

MINUTES OF PUBLIC MEETING  
New York City Loft Board Public Meeting

November 19, 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 November 19, 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.

Before we get started, I have two short announcements for the public. First, the Board has scheduled an additional Board meeting for December 10, 2020, at 2pm for rulemaking only. This meeting will likely be held virtually, but we must wait for the Governor to officially extend the suspension of the in-person meeting requirement of the Open Meetings Law.

Second, we have two additions to today's agenda. The first is number 6. Mr. Delaney will present a summary of a meeting select Board members had recently with DOB (Department of Buildings) officials regarding the self-certification process and how it affects Loft Board buildings. The second item, number 7 on the agenda, will be a discussion of an active litigation matter against the Loft Board: *Dezer Properties II, LLC versus New York City Loft Board*; and my goal is for the Board to begin to consider this item at 3:30pm. At that time, the Board may vote whether or not to discuss this meeting in executive session, and if the Board does go into executive session, this meeting will end at that time for the public,

I now turn to a vote on the minutes from the October 15, 2020, public meeting. Are there any corrections or comments on the minutes? Mr. DeLaney?

**Mr. DeLaney:** Thank you. In at least two points in the October 15th minutes, there's mention of the Board being understaffed, and I'm just curious what staff positions are currently unfilled.

**Mr. Hylton:** The Executive Director position

**Mr. DeLaney:** Okay. That's the only...

**Ms. Lin** offered a response: Even before the pandemic, the former Executive Director was trying to get additional staff. The volume of work that comes in is, frankly, too much for the current staff. Everyone works very hard, but an incredible amount goes on behind the scenes, that requires an extraordinary amount of attention and effort. So, she had been trying for quite some time to get more staff. I'd have to look back at the request to see what positions were specifically being requested, but she asked for at least a couple of attorneys and a couple of administrative people.

**Mr. DeLaney:** Okay, thank you. My impression was that most of the open positions we had recently were filled. But I understand that the Board has a significant workload, and I'm supportive of trying to see the budget increased to allow more staff, because important projects, like the enforcement initiative, have been stalled. So, thank you for that summary.

**Mr. Hylton** clarified that the Executive position is the only authorized, unfilled position.

**Mr. DeLaney** then noted a correction he would like made on page 9 of the minutes. His sentence, "I know there's a lot of paper flying," should be changed to, "I know there's a lot of paper flying around."

**Mr. Hylton** acknowledged the correction.

**Mr. DeLaney:** And finally, on page 44 in the minutes, where we were discussing the suggestions provided by the Office of Administrative Trials and Hearings (OATH), there was a comment that there'd be a revised version sent out; but I don't think I ever received that. Am I correct that we don't have that as yet?

**Ms. Lin** said she believed they had asked OATH about the 1-31(c) section, but asked if it could wait until the rulemaking portion of the meeting.

**Mr. DeLaney:** Yes, but in addition, in the middle of the page, Renaldo says, “Can we just agree we're going to fix it?” This is the question of where we put ‘Loft Board decisions’ and what OATH proposes to do. I think it's 1-32. And Renaldo says that “We'll work it out. Insert it somewhere. Can you email it to the Board members?” And to my knowledge, I have not received an updated version of the OATH one-pager.

**Mr. Clarke:** Mr. DeLaney, I apologize for that. I did fix the language, and I sent it to OATH, but I didn't send it to the Board members. We did send an email with your responses to OATH, and we were waiting for them to respond to us, which I think they did about ten minutes ago. And I'll update the Board members with OATH's response.

**Mr. DeLaney:** Oh, okay. I thought we were going to get to see what we were proposing before they do.

**Mr. Hylton** expressed his belief that the staff was supposed to fix the language and send it OATH.

**Mr. DeLaney:** But the dialogue reads, “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.”

I would have thought that as a courtesy the Board would have gotten to see it before it went to OATH. And I object to the way this was handled.

**Mr. Hylton:** I understand. As we're not going to get to OATH's comments today, and we still need to send that piece that was agreed upon, do you want us to do it now?

**Mr. DeLaney:** We can discuss it at the December meeting. It's just that, when I saw this, I thought, gosh, did I miss something? So, I guess thus far, it's gone to OATH, not to us, which...

**Mr. Hylton:** Yes, I'm sorry. So, we're going to send that language over to you to see. I don't know if OATH has made any comments on that piece, but I thought that we would still have to send it to them. So, we were going to send it to OATH in between, but also copy it with the right language.

**VOTE ON MEETING MINUTES:**

**October 15, 2020 Meeting Minutes**

**Mr. Hylton** then asked if there were any other comments on the minutes. As there were none, he asked for a motion to accept the October 15, 2020 meeting minutes -- with the addition of the word “around” to that one sentence on page 9, as Mr. DeLaney requested -- and for a second.

**Mr. DeLaney** moved to accept the October 15, 2020 meeting minutes, and **Ms. Roslund** 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

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**ACTING EXECUTIVE DIRECTOR’S REPORT**

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

**Executive Order:**

On November 3rd, the Governor issued Executive Order 202.72. This Order did not extend the toll on the statute of limitations. Therefore, the initiatory filings to the Loft Board are no longer tolled, as of November 4, 2020. Executive Order 202.72 did extend the suspension of the in-person meeting requirement of the Open Meetings Law to December 3rd. Our next Board meeting will be on December 10<sup>th</sup> to discuss rulemaking, and while we anticipate that the Governor will continue suspending the in-

person meeting requirement to allow us to continue meeting virtually, we will have to wait for that confirmation. We will update our website to inform the public when we have more information. Which brings me to my next item.

Listserv:

We have created a Loft Board listserv, so the public can receive email announcements from the Loft Board. The signup form is available on our website; there's a link on the front page. You can also access it via the news tab. The first link is to the Loft Board notice signup form, from which we'll send out information on Board meetings, such as the meeting link, updates on Executive Orders, and the dates of any additional Board meetings. All this information will also be available on our website, so you do not have to sign up to get this information. But if you want to receive these updates through emails, you can, by subscribing to this service.

Revenue: The unofficial Loft Board revenue for October 2020, was \$82,970.

Enforcement:

Two violations were issued in October 2020. One at 250 Moore Street, Brooklyn, for failure to provide gas to one unit; and another at 400 South Second Street, Brooklyn, for failure to maintain the elevator in good working order.

Litigation:

NEW: *99 Sutton LLC versus New York City Loft Board*, Supreme Court index number 159477 of 2020. Owner filed an Article 78 concerning Loft Board Order 4934, dated January 16, 2020, which fined owner \$5,000 for failure to renew the Annual Registration for the building.

UPDATE ON EXISTING: *Callen/Fiscina versus New York City Loft Board*, index numbers 100873 of 2017 and 156504 of 2017. These are two separate but consolidated cases. In February of 2020, the former Executive Director informed the Board of this proceeding. To refresh your memory, this is the case where the Loft Board had issued an Order rejecting the settlement agreement between the owner and tenant as against public policy, as the settlement would have allowed for continued occupancy without

Loft Law coverage. The court annulled the Loft Board's decision, and the First Department affirmed, holding that the Loft Board cannot force parties to litigate a coverage application. But that holding conflicts with the Second Department's ruling in *Dom Ben Realty versus NYC Loft Board*, which held that the Loft Board can reject a similar settlement on public policy grounds. So, the Court of Appeals has granted our motion for leave to appeal, and the matter is now being briefed.

**Mr. Hylton** thanked Ms. Lin and asked if there were any questions for her.

**Mr. DeLaney:** Just one question. The Governor's Executive Order extended the suspension of the Open Meetings Law, but the piece he did not renew relates to no longer tolling deadlines, is that correct?

**Ms. Lin:** Yes, the statute of limitations for filing deadlines.

**Mr. DeLaney:** So, what's the practical effect of that for our population?

**Ms. Lin:** For certain applications -- extension or reconsideration, for example -- there was a time limit for filing. The Governor's tolling of the statute of limitations had affected those filings.

**Mr. DeLaney:** Okay

**Mr. Hylton** followed up on the listserv by encouraging the public and Board members to sign up for it. It can be done on the Loft Board website and only requires an email address; no personal information, and that it is not something staff can do; individuals must register themselves.

**Mr. Hylton continued:** Please spread the word. This is for everyone. Any kind of information we may have for you can now be distributed by email with the click of a button. It's not a newsletter, but it is news. We'll put in the next Board meeting dates, for example, just to remind people that it's coming up. And if you have suggestions for other kinds of information to be shared, let us know.

But the first thing to do is to sign up for this email listserv, so we can get information to you as quickly as possible. We've been working on this for a while, so this is a big step forward. But we need this information to be publicized, so that it can be effective.

**There was discussion** among some of the Board members and staff, who were consulting the site, as to where the registration form was located.

**Ms. Lin:** If you see the big box in the middle, it should say, sign up for the Loft Board newsletter. I think it might still say newsletter. It's not a newsletter, and we've asked IT to address that. You can also get to it by clicking on the news tab. It'll be the first link under the news tab.

**Ms. Torres-Moskovitz:** The news tab worked for me. Thank you.

**Ms. Roslund:** I got it. It's there on the homepage.

**Mr. Hylton** also noted that people can unsubscribe in the future if they want. Thank you, Tina.

**THE CASES:**

**The Master Calendar**

**Mr. Hylton:** All of these Proposed Orders are owners who have failed to timely renew their building registrations. There were originally sixteen cases on the Master calendar, but as some payments were received subsequent to these drafted Orders, there are now nine remaining cases, and they are voted on as a group. Therefore, we start at number two on the list.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
1	47 West 28 <sup>th</sup> Street LLC	47 West 28 <sup>th</sup> Street, Manhattan	FO-0860
2	EMPSRG Greene LLC	47-49 Greene Street, Manhattan	FO-0862
<i>Summary: A \$5,000 fine is imposed for Owner's failure to timely complete its annual registration for one year.</i>			
3	Camilla Shah, president of Condo Assoc.	354 Bowery, Manhattan	FO-0864
<i>Summary: A \$17,500 fine is imposed for Owner's failure to timely complete its annual registration for three years or more.</i>			
4	17 Leonard Properties LLC	17 Leonard Street, Manhattan	FO-0865
5	Haimil Realty Corp.	209 East 2 <sup>nd</sup> Street, Manhattan	FO-0869
<i>Summary: A \$17,500 fine is imposed for Owner's failure to timely complete its annual registration for three years or more.</i>			
6	541 Construction Corporation	543 Eighth Avenue, Manhattan	FO-0873
<i>Summary: A \$5,000 fine is imposed for Owner's failure to timely complete its annual registration for one year.</i>			
7	45 West 28 <sup>th</sup> LLC	45 West 28 <sup>th</sup> Street, Manhattan	FO-0875
8	Bridge Associates of Soho, Inc.	533 Greenwich Street, Manhattan	FO-0877
<i>Summary: A \$17,500 fine is imposed for Owner's failure to timely complete its annual registration for three years or more.</i>			

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9	Time Century Holding LLC	49-55 West 28 <sup>th</sup> Street, Manhattan	FO-0879
10	388 Broadway Owners, LLC	388 Broadway, Manhattan	FO-0881
<i>Summary: A \$17,500 fine is imposed for Owner's failure to timely complete its annual registration for three years or more.</i>			
11	Vestry Holding Corp.	37 Vestry Street, Manhattan	FO-0882
<i>Summary: A \$5,000 fine is imposed for Owner's failure to timely complete its annual registration for one year.</i>			
12	Tai Loy Corp.	324 Canal Street, Manhattan	FO-0884
13	282 Nevins Street LLC	280 Nevins Street, Brooklyn	FO-0889
14	Harbor View Properties, Ltd.	47-53 South 5 <sup>th</sup> Street, Manhattan	FO-0902
15	657-665 5th Avenue, LLC	657-665 Fifth Avenue, Brooklyn	FO-0905
<i>Summary: A \$17,500 fine is imposed for Owner's failure to timely complete its annual registration for three years or more.</i>			
16	450 Broadway Owners, LLC	450 Broadway, Manhattan	FO-0910
<i>Summary: A \$5,000 fine is imposed for Owner's failure to timely complete its annual registration for one year.</i>			

**Mr. Hylton** asked for motion to accept cases 2, 3, 5, 6, 8, 10, 11, 15 and 16 above; and for a second.

**Ms. Rajan** moved to accept all those cases, and **Mr. Hernandez** seconded.

**Mr. Hylton** asked if there were any comments on the cases.

**Mr. DeLaney:** Yes. This is our annual exercise, where we impose penalties on owners who have failed to register. In my view, registration is the first step in compliance with the Loft Law. It ensures we have an up-to-date contact number for the owner. The good news is, as of the October meeting, there were sixty-one buildings that had not yet registered; but over the course of a month, by the time the Board did the paperwork and sent out the notices, there were only sixteen left on this agenda. And six of those have since complied. Now we're down to only ten owners who thus far have not registered.

The other good news is that in the past few years, there have been three or four flagrant offenders, who have not registered for lengthy periods of time. This year, we're down to one, Bridge Associates of Soho which, for whatever reason, owns a building at 533 Greenwich Street, and which last registered in 2008. That's twelve years this building has not taken the simple step of registering with the Loft Board. I'm also reasonably certain -- but I have not had time to pull out the old agenda from the last season we did this - - that there's one owner who has three properties that were on this agenda but were removed because the owner paid at the last minute. And I'm pretty certain that's for the second year in a row.



In all these instances, what the owner had to do to avoid being fined either \$5,000, or in a couple cases where it's more than one year \$17,500, is to simply file the registration renewal or the initial registration, provide the necessary information, and pay the registration fees. But by allowing them to go four and a half months and register at the last minute to avoid the fine, we're actually giving the owner a very low cost loan on money that he has to pay anyway, because the penalty for not paying is, I think, \$5 a unit or \$25 a unit. It goes up to thirty.

So, as I did last year, I encourage the Board, number one, to look at a more meaningful penalty for late filing so that there'd be less of it. And secondly, in my opinion, once we move against them, it's unfortunate that they're able to cure at the last minute. If we want to do that, then I think we should start this process much earlier in the fiscal year. I said the exact same thing last year; but hopefully, I won't have to say it again next year.

**Mr. Hylton:** Yes, Mr. DeLaney, you have said this before. So, I want to let you know that it was our intention to do it earlier this year, but with the pandemic, staff shortages, and so on, we could not move any faster. So yes, it is our intent, and I say this sincerely, to do exactly what you're saying. And hopefully, things will be better next year. But I applaud your recognition of the fact that these numbers are improving and the egregious non-payment or people who are not registering on time has diminished significantly.

Are there any other comments on these cases? (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:** We'll now move to the next session -- the discussion of the rules. But before I turn this over to Mr. Clarke, I think Miss Lin has something to say.

**Ms. Lin:** Yes. Before starting, I wanted to let the Board members know that, following our last rulemaking discussion, we did reach out to the Law Department and to OATH about some of the issues the Board has raised, and we're still waiting to hear back from them. I believe we received something from OATH during the course of this Board meeting. So, we'll review that and, hopefully, be able to present it to the Board in December.

**After some consultation among the staff, Chairperson Hylton** decided it would be best for agenda item number 6 to be taken up before starting the rules: a summary by Mr. DeLaney of the meeting certain Board Members had with a DOB official, concerning self-certification and loft buildings being noted as formerly having been under Loft Board jurisdiction on Certificates of Occupancy.

**Mr. DeLaney:** Julie Torres-Moskovitz, Heather Roslund, Rich Roche and I met with Mr. Martin Rebholz, whose title I don't recall, but it is significant. He is a DOB expert on the topic of self-certification, and the first thing I learned was that self-certification is actually a misnomer. There is a thing called self-certification, but that's only done by licensed professionals of a certain stripe. What architects actually perform is something called professional certification, which is essentially the same thing, I guess; and I would ask either Ms. **Torres-Moskovitz** or Ms. Roslund to perhaps provide a more cogent explanation of this than I'm able to do.

**Ms. Roslund:** Professional certification is, you're certifying the plans ahead of time. And by plans, I mean that in the big picture sense. So, it's your application to DOB. Self-certification is by a licensed trade, plumbers and such, who certify their own work after it's complete.

**Mr. DeLaney:** Thank you. That was very succinct. And what we learned, what I learned, is that -- and whether it's by statute or by regulation, I don't know -- a certain amount of the things that are either self-certified or professionally certified are, indeed, audited by the Department of Buildings to make certain that what was done; or what was promised to be done; or what was claimed to have been done; was, in fact, done. And I believe they audit about twenty percent of the filings made under either self or professional certification. Am I summarizing accurately so far? Okay.

The interest in this was predicated by a letter Ms. **Torres-Moskovitz** wrote back in the summer of 2019, expressing some concern about this. It stemmed from the fact that there were a number of IMD buildings where odd and unusual things seem to have happened. For example, 255 18th Street, where the Certificate of Occupancy was revoked because of numerous irregularities, and some other buildings filed by the same architect, who suffered a mild punishment. It seems that there's something about loft buildings and the financial opportunities they present that seem to, occasionally, encourage this kind of questionable behavior.

One idea bandied about in this meeting was to consider whether it would be feasible for the Board to request of the Department of Buildings that all certifications of this sort in IMD buildings are put on the audit list. At present, to some extent, the auditing seems to be random; although it was made clear by Mr. Rebholz that, if they receive a complaint, that triggers an audit as well. And certain things are always audited. Any claim that work involving gas has been done is automatically audited, and I think that's entirely appropriate. We've had a few unfortunate examples in the city over the past few years of the kinds of huge and, at times, fatal problems gas issues can create.

So, I think it would be appropriate for the Board to discuss and, hopefully, pass a resolution, asking the Department of Buildings to have all certification items in loft buildings put on the audit list.

**Ms. Roslund:** I'd like to add for clarification, who performs these audits; who's reviewing the drawings. We're talking about a plans examiner versus a professional certification. When an architect or an engineer files with the Department of Buildings, the way it used to be done was the application, which is the paperwork as well as the drawings -- the construction documents -- were reviewed by a plans examiner at the Department of Buildings. And you would go down and sit down with them and go through the drawings, and if anything was amiss, if there were any code-compliance issues or the like, they would state their objections.

With professional certification, there is no plans examination. The professional is certifying that everything is legal and code-compliant. But an audit is having an actual person at DOB review the drawings and other application materials to confirm that, indeed, everything is above board.

And we also discussed the fact that, because of the complexities of loft buildings in particular, it made sense to, one, have work reviewed by a second set of eyes, because some of the code-compliance issues

are not so straightforward or cut-and-dry. And second -- and this was a request -- to perhaps have certain examiners receive extra training in the intricacies of commercial conversions to residential.

**Mr. Hylton:** Very well summarized, by both. Thank you. Mr. DeLaney, are you finished? I think Mr. Barowitz has a question.

**Mr. Barowitz:** Many moons ago, the architect, or plumber, or electrician, would come over and wait hours and hours for someone from the Department of Buildings to show up, which sometimes never happened. There's just not enough people available to do it all. So, architects and others whose work needs to be inspected were allowed to certify their own work. Obviously, it's not the best solution, but that's the way it works in the real world, here in the city of New York.

**Mr. Hylton:** You're describing what Heather just explained as self-certification, where the finished work is supposed to be inspected by a DOB official instead of just taking the license-holder's word that all was done correctly. So, I hear you, Mr. Barowitz. Thanks for that clarification. In the grand scheme of things, the Department of Buildings does not have the resources to inspect every single piece of finished product there is; and so some of it is dependent upon self-certification.

**Mr. DeLaney** asked Ms. Torres-Moskovitz if she had anything to add.

**Ms. Torres-Moskovitz:** Mr. DeLaney and Ms. Roslund were very succinct and did an excellent job of describing what was discussed. I wrote the letter because, as an architect with my own firm, I was concerned, because I do use professional self-cert. I call it professional self-cert, professional cert. And I see it as a good, viable path for architects and for the city to handle the tremendous caseload. But on these complex conversions, I think it could be dangerous. Someone could get in over their head, and that's the reason I wrote the letter over a year ago -- because of three particular cases. After we voted on them, I reviewed them, and they just should not have been self-certified. Or, at the very least, the self-cert led to problems like a final C of O that was incorrect.

I have to admit, during the presentation, I was actually a little distracted, because I, myself, just received an email about a special audit from the DOB on a separate job. So, these audits come up all the time, and they're a good cross-check. I think it's good for these projects to be audited if they were self-certified, because they're so complex and involve not only owners but tenants. To ride through years of

work with a professional who's not had a standard examiner review is problematic, I think. So, an audit is another way to assure quality.

**Mr. DeLaney:** As I understand it, to Elliott's point, the shortage of staff at DOB means that if you try to have a DOB staff person appear while the professional is there on the job site, it's difficult. I gather that the auditing process provides a little more efficient way to provide oversight, without requiring everybody to be in the same place at the same time. Is that right?

**Ms. Roslund:** You make an appointment. It's not chance. So, if I'm the plumber, and I've installed my roughing, and the contractor's ready to close the walls, I make an appointment with the Department of Buildings to come and inspect the plumbing work I've done while it's visible. Then you're given an appointment between two o'clock and three o'clock on Friday, November 20. And as the plumber, I would have to be there for that hour. If the inspector does not show up after the hour has passed, I'm allowed to sign-off my own work. So, it's not like happenstance.

**Mr. DeLaney:** And what would happen if that work were selected to be audited?

**Ms. Roslund:** It's a little different. There really aren't audits on the self-cert part of it. The audit is on the professional certification. So, I'm an architect, and I professionally certified the staff bathroom I designed in a store. It needs to be accessible, ADA compliant. In a typical situation, I take my drawing down to the plans examiner and explain, this is where my front door is; this is where the bathroom is going to be; this is where the changing rooms are. And the plans examiner says, oh, your sink doesn't comply with the law, or your door swing doesn't, or something. They might find something that was an oversight. And then you're allowed to correct it, and resubmit the plans, and get the plans approved. And then your application is approved, and the contractor pulls the permit against that application.

Now, if the professional goes pro-cert, and that mistake is not caught, and it's built, and then there's an audit, the mistake will have to be rebuilt to comply. So, let's say it's a door swing or something simple. It gets built swinging in one direction; and the job is audited; and the plans examiner looks at it and says, this doesn't comply with egress. It doesn't swing in the right direction for egress. Then the contractor needs to physically rebuild that door to be code-compliant. So sometimes you could be saving time and money up front, but it could cost time and money later on.

**Mr. DeLaney:** Thank you

**Ms. Torres-Moskovitz:** It catches mistakes in the process of construction. And when I professionally self-cert, sometimes there'll be surprise audits at the beginning of a job – like, two or three different ones all at once, trying to make sure the job's doing what the plans say. And they study everything. You could be audited multiple times. It is a faster process in the front, but could also cause delay, especially on a complex project like a loft building.

**Mr. DeLaney:** I don't think what I've heard would cause me to alter my suggestion that the Board pass a resolution, asking that IMD work go on the audit list as a matter of course.

**Mr. Hylton:** So, you're asking that the Board make a resolution that's not a binding resolution on the Department, right?

**Mr. DeLaney:** I don't think we're in a position to tell the Department of Buildings what to do. We can only ask.

**Mr. Hylton:** Right. So, are you suggesting that someone, perhaps yourself, could draft language for a resolution that we could take up next month?

**Mr. DeLaney:** I would be happy to do that. And with the Chairman's commitment to give that time for the Board members to consider it at our December meeting, that would be fine with me.

**Mr. Hylton:** Can we do that for January? Because December will be for rules. Is that all right?

**Mr. DeLaney:** Sure

**Mr. Hylton:** Okay, thank you. If no one else has anything to add, I would just say, relative to Mr. Barowitz's point about waiting around for the DOB, and then the licensee signing off on their own work; there's nothing preventing the Department from inspecting that work at a later time. And the Department is obligated to investigate all complaints and can inspect that work and write a violation against either the contractor or the owner to correct any deficiencies. I just want to make that clear.

**Mr. Roche:** I would like to publicly thank the Chairman and Ms. Torres-Moskovitz. The discussion we had with Mr. Rebholz was extremely informative and educational. And I want to go on record as saying I think it was well worth the time. And, again, recognize those that made it possible. Thank you.

**Mr. Hylton:** Yes. And I'd also like to thank Ms. **Torres-Moskovitz** for raising awareness of this. While not speaking officially for the Department, I can say that a lot of the issues we were having with some bad actors have been addressed. And though the penalty may seem small, losing your ability to file with the Department of Buildings is losing your livelihood in the city. And in many of these cases, these professionals do completely lose filing privileges with the Department. Some will lose their self-cert privileges, but some may lose their entire filing privileges, depending on how egregious the situation is.

So, the Department does aggressively go after bad actors, and I want to let the public know that on the Department of Buildings website there is a list of disciplinary actions against licensed professionals, meaning the architects and engineers; or a licensee, which are the plumbers and welders and all those with Department of Buildings licenses. There is a link; just search for disciplinary actions, and you'll find a complete list. If you're thinking of hiring someone, you can look them up before you do to see if they're legit, or if they've been in trouble before with the Department. And that is on the Department of Buildings website; not the Loft Board website.

And with that, it is now 3:20, and so we have ten minutes for Mr. Clarke to talk the rules. Obviously, we're not going to get very far, because we do need to go back to the Board to decide on what we're going to do at 3:30.

**Mr. Clarke:** As we have only about nine minutes now, I don't think it makes a lot of sense to dive into the document we prepared. What I would like to do is just answer any questions you may have about the documents you've received. Mr. DeLaney had a question about one of the documents we recently sent, and I'd like to take a few minutes to explain all the documents you currently have, and what I anticipate we will talk about at the December 10<sup>th</sup> meeting.

The first one is the five-page Law Department comments. These are substantive comments the Law Department made. They're all in the September 1, 2020, document. We just, literally, copied and pasted the Law Department comments into this Word document, separated them, and tried to organize them in a way that would make them easy for the Board members to digest. So, they understand the issues and what the Loft Board staff discussed with respect to these issues. And that's what we're going to be reviewing with this particular sheet.

There are two other documents. One is a comparison document, and the other is the Law Department document dated September 1, 2020. Both are a set of proposed rules, and what I want to do is try to explain the difference between these two documents. The comparison document shows all changes that were made to the proposed rules since February 2020. The September document we have been working on doesn't show all the changes that were made since February. It only shows the Law Department's edits. It doesn't include the Operations Department's edits.

So, at this time, we feel the priority is to review the substantive issues, which are from OATH and the Law Department. The Operations comments are also important, but we don't think they're as important as the substantive comments.

**Mr. Hernandez:** So, just to clarify, Operations is the Mayor's Office of Operations?

**Mr. Clarke:** Yes. Most of the Mayor's Office comments, we believe, were to perfect punctuation and other minor edits; so, we're saving that for last. But we're going to tackle all the substantive issues that we can bring to the Board. So, on December 10<sup>th</sup>, we are going to pick up with this document that you were prepared to discuss today. And then after we've finished these, I know that OATH recently sent an email to us so we will read that and gather that information. It's a response to an email that we sent to OATH with the language that the Board members wanted to change. We sent that email with the specific language of the Board members want to change are highlighted in green. So that's what....

On December 10<sup>th</sup>, we'll have a bit more time. We did send some comments to the Law Department, and hopefully, between now and December 10<sup>th</sup>, we'll get some responses, and we can update the Board. We'll also have had a chance to review the recent communications with OATH, and we'll update everyone on those as well.

I think, if you have any other questions, you can email me, and I'll try to answer them as clearly as I can. And once we finish the five-page document you have, our plan is to go into the comparison document; but we might change that later on, as it seems this document might be causing some confusion. So, over the next couple of days, we're going to re-think the way we present this information to you.



I know it's a lot of information, a lot of different moving parts. We're going to try to present it in the most clear and succinct way possible. So, with that, if there are no other questions, we'll move on to the next part of the meeting.

**Mr. Hylton:** The next item on the agenda concerns an active litigation matter: *Dezer Properties II LLC versus New York City Loft Board*. Supreme Court index number 155782 of 2020. Pursuant to the Open Meetings Law, section 105, a public body may conduct an executive session to discuss proposed pending or current litigation.

**Mr. Hylton** asked for a motion to go into executive session to discuss the matter of *Dezer Properties II LLC versus New York City Loft Board*, and for a second.

**Mr. Roche** moved to go into executive session, and **Mr. Barowitz** seconded.

#### The vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**Mr. DeLaney:** Can you clarify what happens after the executive session?

**Mr. Hylton:** When I'm finished speaking, I will ask the members of the public to sign off, so that the Board may go into executive session. But I want to make clear for the public that the minutes of this Board meeting will contain a summary of what was discussed in the executive session.

As a reminder, our next public meeting will be held on Thursday, December 10, 2020, at 2pm. The Governor's suspension of the in- person meeting requirement of the Open Meetings Law is in effect until December 3, 2020. So, at this time, we do not know whether the meeting will be held virtually,

though we suspect it will be. When we have further information, we will update the Board members by email, post the information on the Loft Board website, and send out an announcement via the listserv.

We will now end this session for the public to go into Executive Session. I'm going to ask Loft Board members and staff to remain in the session, and I will end this meeting now for the members of the public.

I want to say Happy Thanksgiving to all of you, and we will see or hear from you again on December 10th.

**The Board went into executive session and discussed litigation strategy concerning *Dezer Properties II LLC versus New York City Loft Board*.**

The Board discussed possible actions that may be taken in the case, and their benefits and drawbacks.

**Mr. Hylton** asked for a motion to instruct Loft Board staff to consult with Law Department as to the Board's options on how to proceed in this case.

**Ms. Rajan** so moved, and **Mr. Roche** seconded.

**The vote**

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

**Members dissenting:** Mr. Barowitz

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0