correct.

Mr. Hylton: Yes. It's designated special. We'll take this back to the Law Department and revisit it, okay?

Ms. Lin: Wait I'm sorry, what are we taking back?

Mr. Clarke: To answer Director Lin's question, what we're taking back to the Law Department is, one, if we can change special interests to specific interests. We're still working on leaving the last sentence, regarding representing the public, and I think Chairperson Hylton said that's just something we'll have to live with. But the last thing is something that Mr. DeLaney pointed out. The way the Law Department defined designated numbers, it also includes the subset of the special interest groups, which we want to change to specific interest. So, I think we just want to clarify with the Law Department whether the designated members are supposed to also be...

Ms. Lin: It is. So, let me just...sorry. On page 14, you'll see this back and forth comment between the former Executive Director and the Law Department on this issue. The designated members come into play regarding how you count the quorums. So that's why they're trying to define five designated members, because indeed, it goes on to talk about how we count quorums. It's that big pink comment. Basically, the five designated members. And because we have a vacancy on the owner, the number for a quorum to take action is five. But if both vacancies were public members, the number for the quorum to take action would be four, because the Board would consist of seven members.

Mr. Clarke: What Executive Lin was pointing out is that the designated members come into play in section (b), when we are trying to define the quorum. Specifically, when we're trying to have a quorum, if a designated member seat is vacant, it still counts. But if the term public member seat is vacant, it doesn't count towards the quorum. And they're trying to clarify that language in (b).

Mr. DeLaney: Well, actually, they're creating that language in (b), because the current (b) doesn't draw that distinction at all.

Ms. Lin: But I believe that's...Sorry, I should have told you. I think that's correct. So, in my reading of these rules, it seems like she had some back and forth with the Law Department, with an individual at

the Law Department who really knows their stuff. And reading the executive order, they determined that this is how the quorum should be counted.

Mr. DeLaney: Actually, just for the sake of perspective, this goes back a couple of years, to when the question or what constitutes a quorum was raised. And I got an email from the former Executive Director saying, this is how the Loft Board explained it, but this is confidential; don't tell anybody. I don't know why it was confidential at the time, but now it's clearly spelled out that a vacancy among any of the five designated members has a different effect on determining the quorum than does the absence of a public member.

Mr. Hylton: The reason it was confidential then was because it was not officially part of any rulemaking. I think they just decided to put this in and clarify it. So, it was kind of attorney-client at the time, and the Law Department was giving its opinion. So yes, this piece has been put in because of what was being raised at the time, Mr. DeLaney. This was put in to clarify. Are we all in agreement with this, though?

Ms. Torres-Moskovitz: Can you clarify the scenario again? I just want to understand it. What's the distinction with this quorum?

Mr. Hylton: So, let a non-lawyer take it and see if he does well with it. Then you'll know everybody's got it. There are five designated members of the Board: the Chair, the Fire Department representative, and the tenant, owner, and manufacturing representatives. Five. In counting a quorum, there are nine members. If all nine members are on the Board, in counting the quorum, it has... You must include those members. Right? Even if their seats are vacant.

Mr. Clarke: Correct

Mr. Hylton: Because in a situation where the tenant representative and the owner representative are missing or vacant, it does not reduce the quorum number. It is as if those people were there in counting the quorum. So, they are essential for quorums. They're not essential for a majority. But to take action, for the Board to act, they're counted in that quorum. Am I saying it right? So, if Mr. DeLaney and Mr. Hernandez were not here today, we probably would not have a quorum, correct? To take action.

Mr. Hernandez: Both of us or just one?

Mr. Hylton conferred with Mr. Clarke and Ms. Lin on what number of board members is required for a quorum.

Mr. DeLaney: The only way to make sense of this is to deal with some hypotheticals. Not that they should go in the rules, but for example, if three public member seats were vacant, but all five designated members were present, and the one public member who was still on the Board was present, there'd be a total of six. In that case, what would constitute a quorum? Four, I guess.

Mr. Hylton: A majority of the Board members present, right? Would it be four? Of a nine-member Board?

Ms. Lin: With Mr. DeLaney's scenario?

Mr. Clarke: With a quorum...I think it was a quorum

Mr. Hylton: Oh, okay. Got it. So, Mr. DeLaney's saying there are only eight members to be counted.

Mr. Clarke: Six members

Mr. DeLaney: No, my hypothetical is there are only six members to be counted. There are three vacant public seats.

Mr. Hylton: So, you have to count the vacant public seats as if they were present.

Mr. DeLaney: No, they don't count, according to this.

Ms. Lin: You only count the vacant designated-member seats, you don't count the vacant public-member seats.

Ms. Torres-Moskovitz: Is it true? Do you always need three of the five designated present?

Ms. Lin: I think at the bare minimum, yes. Because it says no fewer than five members. So, I think you can't at any time get below three as a quorum.

Mr. DeLaney: The reason this came up a couple of years ago is because I asked. Because, the one time you don't want to have an argument over this is if there's a close vote on something, and you've got

people saying, no, that's enough votes; no, it's not enough votes. That's kind of the circumstance the Republic finds itself in. So, when I raised it a couple of years ago, I was looking for clarity. But boy, the Law Department's proposed (b) I don't find very clear, without some examples.

Mr. Clarke: I agree with Mr. DeLaney, that it is a pretty tough concept to wrap your mind around. I actually had to draw little bubbles on my sheet just to understand what was going on.

Mr. DeLaney: If it's a close vote, and I'm screaming my head off, I don't want you having to be drawing bubbles, Mr. Clarke.

Mr. Clarke: Just for hypotheticals, I was drawing blank seats; I was drawing bubbles to represent seats that were full.

Mr. DeLaney: I guess that's confidential.

Mr. Clarke: Right. You guys can't see this.

Mr. Hylton: By the way, whatever is in brackets here is intended to be removed?

Mr. Clarke: No, in brackets, it's being deleted.

Mr. Hylton: No, in (b). In the red (b). Parentheses. I'm sorry. I say bracket. I'm old school. So, parentheses defined as five designated members, which is the entire....including any vacancies. So, if any vacancy after five designated members is included in that count, plus any public member....So, you always have five at a minimum, right, for a quorum? For a Board anyway, right? If five designated members must be in the count. And the other public members would just add to that number.

Now, if any one of those designated members are after, they still count. So, it's five or more. Is that right? Am I getting it now? So, regardless, they must be in the count. I must count five of the designated members every time I go for quorum. I must count five, plus. So, simply put, it's five plus any additional public members present. If I'm counting the vacancies, it has to be five. I have to start with five, when I'm going for a quorum. And that five I'm starting with are the five designated members, whether or not their seats are vacant.

Ms. Rajan: I understand them saying that you count those five, you start with those five, when you're talking about the Board. Right? So, the entire Loft Board, you start with five. Then whoever happens to be public. Not when you're doing the quorum. Right? So those are two different counts. First, you have to count how many people are on the Board. And then you have to count how many people are present for quorum. So, I think the first thing that you're saying -- those five -- that's part of who's on the Board always, even if those seats are vacant.

Mr. Hylton: Right. Yes. It's the same. Those five that you're counting first, if, for simplicity's sake -- they are the five designees, whether or not they're there. Right?

Ms. Rajan: They're just counted as those positions existing; which means that they're changing the ratio when it comes to what you're trying to get for quorum, right. So, if those five are always on the Board, if only three of them exist, then only those three count for quorum. But the five are part of the Board. So, you're going to have a hard time coming up with your quorum. Your ratio is going to be harder. Right? So, it feels like...

Mr. Hylton: The lawyers are saying you're right. I just need to clarify for myself. So, five designated members, which are myself, Chair, Mr. Roche, and the three special interests are five. We always have to be counted to get a quorum, correct? No, not quorum. As a Board, as a Board. And then, even if they're not present, if you've got enough folks to add to... whatever public members are added in, that makes the Board; not the number of the Board, that's on the Board, currently. So, if five are present, and one more public member, that's six members of the Board. And then the majority would be four to act.

Ms. Lin: In that scenario, I believe, because you have a Board of six, majority would be four.

Mr. DeLaney: By way of background, I think this came up, because for a while, the Board was functioning under the assumption that nothing could be done without five affirmative votes. But based on what the Law Department is telling us, if for example, you had only one public member and the other three seats were vacant, then the majority would be four, and something could be adopted with four affirmative votes. That's my understanding. But I could certainly be reading this wrong.

Mr. Hylton: Okay, I will ask. We're going to take this off, and I'm going to ask the Law Department for some scenarios to make it clear. As many as possible, in case you leave the Board, Mr. DeLaney, and I'm no longer here. Not that it matters. And Tina's, you know...Whatever happens next month or the following month... There's something to refer to, for simplicity, because this could be crazy. But I think we got it right.

Mr. DeLaney: The other thing that would be helpful would be to ascertain from Law Department whether there's any difference between a seat being vacant, such as the owner in the owner chair, and someone just being absent for the day.

Mr. Clarke: So, I think, as Ms. Rajan pointed out, the designated members... As we're talking about it, I'm thinking about a numerator and a denominator. I don't know if this will make sense, but the bottom number, which is the denominator, is the entire Board. So, when you're counting the designated members, the denominator is going to at least be five. And then whatever else you add on there, you're going to increase the denominator, which is the entire Board.

When you're voting with a quorum, that's the numerator. That's the people that are actually present; that can actually make that vote. And those are the ones that are going to be.... And there is a distinction between...actually, for those that are counted for the vote, and not just the entire Board, but just to take the affirmative action for the quorum, the vacancies are not taken into consideration for that. It's just whoever's there. Is that correct? It seems like the vacancies are considered as if counting vacancies is more for counting the entire Board; who's part of the entire Board.

Mr. Hylton: The more members that you have, the more of the special interest, or, I guess the designated members that you have absent, the more difficult it is to get a quorum, because their vacancy is counted. Okay, we'll circle that and get that straightened out. But I think the vacancy is what you would consider for the quorum. But I don't think whether they're absent or present matters, right? I think to get a quorum, you would have to count their vacancy, whether or not they're.... You'd have to be counting their vacancy in the number, in the denominator, right? To get that quorum.

Mr. DeLaney: I'm staying away from the numerator denominator thing. That's above my pay grade. But I guess the question I would like asked of the Law Department is, is there a difference between a seat that's vacant and a member who's just absent, in determining the minimum number for a quorum?

Ms. Torres-Moskovitz: I was wondering if I could bring it back. I may have started that rabbit hole by asking if you would explain a quorum. But if we take it back to (b), where Chuck was pointing out that it talks about five designated members all of a sudden, when (a) talks about specific interest groups. I think we resolve that by just defining designated members in the definitions, right? Does anyone agree? It's not in the definitions yet.

Mr. DeLaney: Well, I actually was thinking about that when we were messing around with (b), and maybe a more logical way for (a) to read after the first sentence would be, there are five designated members, including a representative from each of the specific interest groups, the Commissioner of Buildings, and the Fire Commissioner. Maybe there's a way to reword (a) that says, there are five designated members in their da, da, da, da, da... and four public members. So that you get away from some of that, you know, special within.. I'm not only special, but I'm designated. I belong to two protected classes.

Mr. Hernandez: I agree with everyone on just the wording. Mr. Hylton, can you go back to the Law Department and say, hey, this is confusing? Can you come back with a proposal that has a little bit more clarity to the structure? Otherwise, I think we'll debate too much amongst ourselves on the right language. Let the Law Department just come back with clearer language, and then we can say yea or nay.

Mr. Hylton: Yes, this whole new on-and-off thing is crazy. I agree completely, Mr. Hernandez. Let's move on. We'll come back with something cleaner. And with scenarios. That would help to preserve what we talked about.

Mr. DeLaney: Just please raise the question with the Law Department as to whether they draw a distinction between a vacancy versus somebody who's absent for the day.

Mr. Hylton: Yes, we got it. Thank you.

Mr. Clarke: That was probably the most challenging section of the rules. So, going from that to number 5 should be more straightforward. It's found on page 15. The Law Department is suggesting that Robert's Rules be removed from the way the Board organizes its meetings. The Law Department found Robert's Rules to be complex and said it's not necessary to put it in our rules.

Mr. Barowitz: Without some rules, there could be total chaos. We have generally conducted ourselves in a very decent manner; but occasionally.... For example, the Robert's rule says that the Chair can table any issue. So now, without Robert's Rules, what should we do? Take a vote each time?

Mr. Hylton: You'd be at the mercy of the Chair.

Mr. Barowitz: It just complicates the procedures. Somebody makes a motion; and a second; and then you discuss it; then you take a vote; rather than just having the Chair table it? It just doesn't make any sense. It's total chaos. We're nice people on the Board. We're not cut-throats. What could happen? But, if the Law Department rules, then okay, there's nothing we can do about it.

Mr. Hylton: I did have this discussion, and it's not going to go far, because I'm not in favor of changing it. So, unless someone else has strong feelings about this, we should just move on. That was just a suggestion from the Law Department. I think as long as Mr. Barowitz is here, we'll survive. And, hopefully, some other expert will arise among the Board members, and we'll move on from there. Do we have consensus?

Ms. Torres-Moskovitz: Robert's Rules is good. And besides, isn't that how it works everywhere?

Mr. Hylton: Yes. It was just a suggestion from them. They're saying it's complicated and may be difficult for us. But that's really insulting our intelligence. So, I think we're good.

Mr. DeLaney: Mr. Hylton, just to be clear, you favor leaving Robert's Rules in the rules?

Mr. Hylton: Yes. So, Board members, can we move on? Do we all agree with this? Because to Mr. Barowitz's point, what are we going to do when things go awry, and we need to make a decision? We'd have to go through all kinds of procedural motions.

Mr. Clarke: Okay, the next item is number 6 on page 86. And numbers 6 and 7 are similar. It's the definition of harassment. In this specific section in the rules, we describe harassment; but the Law Department said we have already defined harassment in our global definitions, so we don't need to define it here again.

But the reason why it was added here, again, in this specific section, was because the Board wanted it to be defined here, again, closer to the actual section of the rule where people will be reading about harassment. Instead of having to flip back to the beginning or scroll up to the beginning of the global definitions to find the definition for harassment, we have it right here, again, where we're actually talking about harassment.

The Law Department said it's not necessary to have it in both locations. But in the past, the Board had said it wanted it here. So, we wanted to bring it back to the Board's attention to see if you still feel the same.

Ms. Torres-Moskovitz: I like definitions in the definition section.

Mr. Hylton: One section, correct?

Ms. Torres-Moskovitz: Yes

Mr. Hylton: I agree. The thing with shifting and having definitions in different places is that when there are changes, you have to be sure you change it in both places or, or all places, if it's more than two. So, it's dangerous to have definitions in more than one place, even if it says the same thing. Do you understand my point?

Mr. Clarke: Does the Board agree to just leave one definition for harassment in the global definitions?

Mr. DeLaney: The Law Department's questions on page 86 -- are they, in fact, identical?

Mr. Clarke: Yes, they are, in fact, identical. But in the actual section on page 86, the beginning of the section says, "Harassment means...", and that portion, that first block, is identical to the definition for harassment found on page...

Mr. DeLaney: Seven

Mr. Clarke: Seven, correct. So, all the way up to where it says Article 7-C, that top block is identical. But then the rules go on to elaborate about what harassment includes. So, if we take it out here, it would just be starting with, "Harassment includes," if that makes sense.

Ms. Torres-Moskovitz: You're saying that's because you don't want to add those two extra paragraphs to the definitions on 7? Or is there a way, on 86, to say harassment, see definitions, and then you're going to elaborate with two more paragraphs?

Mr. Clarke: Yes. We can see if we can refer back to the global definition of harassment in this section. Work on some language. If we take it out and refer back to the global definition.

Mr. Hylton: So, is this a definition section? Is it going to say, section 2 or 2(b) on the definitions? It's going to just say what? What is it going to look like, if we were to keep the definition as it is in the general definition section? And then that last sentence, where it says, "Harassment may also include any act of..." Is that where we're going to add? Or am I confused?

Ms. Torres-Moskovitz: That's a good question, because I see on 86 it goes on to define landlord and occupant.

Mr. DeLaney: Yeah. And I think those definitions are slightly different than definitions in the definitions section, if I recall.

Mr. Hylton conferred with Mr. Clarke and Ms. Lin.

Mr. Hylton: Okay. We'll leave this first piece; we'll take this piece out in 2-02(b), and just say, harassment would be defined as in 1-12? And it also includes --harassment also includes -- something like that? Ms. Torres, does that clarify it? That's what I needed a clarification on.

Ms. Torres-Moskovitz: I was just reading the Law comment, that if you keep the definition in the definition section, and then in this section, you do a particular definition, then this one supersedes the overall definition for this section. Does that make sense? In their comments, that's what they said.

Mr. Hylton: You can have them in both places, though, it's unnecessary if they are the same. And these will supersede the definition of 2-02?

Ms. Torres-Moskovitz: I don't know if everyone has it right in front of them. I happen to have it printed, but there's actually five words that are defined in this on page 86. And so...

Mr. Hylton: Yes, so what they're saying is that big, first paragraph that defines harassment is not necessary if it's already located somewhere else. In definitions. So, Mr. Clarke, why can't you just move the whole thing about harassment into 1-12? And then we start with the other definitions: landlord, occupant...including the particulars. Including what harassment includes. Why couldn't it be under the definition in 1-12 on page 7? Why can't we put those examples up there and then just define the others?

Mr. Clarke: It would make the definition a lot longer.

Mr. Hylton conferred with Mr. Clarke and Ms. Lin, and said: Okay, but that's what we're doing here. It's the same effect, isn't it?

Ms. Torres-Moskovitz: I think I'm changing my mind here when I see it. It's 2-2 harassment. So, within that, at some point, with the rules, we must have been trying to say within that 2-2, here's all the key information we need. So, pulling it out and putting it into the front might (inaudible), and not be useful for someone trying to understand what harassment is and all the players. I don't know. Does anyone else have a....

Mr. Clarke: If you think about moving this block into the global definition...

Ms. Lin: I think it makes the definitions not so much definitions, as rules.

Mr. Clarke: An explanation of the rule

Ms. Lin: You have to draw the line somewhere.

Mr. Hylton consulted with Mr. Clarke and Ms. Lin and said: Okay, I'm sorry. Thank you for your patience. So, we haven't really gotten to section 2 yet, and I'm thinking -- and staff believes -- that we should just leave this the way it is over the objections of the Law Department, correct? Right. Leave it the way it is. And when we get to section 2, we'll clean this up, because that's really where we should do it. Is that all right? And remember, this is just a suggestion from Law Department.

Does anyone else want to comment on what I just suggested? That we leave it the way it is over the objections of the Law Department, and then explain to them that we're going to be looking at section 2 in the rules at a later time; and at that time, we'll clean this up.

Mr. Hylton consulted with Mr. Clarke and Ms. Lin. But this change would happen, though, right?

Mr. Clarke: At some point

Ms. Lin: We'll take up section 2 at some point.

Mr. Hylton: We are going to be looking at section 2. These changes are going to occur in this version of the rule?

Ms. Lin: Yes

Mr. Hylton: And that's okay?

Ms. Lin: It's the best we can do under the circumstances, my understanding is the only revision to section 2 is to update the respective law and to change some....

Mr. Hylton: Could you go on?

Ms. Lin: So, my understanding of what happened with section 2 is that the Board never really got to discuss a fleshed-out version -- a redraft of section 2 -- like they did with section 1. So, my understanding is that section 2 is basically being updated just to reflect the change in the 2019 law and to change some capitalizations here and there. And that's the extent of it. But it does seem like quite a bit of work needs to be done in section 2 to make it cleaner and easier to understand.

Mr. Hylton: So, my point is, let's move on with this. Tell the Law Department we're going to keep it and clean it up when we get to section 2. That will be a different round of rulemaking.

Mr. Clarke: So, the only change we would make it to make the definition match the global definition in the beginning. We'll keep it in, but with respect to the minor changes, capitalization and things like that, we will make this portion match the global definition at the beginning. Those would be the only changes.

Mr. Hylton: Are all Board members in agreement?

Mr. DeLaney: Can you just restate the premise?

Mr. Clarke: Okay, so the next item is similar to this one. It's found on page 107. It's also another definition that the Law Department is saying we don't have to include a second time, because it's already defined in the global definitions in section 1. I'm sorry, Mr. DeLaney. Can you repeat your statement?

Mr. DeLaney: Yes. To take you back to number 6 for a minute. I missed what you were saying.

Mr. Clarke: What we said we would do for item number 6 is leave the definition in both the global section as well as page 86. And the only changes we would make would be matching the actual words in the definitions to one another.

Mr. DeLaney: Right

Mr. Clarke: That will be the only change. And then later on, when we actually do the revisions for section 2, then we will try to clean up this part and make it clearer for people to understand.

Mr. DeLaney: When you say revisions for section 2, you mean for...

Mr. Clarke: The plan, I've been told, is that there's going to be an overhaul of Chapter 2 of the rules at some point.

Mr. DeLaney: A second pass across Chapter two?

Mr. Clarke: Correct

Mr. Hylton: Yes, if we can ever get past where we are right now. If we were to do everything at once, it would be another two years before we even get this.

Mr. Clarke: Okay, so are there any other issues with item number 6? I think we can go to number 7. I don't think the remaining issues are that difficult. Number 7 is another definition and it is found on page 107. It's the definition of escalators. We've already defined escalators under the global definitions

in section 1-12, so the Law Department is suggesting that we take it out of page 107. But as you can see, on page 107 the definition for escalators ends in the middle of the paragraph. So, we take it out.

Like the previous item, we can leave it and just make sure the definitions match, which I think is easier. But if the Board members want to take this particular definition out and not define it twice, then we just have to figure out how that would look.

Mr. Hylton: How is this problem different from the one we just had before?

Ms. Torres-Moskovitz: Without thoroughly studying it, I think taking the escalators out here seems a little easier than the harassment section, because there we were defining five words that were in the context of that whole chapter. Here, it looks like you could take it out and define it in the front. That's my thought.

Mr. Clarke: Thank you, Ms. Moskovitz. Are there any other comments?

Mr. Hylton: So, we take it out. This is a compromise with the Law Department anyway, right?

Mr. Clarke: So, this would read as on page 107. It's under amount of increases. "For purposes of these rent guidelines, the following percentages shall be calculated upon the total rent for the residential occupant, including both base rent and escalators." And then we would say, escalators as defined in section 1-12. So, we would say, base rent and escalators as defined in section 1-12. We'll just give a reference at the end of the sentence.

Mr. Hylton: So, do we need to say, as defined in 1-12? We would definitely need to say as defined...Where else is it defined? It's still our rules, right? Are there any other comments on this?

Ms. Torres-Moskovitz: I'm just noticing on 107 the definition of escalators is deeper than it is in our definition section. But you would take that and move it over to 7?

Mr. Clarke: That's right. We would just take out the entire the definition of escalators on page 107 and move it to page 7. If there are no more comments, we can move to 8.

Mr. DeLaney: Now, just to be clear, Mr. Clarke, we're going to be starting with escalators in quotes at the end of line three through any cost of living formulas. So, then it would read, including both base rent

and escalators, such provisions as they relate to gas, electricity, and steam charges are excluded. Is that correct?

Mr. Clarke: Yes, the only thing is, at the end of the first sentence, at the end of escalators, we would add, as defined in section 1-12. So, if someone went back to 1-12, then the definition of escalators would include, "includes but not limited to charges based on real estate taxes, heating, fuel, labor, water, and sewer, and insurance." So, you're right that after the escalators are defined, the next sentence would be, "Such provisions as related to gas, electricity, and steam charges." That sentence might seem a little bit abrupt, so we might be able to work on....Well, actually, I don't think we should touch it. I think we've either got to be fine with having an abrupt sentence there, or we leave escalators defined a second time here.

Mr. Roche: I like it defined a second time.

Mr. Clarke: Okay, that makes sense.

Mr. Hylton: How is that different from another Board member's suggestion? We need to reconcile, right? Ms. Torres-Moskovitz, was that your suggestion? Two times? Or take it out?

Ms. Torres-Moskovitz: Well, I hear the point. And I think I know what Richard Roche is getting at it. It's a whole paragraph that works together. So, if you pull out the definition, it might... That paragraph uses escalators, like, four times. And when you look at the definitions at the front, I guess.... I don't know. When we all worked on this previously...The escalators definition in the definition section is pretty generic. It's simple, whereas in this section, it is specific to doing this calculation and how you determine it. So, I guess maybe I'm back to agreeing with what Richard Roche just said. I'm afraid of losing the meaning if we pull it out and don't go over the exact language of what's left. Unless the staff wants to prepare language that shows us how it reads without escalator being defined in that paragraph... Because it could be problematic, unless we see it. The language.

Mr. Clarke: Yes, we can do that.

Ms. Torres-Moskovitz: Okay. Thank you.

Mr. Clarke: So, we're almost there. Unless there are any other comments for 7, we can move to 8, which is straightforward. Law Department just suggested cleaner language, on page 110, under the improvements and defining fixtures. The Loft Board staff read it, and we feel that it is a cleaner sentence. I know that some of you are reading it now, but I'll read aloud how the new language would read: Fixtures are appendages permanently fixed or attached to real property, including but not limited to..., and then it goes on to the rest of the definition. Do the Board members agree that this sentence is a lot cleaner?

Ms. Torres-Moskovitz: You just switched around the two words. Right? It sounds fine.

Mr. Clarke: Basically, yes

Ms. Torres-Moskovitz: What do you think Elliott?

Mr. Barowitz: Somewhat cleaner, not a lot cleaner, but it's okay.

Mr. Clarke: Okay, great. So that one's down. On the last one, actually, the Law Department didn't make a comment. Here, all we're doing is on page 125 -- the definition of grandfathering. We matched it to the global definition that we have in section 1-12. And based on Ms. Balsam's comments, because we made that change, we just need to get the okay from the Board to match up the language in section 1-12 to the definition of grandfathering on page 125. Are there any comments regarding matching the language here on page 125, for grandfathering, with the global definition of grandfathering?

Ms. Torres-Moskovitz: When you say, match language, does it also match the DOB definition of grandfathering in the Code?

Mr. Clarke: That, I don't know. I'm not sure. I'd have to double check.

Mr. Hylton: I don't know. I'm Sorry.

Ms. Torres-Moskovitz: It would be good if you double-checked. I'm just curious.

Mr. Clarke: Okay

Mr. Barowitz: Let's leave that term grandfathering for now. I doubt there's anybody who knows what deadline means or meant. It's from the Civil War. When the Southern soldiers were captured, they drew a line around them. If they moved beyond that line, they would be shot dead. Nobody knows that. So, let's just move on for now.

Mr. Hylton: Wow, thank you for that, Mr. Barowitz. I didn't know that.

Mr. DeLaney: That makes the whole afternoon worth it.

Mr. Roche: As a real history buff, that was fantastic information. I never knew that.

Mr. Hylton: Listen, you can't leave this Board, because you're the only person that makes it interesting, Mr. Barowitz. So, we're going to try to see what it says in DOB's definition. Any other comments on these rules?

Mr. DeLaney: I think we made good progress today, but are we going to schedule an additional meeting in November? Are we going to meet in December? Have we given any thought to how we're going to move forward? We've still got a way to go, it appears.

Mr. Hylton: It's very hard to do in November. I will think about a December meeting for rules only, since we're not having a meeting in December for cases. It's very hard with the holidays in November. You have Election Day, Veterans Day, and Thanksgiving. And then we have a Board meeting. So, let's just look at December.

Mr. Hylton to Ms. Lin: Could you please poll the Board members as far as availability? We'll work on it for early December, well before the holidays.

Mr. Barowitz: And we're anticipating the meetings at the end of the year will still be virtual? But we don't know yet. The Governor hasn't made a decision yet.

Mr. Hylton: I was actually going to read that in my closing statement. But Tina, you can go ahead and address it.

Ms. Lin: As of right now, the Governor's order suspending the in-person requirement only lasts through November 3rd. So, we'll have to wait until November to see if we can continue to hold meetings virtually. But it will most likely be virtual.

Mr. Hylton: Okay. Thank you, Board members. Thank you for your patience, members of public. I'm assuming no one has any other comments.

Ms. Torres-Moskovitz: We didn't go back to the OATH statement, but we talked about it last week that you were going to talk to the Law Department about OATH. There were also items today we talked about discussing with them. Are you also going to go through the OATH comments with the Law Department? There were a couple of items that we had discussed in our last meeting about OATH and following their procedures. For example, is that something that's common with every single group that works with OATH? Some more information that would help us understand the context.

Ms. Lin: I will raise this issue with the Law Department. We were waiting to see the outcome of today's Board meeting. As we've seen, there are a few other points that we might want the Law Department to clarify, so, instead of bombarding them with ten emails with ten separate questions, we'll have one email with several questions they can address all at once. And yes, that will be on the list.

Ms. Torres-Moskovitz: And you would hear from them before a December meeting?

Ms. Lin: I don't know if we'll have the final answer by then, but yes, we should have some kind of response back. Some of these items we're asking about might require additional research on their end. But we should certainly have some sort of response back for an early December meeting.

Ms. Torres-Moskovitz: Okay. Thank you.

Mr. Hylton: And just so you know, November's meeting may include some rulemaking. We always reserve any remaining time after cases for rules. So, we may bring some of this up in in November, depending on how responses go. Not just December. Are all hearts and minds clear? Thank you Board members.

This will conclude our October 22, 2020 Loft Board meeting. Our next public meeting will be held on Thursday, November 19, 2020 at 2PM. The Governor's suspension of the in-person meeting requirement of the Open Meetings Law is in effect until November 4, 2020. So, at this point in time, we do not know whether the next Board meeting will be in person or via teleconference. Board members and members of the public, we will update you as soon as we know the format of our next meeting, and we will post that information on the Loft Board website. Board Members, please sign and email your attendance sheet. Thank you very much and have a great afternoon.