

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting

December 10, 2020

The meeting began at 2:10 PM

Attendees: Elliott Barowitz, Public Member; Richard Roche, Fire Department’s *ex officio*; Robinson Hernandez, Manufacturers’ Representative; Charles DeLaney, Tenants’ Representative; Heather Roslund, Public Member; Julie Torres-Moskovitz, Public Member; Samira Rajan, Public Member; Renaldo Hylton, Chairperson Designee; and Tina Lin, Loft Board, Acting Executive Director.

INTRODUCTION:

Chairperson Hylton welcomed those present to the December 10, 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.

VOTE ON MEETING MINUTES:

October 22, 2020 Meeting Minutes

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

Mr. DeLaney had a few comments: First of all, the minutes are a wonderful, accurate transcription of a thoroughly maddening meeting, given the topics we discussed. But I’m curious. On page 4 there are a couple of points in Ms. Roslund’s remarks that are noted as inaudible, and I was wondering if she might recall what she said. On page 4, in the second paragraph, it says we “...have items that require (inaudible) review.” And then later there's, “... (inaudible) full review.”

While **Ms. Roslund** searched for the comment, **Mr. Hylton** volunteered that the word might be “full.”

Ms. Roslund: Maybe it’s already? “You have items that require” blank. “So, in the Zoning Resolution, you have items that require blank review, and items that can be certified in the same way.” Probably city review or agency review?

Mr. Hylton: I think what makes sense is the full department review. I don't know if that's what you meant, or what you said.

Mr. DeLaney: I was sufficiently lost in this whole topic, that I was hoping there'd be some enlightenment there. But that’s OK.

Ms. Roslund: The sentence is, “So in the Zoning Resolution, you have items that require blank review and items that can be certified in some way.” So yes, I agree with Mr. Hylton that it’s probably full review or agency review. The two ways that something is quantified, qualified, in the Zoning Resolution are, it’s as of right, which then goes just through a standard review; or, you can do a variance or a certification of some sort as a way to get, in essence, a waiver. And that would be the other, the opposite. So, it's like a non-standard review. A certified review. To get something certified would be a non-standard review, to get something approved without a variance would be a standard review.

Mr. DeLaney: Okay. Thank you.

Mr. Hylton: Any further questions or comments on the minutes?

Mr. DeLaney: I had one other question. On page 12. Acting Executive Director Lin was going to double check on personal information with our FOIL officer. I wonder if she had a chance to do that.

Ms. Lin: Mr. DeLaney, I did not, as I thought that was subsequently resolved in the same meeting. The Chairperson did correct me and say that we do redact personal information. We go on to discuss that at the bottom of page 12.

Mr. DeLaney: Yes. Okay, but you didn’t double check with our FOIL... Okay. Thank you.

Mr. Hylton: I think I was correct. I used to head a FOIL unit before, so... If the lawyers can confirm, I believe information like personal pedigree and such is redacted during FOIL. Thank you, Mr. DeLaney.

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 22, 2020 meeting minutes and for a second.

Mr. DeLaney moved to accept the October 22, 2020 meeting minutes, and **Mr. Hernandez** seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

ACTING EXECUTIVE DIRECTOR'S REPORT

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

Executive Order:

Ms. Lin: Thank you, Chairperson. On December 3rd, the governor issued Executive Order 202.79, which suspended the in-person meeting requirements of the Open Meetings Law to January 1st, 2021. That's why we were able to hold this meeting virtually today. Our next meeting is going to be beyond that January 1st deadline. We expect another Executive Order to be issued around that time, January 1st. When we have further information, we will update the Loft Board website as well as the Loft Board listserv.

Revenue: In terms of revenue, the unofficial Loft Board revenue for November 2020 was \$216,280.

Enforcement:

In November 2020, the Loft Board issued six violations in four buildings, as follows. We issued one violation at 338 Moffat Street, Brooklyn, New York, for failure to provide gas. We issued two violations at 210 Cook Street, Brooklyn, New York, for inadequate heat and missing smoke/carbon monoxide detectors. We issued two violations at 255 18th Street for failing to provide gas and for inadequate heat. We issued one violation at 475 Kent Avenue, Brooklyn, New York, for improper drainage on the roof.

Litigation:

We received one decision in two consolidated Article 78 proceedings. The caption is *470 Manhattan, LLC versus New York City Loft Board*, New York County index numbers 156349 of 2019 and 160119 of 2019. These two related Article 78 proceedings concerned the Loft Board staff's decision to hold the owner's de-coverage application in abeyance pending a Narrative Statement conference. Both cases were dismissed by the court, finding that the Loft Board had a rational basis to hold the de-coverage application in abeyance. And that's all I have for my report today.

Mr. Hylton: Thank you, Ms. Lin. Any comments or questions for Ms. Lin? Thank you.

THE CASES:

The Master Calendar

Mr. Hylton introduced the only case on the Master Calendar:

	Applicant(s)	Address	Docket No.
1	Wang & Associates LLC	145 Grand Street, Brooklyn, NY	FO-0851
Summary: A \$10,000 fine is imposed for Owner's failure to timely complete its annual registration for two years.			

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

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

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

RULEMAKING:

Mr. Hylton explained that the primary purpose of today's meeting was rulemaking and asked if Ms. Lin had anything to add before turning the meeting over to Mr. Clarke. She did not.

Mr. Clarke: Thank you, Chairperson Hylton. Today, we'll be discussing the two Word documents I sent to everyone. The first document, starting with §1-12 Definitions, are the comments we received from OATH. We'll give you an update regarding what we had discussed in our Board meeting and OATH's response -- what OATH has recommended with respect to any of the rules that relate to them.

The second document is new comments from the Law Department, and, hopefully, we can get through them as well. In between those two documents is the email I sent, I believe, late Tuesday, also from the Law Department, regarding the quorum issue. Hopefully, it will clarify that confusing rule. But we'll discuss that before we start talking about the Law Department comments.

With that said, I'll start with OATH's comments. The first comment is under §1-12 Definitions. The Board made some corrections to the definition of Adjudicator, and OATH responded that they're okay with those changes.

The next thing we discussed was §1-27 Hearings, where it says, "Where OATH conducts a hearing and the Loft Board rules conflict with OATH's procedural rules, OATH's procedural rules or practices will apply, unless otherwise provided by state law." Mr. DeLaney wanted the Loft Board staff to do some research to find out if there are any conflicts between OATH's and the Loft Board's procedural rules. We are in the process of doing that, and we'll update you as soon as we're finished.

Mr. DeLaney: On that point, I want to thank you for taking the time it will require to follow up on my request. I have also spent some time with the OATH rules, and one thing I would point out to my colleagues -- I don't have them in front of me at this particular moment, and I don't want to waste your time while I rummage around for them -- but in addition to its general rules that are in the first several sections of OATH's rules for procedure, they then have separate sections that apply to additional rules for specific kinds of things that OATH does. For example, article 4, section 4, or 3, is specific rules for impounding vehicles. So, it does appear that OATH has recognized, in general, that some of the things they do require specific rules. So, why our procedures and theirs need to be seamless is even less clear to me now than it was before.

Mr. Clarke: Thank you, Mr. DeLaney. As I said, Mr. Argov has undertaken this task. So, our thanks to you, Mr. Argov. I know it's keeping you up late at night.

Mr. DeLaney: It's like the newest member of the Supreme Court has to get up and close the door, right?

Mr. Hylton confirmed that Mr. Argov has agreed to complete the task before Christmas.

Mr. Clarke: The next section in the OATH comments concerns §1-30 Settlements. This is new language OATH is proposing to us, so we'd like you to review the way they worded this particular rule, which concerns the remand issue. We will also see this in two other sections on this worksheet, but this is the first instance. OATH made modifications to the wording about the Loft Board seeking a remand. They

don't want to be told that the Board can just remand any case, so the wording they're proposing for this particular section in our rules is as follows:

"The Loft Board may direct its staff to reopen a matter for further investigation. Or, where the Loft Board determines that the record in the underlying proceeding has not, in whole or in part, been fully developed, the Loft Board may refer the matter back to OATH for development of a complete record."

So, we would like the Board's feedback on this -- whether they approve of this wording or not. The Loft Board staff has reviewed the language, and we don't take any issue with it, but we would like to hear any comments the Board may have.

Ms. Roslund: To be clear, that's replacing the line that reads, "The Loft Board may direct that a particular matter be reopened and remanded for further investigation"?

Mr. Clarke: That's correct.

Ms. Roslund: Thank you.

Mr. Clarke: Are there any comments about the way OATH would like to word this part of the rules?

Mr. DeLaney: How would you summarize the changes in layman's terms?

Mr. Clarke: I would summarize it by saying, first, the Loft Board can't directly tell OATH that they can remand...that they have to remand a case and hear it over. They have to request it from OATH. Second, what OATH is very concerned about is not listening to a case and going through an entire record over again and wasting resources. So, basically, this language appears to be saying to us that if/when they do undertake a review of a case, it would only be to complete the record. There would have to be something that was insufficient in the underlying record. They would be taking the time to go back and try to complete the record, so that the fact-finder can make their decisions based on a complete record. I think that's the essence of what OATH is saying here.

Ms. Lin: And if I may just add something to that, Mr. Clarke. I think OATH is intended to clarify what we, in practice, already do, which is, if we have a legal disagreement with this view, if we disagree with OATH's outcome, we don't remand it back to OATH. And that's what they're trying to prevent us from

doing. It doesn't really make any sense for us to do that, but if the factual record's insufficient, we can and do remand it back to OATH. So, I think that's what OATH is trying to do; to clarify what the existing practice already is.

Mr. Clarke: Yes, and I would also add that, from what I understand from OATH, this is the standard language that they've been using with another agency as well. So, they're just reproducing the language they've been using with other agencies and applying it here for the Loft Board.

Mr. DeLaney: If I understand correctly, whereas the previous language that we discussed from OATH, basically, wouldn't allow any kind of remand, this addresses the fact that they will accept something referred back to them, if it's a question of the record not being fully developed.

Mr. Clarke: Yes. OATH didn't say that we couldn't remand back to them. They're just saying that we can't demand that they take it. We can only refer to them, and basically, they want the ability to make that decision for themselves.

Mr. Hylton: In other words, Mr. Clarke, are they caught up with the fact that we're not a higher court?

Mr. Clarke: Right. So, are there any issues or comments? No. Okay. So, we're done with that. The next is §1-31 Decisions, and regarding the report and recommendation, it reads:

“The report and recommendation shall be based on the administrative record of the case and relevant authority, including but not limited to Loft Board Orders, decisions of courts of competent jurisdictions, statutes, and rules.”

So, we included Loft Board Orders, but after I read the minutes, I realized I made a mistake, and it should be the language the Board requested, which is Loft Board decisions, not Loft Board Orders. So, I want to bring that to your attention. But OATH was fine with adding Loft Board Orders, so I don't think they'll have a problem with switching Orders to decisions, which is what the Board had originally said. But I just wanted to bring that to your attention. It would be adding back in Loft Board decisions.

Ms. Lin: I would ask the Board members to consider sticking with Loft Board Orders. That is the official Order issued by the Loft Board. I think decisions might leave an opening for questions. I think Loft Board Orders is probably a better usage.

Mr. Hylton: I was going to say, I think your Orders are your final decision. So that's the best. That's actually a much more precise word.

Mr. Clarke: Are there any other comments? OATH was fine with adding Loft Board Orders into this definition. Originally, they had taken out Loft Board decisions, but they're fine with adding back in Loft Board Orders. And that's the way that it would read now. Are there any other comments on this?

Mr. DeLaney: I think Orders is just as good as decisions and probably more precise.

Mr. Clarke: So, we can leave that. Good. The next section is also under §1-31 Decisions, for the report and recommendation. Mr. DeLaney wanted to see if there were any differences between the report and recommendation requirements in this section -- section (c) -- and what OATH is currently providing in their report and recommendation. We have not gotten to researching this part yet, to find out if there are any differences between the report and recommendation requirements in this section and what OATH is already doing. But I know Mr. DeLaney was also doing some research.

Mr. Hylton: Is this tied in with what Mr. Argov is doing?

Mr. Clarke: No, this is something different.

Ms. Lin: No, I haven't asked Mr. Argov to do this. We'll work that out. I don't know if that'll be ready for January. We do have Loft Board Orders to focus on as well, so...But it's on the horizon.

Mr. Clarke: On the last page is section (d). At the October meeting, Mr. DeLaney asked whether there are any other sections in our rules that speak about a remand. OATH didn't comment on them originally, but we went back to OATH and asked about the other sections that mentioned remand and if they had any comments on those as well. OATH did come back, and they made changes to §1-31 Decisions section (d). They also took out the word remand and included the language that was used in our Summary cases. Very similar, but it reads:

“Where the Loft Board determines that the record in the underlying proceeding has not in whole or in part been fully developed, the Loft Board may refer the matter back to OATH for development of a complete record. If the Board refers a matter back to OATH, OATH shall issue a recommended decision at the conclusion of the additional proceedings.”

So, the language is very similar to the language they want to use for the Summary cases. This is the language for the Master cases, where reports and recommendations are written by OATH. We just wanted to bring this to your attention and ask if the Board has any comments about OATH’s change in section (d). Again, it's, basically, if we refer a case back to OATH, it would be for OATH to develop the underlying record, so that the fact finder can make a thorough decision on the underlying record.

Mr. Hylton: It looks fine to me. It’s very close to the other section. The additional language is replacing the word remand, right?

Mr. Clarke: Yes, exactly. All right. The last thing on this sheet is §1-32 Reconsideration of Loft Board Orders. Again, this is where OATH caught the word remand again, and they replaced it with, “...refers the matter back to the Adjudicator.” So, they're replacing remand with refers, and we wanted to bring that to your attention. Are there any comments on this?

Mr. DeLaney: They've sanitized by taking out the word remand, but the last word in the sentence is remand.

Mr. Clarke: That's true.

Mr. Hylton: But you cannot use that word. The word will be refer, right?

Mr. Clarke: Yes. Following the referral, probably.

Mr. DeLaney: Well, I would let them figure out what they mean. They're certainly not good proof-readers or copy editors.

Mr. Hylton: We're not going to go back to them on this. If they have an objection when our rules get published, they can....Board members, are you satisfied with just replacing remand with the final agency

determination following referral? Mr. Clarke, why don't we change that word to referral in our rules. But please, do not go back to OATH with this.

Mr. Clarke: Okay

Mr. Hylton: Unless anyone else objects. And I don't think it's anything OATH would object to.

Mr. Clarke: Okay, so I'll go ahead and do that. If there are no other comments, then we're done with this page and can move on.

Mr. Hylton: Before that, Mr. Clarke, can you just clarify. On these two pages, what is still outstanding?

Mr. Clarke: § 1-27(e) and §1-31(c).

Mr. Hylton: And those are research questions, right? Not language; just research?

Mr. Clarke: Correct

Mr. Hylton: Thank you.

Mr. Clarke: The next sheet is one that, I apologize, I didn't have time to print out. But it's the email I sent everybody with respect to the quorum. I hope everyone had time to read it over. It is §1-18 in our rules, and in the email I sent is our current language and the proposed language from the Law Department. If there are any comments or suggestions, we can discuss that now.

Mr. Hylton: You have to put it on the record, Mr. Clarke. If you don't have it, you can just read it.

Mr. Clarke: Sure. These are the comments we received back from the Law Department regarding a quorum:

“Board members, as you recall, a quorum is the majority of the entire Board. When counting the entire Board, the Law Department stated a count is five plus currently serving public members. In other words, the public members are anyone who isn't a commissioner or one of the three specific interest representatives. So that's how we count the entire Board, so that we can determine if there's a quorum. Again, that's five plus any currently serving public members.”

Mr. Hylton: In other words, five speakers are always members of the Board, right? Those are the two ex officio members, and the three specific interest members. That is, the tenant, the owner, and the manufacturing representatives, right? Plus the two ex officio members, myself, the Chair, and the Fire Department Commissioner, represented by Mr. Roche. So those five people must be, in terms of achieving a quorum. Even if they're vacant, they must be included, correct?

Mr. Clarke: Yes, in the count.

Mr. Hylton: ...in the count, when you're establishing a quorum. So, you always have to have five people. So, stop at number five, and then you add any additional public members to the Board to come up with a total, right? And then you divide that by two, and if you have a number that's bigger than the half, then you have a majority, correct?

Mr. Clarke: That is correct. So, those five will always be included in the count when you're counting the entire Board. Then you add any currently serving public members, as Chairperson Hylton accurately said. Are there any comments with respect to that? Does that make it a little more clear for everyone? How to count the entire Board and establish whether or not we have a quorum, so that the Board can take action?

Mr. Hernandez: What's the maximum count? Is it five, maximum, two plus three?

Mr. Hylton: You can't say maximum. Well, there's a maximum, but right now, we're trying to establish what the minimum is for a quorum. That's it. The number five, representing the two ex officios and the three specific interest representatives. That comes to five. So, it doesn't even matter if there is a vacancy among these positions. You must use those numbers in determining a quorum. They must be included. So, we start with simple math. We just start with five, and then we add public members.

Mr. Barowitz: I read this over three times, and it's not any clearer than what we had before. But that's the way the state runs, and that's the way we're going to have to do it.

Mr. Hylton: The Law Department is fine with it, right?

Mr. Clarke: Yes

Mr. Hylton: Okay. Go on, Mr. Clarke.

Mr. DeLaney: Oh, I'm sorry, I thought you were going to make another comment on (a). We devoted five pages of the minutes, or thereabouts, to the question of special interest versus specific interest. The Chairman used the term specific interest, but I see here the Law Department is still using special interest.

Mr. Hylton: My mistake. Whatever it says there.

Ms. Lin: Mr. Clarke was going to get to this. The Law Department did approve the use of specific interest, so we can go ahead and correct that in our rules.

Mr. DeLaney: As I recall, the question came down to, was it in either of the Executive Orders? Because the term special interest is not in the state law.

Mr. Hylton: What is in the state law?

Mr. DeLaney: The state law just says, "individuals representative of." It doesn't use either specific or special.

Ms. Lin: Mr. DeLaney, you are correct. We went back to the Law Department on this. Again, I think Mr. Clarke was going to get into at some point, but we did ask the Law Department, and I believe the conclusion at the last Board meeting was that we were going to ask if we can use specific interest instead. And Law Department said that was perfectly fine. So, we can go ahead and start using specific interest and not special interest going forward.

Mr. DeLaney: So, should we change the underlined paragraph for the new (a) to specific at this point, or no?

Mr. Clarke: Yes, we can change that. Going forward, you shouldn't see special again in any re-draft. It's specific. So, if there are no other questions, I'll go into the next part of the email, which concerns a question Mr. DeLaney had with respect to the vacancies on the Board versus Board members that are absent. And the Law Department said:

“The special Legal Counsel Loft Board rule requires that five statutorily required members always be counted with the public member(s), to be counted unless there is a vacancy (in which case, they are not included in the total.)”

So, for the public members, if there's a vacancy, they are not included in the total. That's what we discussed earlier. So, the Law Department went on to further say:

“Merely being absent is not enough. That is the purpose of the quorum rule -- namely, to determine whether business can be conducted when a member is absent.”

So, they clearly differentiated counting a quorum, in which you take the vacancies into consideration. And basically, the reason we want to determine whether or not we have a quorum is to know if business can be conducted. So, once we determine that there is a quorum and business can be conducted, then we can proceed to vote on cases, and minutes, and things of that nature. That's when absences would come into play. But with respect to finding a quorum, only the vacancies are taken into consideration, and absences are not taken into consideration.

So hopefully, that answered Mr. DeLaney's question. But if any Board members have any questions about that, then we're happy to discuss it further.

Mr. DeLaney: So, what we're going to do, if I understand correctly, is take this new, underlined language from your email and put that in as the new section (b)?

Mr. Clarke: Yes, that is what the....

Ms. Lin: No. Mr. Clarke, wait. Hold on a second. A lot of what's in the email is just for the point of clarifying for the Board members what a quorum is. The Law Department isn't actually suggesting a change to the rules. We just want to ensure that the Board members understood how to calculate a quorum. That was the purpose of that email.

Mr. DeLaney: Okay, but now you've got me confused. In Mr. Clarke's email, it says, “For current proposed language in black, changes in red.” I printed out in black and white, so the red part's lost on me. We have a (b) that isn't underlined, and a (b) that is underlined. And if I recall my reading...

Ms. Lin: I'm sorry, Mr. DeLaney. I misunderstood what you said. I thought you were referring to the language Mr. Clarke was reading before from the Law Department's email. But in your email, he does reproduce the proposed language-change again. So, for anything that comes up after 1-18, he did reproduce the rules in his email.

Mr. DeLaney: Right. The commentary at the top of the email, I understand, is not going to become part of the rule.

Mr. Clarke: Right. The comments at the top would not be part of the rule.

Mr. DeLaney: But I do have one more question. In that top part, "The Law Department responded as follows: The special Legal Counsel Loft Board rule..." I've never seen the term, special Legal Counsel Loft Board rule, before. It seems to refer to something specific, because it's capitalized.

Mr. Clarke: Right. I saw that as well, but it didn't strike a chord with me. I've never seen that before. But I'd be happy to double check and find out if that was just an error, or if that really is something -- special Legal Counsel Loft Board rule.

Mr. DeLaney: It could be like double secret probation.

Mr. Hylton: There goes that special word again.

Mr. Clarke: It should be specific....

Mr. Hylton: I guarantee you, there's no such person or rule. But, Mr. Clarke, maybe they meant something different. Maybe they're saying the legal counsel's direction requires that.

Ms. Lin: That was my interpretation of the email, but we could clarify.

Mr. DeLaney: Thank you. That would be very helpful. Because if there is a special Legal Counsel Loft Board rule, I'd sure like to know about it.

Mr. Hylton: Sounds like a federal position.

Ms. Lin: I think the Law Department was referring to a specific person at the Law Department, who opines on such matters and who gave direction on what it should be. I thought that's what they were

referring to. But I think it's one person's opinion, who happened to be very knowledgeable in this area. But we will double check and see what they meant.

Mr. DeLaney: Thank you.

Mr. Clarke: With that, we can move on to the second Word document: Law Department Comments for the Board Review, with today's date.

Mr. DeLaney: I'm sorry. What about... We discussed (a) and (b); and with regard to (c) and (d), there's no....

Mr. Clarke: Oh, I'm sorry. Continuing the discussion on the quorum.

Mr. DeLaney: Right

Mr. Clarke: Okay. I'm sorry. Are there any other comments with respect to the language that the Law Department suggested for the quorum? Do I need to read that into the record, Chairperson Hylton?

Mr. Hylton: Yes

Mr. Clarke: The current proposed rules and the changes that the Law Department suggested at the bottom of the email...

Mr. Hylton asked **Ms. Lin** if, legally, they were required to read this into the record.

Ms. Lin: I don't think so. We have not been reading every single rule discussed into the record. All this is for the Board members to review, and the public has a chance to review it when it comes time for them to comment. So, I don't think it's necessary. But certainly, the Board members could decide to read it out loud right now, if they want to.

Mr. DeLaney: I was just trying to ascertain what was different. Remember, we only got this at two o'clock yesterday. So, I was just trying to ascertain the difference between the (c) that's in black and the (c) that's red and underlined. And as far as I can tell, the only difference is that they put in a parenthetical, numerical one, and then took out Department of Buildings and Fire Department -- or

made Fire Department just Fire Commissioner. They've just taken out a few words. But I want to make sure I'm not missing anything.

Ms. Lin: I don't believe you are, Mr. DeLaney. First, this rule is the same thing as the last version that we looked at, during the last Board meeting. The only purpose of this email is to clarify the questions the Board members raised at the last meeting, which were about the quorum and specific interest issues. So, nothing's changed since the last time you all looked at it. And if there's a difference between this and what was different, the major changes are in the first two paragraphs, I believe. There's an addition of paragraph (d). I don't believe that was in the original, February draft version of the rules. But that is the only difference.

Ms. Roslund: They also added the word majority before vote.

Mr. DeLaney: Right. And once again, we still have our special interest groups. Hard to get rid of them.

Ms. Lin: That will all be corrected as well.

Mr. Hylton: Thanks for picking it up.

Mr. Clarke: Okay, are there any more comments for this section?

Ms. Torres-Moskovitz: Maybe we should just read that out loud at this point, like the Executive Director is suggesting. Because no one can see it, and we've been talking about it. Should we just read the two (c)s?

Mr. Hylton: Okay. Mr. Clarke...

Mr. Clarke: And did you want me to read the current proposed rules and the changes on the record?

Mr. Hylton: Just read section (c) for Ms. Torres. The new (c).

Mr. Clarke: Okay. So, this will be §1-18 (c), and it will read:

“Each member of the Loft Board has (1) vote. The Commissioner of Buildings and the Fire Commissioner, serving ex officio, may each designate an employee of his or her department to serve on the Board and vote in his or her absence. Representatives of the specific interest groups may, in their

absence, designate substitutes to participate in discussions at the Loft Board meetings, when the Loft Board, by majority vote, requests such participation. Such designated substitutes may participate only to the extent permitted by the Loft Board and shall not have the right to vote.”

Mr. Hylton: Okay. I remember this whole thing quite well from last year. And you said the word majority was added in, right?

Mr. Clarke: Yes

Mr. Hylton: It makes a lot of sense, right? If you're going to do a vote and permit something, it has to be a majority vote. Okay. Thank you, Mr. Clarke. Move on.

Mr. Clarke: Okay, so now we have the other document -- the Law Department’s comments, again. We'll start off with §1-12 Definitions. The issue here is that we have two global definitions: one for Family, and one for Family Member. The Law Department is concerned that the definitions of Family and Family Member are inconsistent, and they're not clear. When the Loft Board staff reviewed it, we found that the definition for Family comes from the MDL and relates to coverage, and the definition for Family Member comes from rent stabilization and relates to protected occupancy. Two totally different issues.

So, we agree that this increases the difficulty in finding consistent language for the two terms. Family Member only appears in our rules in Succession Rights and under Abandonment. And under the Abandonment rule, it says, “...as long as no Family Member is denied its succession rights.” So that's where Family Member comes in under the Succession rule. So, we think we can remove the global definition of Family Member and leave the definition for Family Member under the Succession Rights section.

We wanted to bring that to your attention to see if the Board would be fine with this. Are there any comments? Is everyone okay with us removing Family Member from the global definition?

Mr. DeLaney: And presumably, when you move the Family Member definition to the Succession Rights portion of section 2, you would add language like that used in this section: Family Member means...

Mr. Clarke: Right, it's already there. So, if I misspoke, then what we are doing is just removing it from the global definition and leaving it as-is under the Succession Rights section.

Mr. DeLaney: Got it.

Mr. Clarke: So, if everyone is fine with that, then we can move on to issue number 2, also in the Definition section. It's the definition of IMD. I'll read what our proposed rule says: "IMD means an Interim Multiple Dwelling as defined in MDL §281 and §2-08 of these rules."

The Law Department does not think we need §2-08 of these rules. The reason being, while IMD is mentioned many times in our rules, it is never actually defined in our rules. When our rules define IMD, we always refer back to the MDL, if that makes sense. So, the Law Department is saying, your rules actually don't even define IMD. So just take out, "...as defined in §2-08 of these rules."

So, the Loft Board staff thinks that it's fine to take out, "...in §2-08 of these rules."

Ms. Torres-Moskovitz: I think that makes sense. It sounds right.

Mr. Clarke: Are there any other comments?

Mr. DeLaney: So that would mean that there would be a period after, "... as defined in MDL §281"?

Mr. Clarke: Yes. If there are no other comments, we can move to item number 3, which is just an update on a comment the Law Department made and what the Loft Board staff is doing. The Law Department commented on the definition for Special Permit. They wanted to know, specifically, what other agencies have jurisdiction to issue special permits.

Right now, we know that City Planning can issue special permits. But we're researching what other agencies, specifically, can issue special permits. We believe the Law Department just wants to delete that language. If there are no other agencies that can issue special permits, we think it's unnecessary to have, "...any other entity having jurisdiction."

Mr. Hylton: City Planning, Landmarks. Landmarks is not the same as City Planning, is it? As far as I know, Landmarks is a separate agency. Mr. Roche, maybe you can back me up. I mean, Landmarks does give special permits, doesn't it?

Mr. Roche: I'm thinking.

Mr. Hylton: And maybe the Fire Department gives special permits for certain things, but I'm not sure. As far as this goes, what's wrong with leaving it there? I don't feel comfortable taking it out. What if tomorrow it changes?

Mr. Clarke: That's a good point. If it changes in the future, then...

Mr. Hylton: Right. I think that's a very picky comment. Board members, I would just leave it there.

Ms. Torres-Moskovitz agreed it was better to leave it in. Reviewing various city agencies, she felt that several probably issue some kind of special permit or special permission.

Mr. Hylton: I understand their need to conserve words, but I think it's sticky to be saying, "...any other entity having jurisdiction." Tomorrow there could be another agency that comes up and has jurisdiction, so...Okay, Mr. Clarke, we're going to leave that.

(The Board then took a five-minute break to deal with some technical issues)

Mr. Hylton: Mr. Clarke, could you please continue your discussion?

Mr. Clarke: We're now on issue number 4, which deals with the Narrative Statement conference. For the Board members who are not familiar with the Narrative Statement conferences, that is when one of the Loft Board staff members holds a conference with representatives from both the owner and the tenants. We sit down in a room together and discuss the owner's legalization plan; how they're going to go about legalizing the building and the individual IMD spaces. In § 1-26, Communications on Pending Applications, section (a), the last sentence is:

"Loft Board staff, conducting Narrative Statement conferences, may communicate on substantive matters with one party without notice and opportunity for all parties to participate in order to facilitate reaching consensus on a legalization plan."

The Law Department's comment was that this type of communication is not permissible. So, the Loft Board staff said that, in our opinion, Narrative Statement conferences are not pending applications. So, when we have these conferences, we do have the freedom to speak to one party without notifying the other in an effort to bring the two parties to agreement. We think the Law Department might be confused because this language is under Pending Applications.

So, our suggestion is to make a separate paragraph in the section after (c), and make our own (d), where we'll add this language, so that it's separate and apart from the first part of section (a). Basically, separate it. Because we do want to allow staff, or whoever's conducting the Narrative Statement conference, to have the freedom to speak to one party without notifying the other party; because we don't feel this is a substantive legal issue. We're just discussing the legalization plan.

So, our two suggestions are one, to make a separate (d), add that to the bottom, and put in the language, "...the Loft Board staff conducting a Narrative Statement conference may communicate, and..." or, alternatively, we can take out the language for now and add it in when we revise Chapter 2.

So, to clarify that the Loft Board staff member conducting the conference is not doing something impermissible, we can either take out that sentence, separate it, and put it at the end of the section; or, we can just remove that language altogether.

I know that was a little bit confusing. So, if anybody has questions, I'll try to further clarify if required.

Ms. Torres-Moskovitz: What does the current version of the law say? Does it make any mention of this?

Mr. Clarke: I think we just added that. Let me just verify this is added language.

Mr. Hylton: I don't understand why we would have added that language here in the first place. I mean, it's nice. But why would we have added it here?

Mr. Clarke: Right. I think that's one of the reasons why the Law Department is confused. Because it's literally under...

Mr. Hylton: ...Pending Applications.

Mr. Clarke: I'm not sure where else we can put that. We thought about putting it in Chapter 2, where we talk about the Narrative Statement conferences. And that's why option two is, take it out now, and add it when we're doing revisions to Chapter 2.

Mr. Hylton asked if any of the Board members remembered the discussion of this; why it was decided to add this here.

Mr. DeLaney: I can tell you that a number of years ago, before Ms. Balsam became the Executive Director, there was one group of tenants in particular, who complained to me vigorously that the Executive Director had been speaking with the tenants' landlord in the context of a Narrative Statement conference and felt that shouldn't be permitted. And as we know, there are a significant number of changes that we're proposing in Chapter 2 to the Narrative Statement process. And there have been comments and requests from the tenant community that the Board go further than what's currently proposed with regard to creating a summary of the Narrative Statement conference, because what happens now is sometimes the parties go away with different understandings of what was accomplished. Neither side is allowed to record the proceedings.

So, there have been instances where the fact that there are ex parte conversations has led at least some tenants in certain groups to question the fairness of the Narrative Statement process. I understand the arguments for it, but there are some arguments against it as well.

And I don't think creating a new section under Pending Applications would be very helpful, because the Law Department's still going to think of it as an application.

Mr. Hylton: Thank you. So, this language is actually just making it formal, right? The ability for us to do that. So, correct me if I'm wrong, Director Lin, but we do sometimes conduct conferences with one side or the other, separately, just to get things moving, don't we?

Ms. Lin: On very, very rare occasions. But we certainly will have conversations with one side about a certain issue when they reach out to let you know. It's not like we hang up the phone and say, we're not going to talk to you. But we very rarely.... Maybe Mr. Clarke, who handles most of these conferences, can speak to that. But we rarely have a formal conference and legalization plan with one side only.

Mostly because it's not productive. But we would like to leave the option to do so open, as there are some instances where it's helpful to have a sit down with just one side and not the other. But it happens very, very rarely.

Mr. Hylton: All right. So, I suppose Ms. Balsam may have felt that we needed to formalize that in the rules by putting the language in here. Otherwise, we could just not have this language, right?

Ms. Torres-Moskovitz: So, we agree with the Law Department, it should not be here. And then putting it in Chapter 2 or elsewhere...It was good to hear what Mr. DeLaney had to say about that. I'm just concerned that codifying it here encourages it to happen more. You're saying it happens rarely, but I just want to think about that some more. I wouldn't want a party to start using that, pushing that aspect, because it's written in a sentence now. I've been through the Narrative Statement process, and I wouldn't want to see it become more about one party getting to talk to someone than another.

Ms. Lin: Sorry, I just want to add that I think the intent behind this was to foreclose legal avenues for someone to challenge...on occasions when this does happen. If a tenant or an owner wants to discuss a matter with the Loft Board staff for whatever reason, we don't want the other side to come back later and undo the entire process by saying, you shouldn't have done that. Because this isn't an ex parte communication. And it's not an application. There's nothing to stop us from doing such a thing. And I would say that the parties can push however they want to, but at the end of the day, it's going to come down to the discretion of the Loft Board staff to do what we feel is fair. And in my experience, at least so far, I feel like the staff has been very fair to both sides. So, I'm not particularly concerned about giving one side more of a voice than the other.

Mr. Hylton: Okay, is there a section of the rules dedicated to the Narrative Statement?

Ms. Lin: Yes, that's § 2-01. The issue here is that this current revision to § 2-01 is not quite up to par. The entire Chapter 2 requires significant revision, and it would be quite challenging to find a place to insert it into Chapter 2.

Mr. Hylton: Okay. Does anyone else have any comments before I say something? So, I'm just thinking we should take this out.

Mr. Clarke: Yeah, it's definitely a strange place to put this. And we agree that it could potentially cause confusion.

Mr. Barowitz: I agree. We should remove it. It just makes things more complicated.

Mr. Hylton: Anyone else?

Mr. DeLaney: For whatever reason, the highlight includes the last word of the prior sentence, participate. But I presume what we're going to strike begins, "...Loft Board staff conducting narrative statement conferences."

Mr. Hylton: You're right, Mr. DeLaney. The highlight that they're talking about starts with Loft Board and ends with plan. Okay, Board members, do we have a consensus? So, we move on? For now, we'll remove this. Mr. Clarke, could you just hold on to that language for Chapter 2?

Mr. Clarke: Okay. We'll figure out where that goes when we get to Chapter 2 and the Narrative Statement process. The next item is number 5 and is under 1-27 Hearings. This was just a question from the Law Department. They wanted to know what adjudicative duties the Loft Board staff has, as attorneys. And we clarified with them what some of the other adjudicative duties are that we have. As attorneys, we do Proposed Orders and legal issues, and we are on that legal side. But we also conduct Narrative Statement conferences, issue certifications, Letters of No Objections, and lift holds. So, we just clarified that with them. And they suggested a sentence we could put there, which is:

"Where a hearing is conducted by a Loft Board staff member, such staff member will not be assigned to any other duties relating to such hearing."

And then, they went on to say,

"But it sounds like the rule is intended more for internal hearing management, rather than for the benefit of the hearing participants. So precise phrasing probably isn't necessary."

So that was their response, when we explained our adjudicative duties. That precise language there is not necessary, but they suggested a sentence we could add. I'll read it one more time:

“Where a hearing is conducted by a Loft Board staff member, such staff member will not be assigned to any other duties relating to such hearing.”

Mr. Hylton: That's confusing to me. Anybody else? “When a hearing is assigned to a to a Loft Board staff member, such staff member will not be assigned to any other duties related to such hearing”? I don't understand that. So, am I alone?

Ms. Torres-Moskovitz: The way I interpret it is that they're afraid that someone representing one individual could then turn around and also.....like doing double duty. Representing them as their lawyer, and then...

Mr. Hylton: No, but this is the Loft Board. A Loft Board staff member.

Ms. Torres-Moskovitz: In their second sentence, it seems like they're correcting themselves. So, to me, it's okay to leave it as-is.

Mr. Hylton: That's what I'm thinking.

Mr. Clarke: I think so as well.

Ms. Rajan: How come it switches from adjudicative to administrative?

Mr. Clarke: Ms. Rajan, are you referring to the language that we already have or the sentence that the Law Department suggested?

Ms. Rajan: That's where it switches, right? So, this original one is the one that says adjudicative?

Mr. Clarke: Adjudicative duties. Yes.

Ms. Rajan: Okay, so then the rest that's underneath it, where administrative... Just ignore that? That was a mistake. What they're really trying to say is that sentence that you read out?

Mr. Clarke: Yes, right.

Ms. Rajan: So, I agree with the Chairperson. That new sentence doesn't make a lot of sense.

Mr. Hylton: Ms. Rajan, were you suggesting changing the word adjudicative to administrative?

Ms. Rajan: No, not if that's what the idea was. If the idea is to leave it as adjudicative. I just got confused by the rest of what's here. But if that's irrelevant, I can ignore it.

Mr. Hylton: Right. I would do what the Law Department says. Leave it alone.

Ms. Rajan: Right

Mr. Hylton: We're certainly not using the language they proposed. That was more confusing.

Ms. Rajan: Right

Mr. Clarke: Okay, so turning to item number 6...

Mr. DeLaney: Wait a minute. Before we go on, what is it we're trying to accomplish here? Not to make the Law Department happy. It's my impression that what we're trying to say is, if a Loft Board staff member is conducting a hearing -- which currently isn't happening, for the most part, correct?

Mr. Hylton: At all

Mr. Clarke: Yes

Mr. DeLaney: Right. But if there comes a time in the future, when a Loft Board staff member is conducting a hearing, we wouldn't want that Loft Board staff member involved in any other aspect of that building's activities.

Mr. Clarke: That's correct.

Mr. DeLaney: So, if I were having a coverage hearing, I couldn't also preside over the Narrative Statement conference.

Mr. Clarke: That's correct.

Mr. DeLaney: But if I were having a coverage hearing, and I needed to mail out notification of an adjournment, I could do that.

Mr. Clarke: Yes, that would relate to all aspects of the adjudicative duties that that staff member would be responsible for. So yes.

Mr. DeLaney: Which would include some duties that one would deem administrative?

Mr. Hylton: Or adjudicative

Mr. Clarke: I see what Mr. DeLaney's saying. Mailing out notices, one might argue, is an administrative, as opposed to adjudicative, duty.

Mr. Hylton: But where's the word administrative here?

Mr. Clarke: Administrative comes at the bottom, when I was discussing what the Loft Board was trying to explain to the Law Department. We're trying to explain to the Law Department that, as lawyers, we also have administrative duties. So, the Law Department was confused by that sentence, where it says, our rules currently state, "Where a hearing is conducted by a Loft Board staff member, such staff member will be assigned solely to adjudicative duties." So, the Law Department said, as opposed to what? And we explained to them that we have more than just adjudicative duties. We have administrative duties as well.

Mr. Hylton: Okay. I understand. But with all due respect, remember, we're not doing this right now. It doesn't seem to be consequential to anything. And it seems okay, that if you're mailing out envelopes to adjourn a hearing, it is related to the adjudicative duties. I don't want to spend time on this right now. We'll leave it alone. Unless anybody else feels strongly, we need to move on.

Ms. Torres-Moskovitz: The only thing I would say, now that Mr. DeLaney brought up the issue -- I know, in the past, there were hearings conducted by the Loft Board staff. So, if that were to occur again in the future, are there other rules pertaining to when that existed? Or is this the one spot where this is mentioned? Do you know, Mr. DeLaney?

Mr. DeLaney: I'd have to look. You know, when we signed on for OATH, we went through and added "or OATH" through all these I'd have to look at all of the sections of §1-27 and the other adjacent sections.

Ms. Torres-Moskovitz: So, if that were to occur in the next administration or something, we'd have to change a lot of the rules.

Mr. Hylton: I think you're right.

Ms. Lin: Those rules already exists. All the OATH rules that we were reviewing earlier today, those were all intended to apply to a scenario where there is a hearing officer again at the Loft Board.

Ms. Torres-Moskovitz: Okay. Thank you.

Mr. Hylton: But trust me, it won't be happening anytime soon.

Mr. Clarke: Are there any other comments? Okay. So, we'll move on to item number 6. Here, the Law Department just wanted to make sure this language was correct.

Mr. Hylton: So, Mr. Clarke, for the purpose of those who are listening, for the public, they don't have this document, could you just talk about what section 6 is.

Mr. Clarke: Section 13. It's §2-05(d)(13), which is about posting the notices that a building is an IMD. In a previous Board meeting, we had discussed this and added language in our rules about where this notice should be placed and how the owner should make sure that IMD tenants and the occupants of the building know that it is an IMD building.

So, this new language, here, in pink, is what Ms. Balsam proposed to satisfy the Board members. And the second part is the current language. So, what the Law Department wanted to do was make sure that Ms. Balsam's language adequately represents what the Loft Board wanted. Staff reviewed it, and we feel that it does. We're fine with the language, but we want to confirm this with the Board. Are there any comments?

Mr. DeLaney: One thing I notice is -- and refresh my memory -- We define Day in the definitions correct? As being a Calendar Day?

Mr. Clarke: We have a Business Day in our definitions. "A Business Day means 9am to 4pm, on Monday through Friday, except for Federal, New York State, or New York City holidays."

Mr. DeLaney: Well, that's helpful. No, because as I recall, we went to great lengths in the rules, themselves, to take out Business Day and Calendar Day, because we agreed on what a day was.

Mr. Clarke: I don't remember those discussions. I don't know if the previous Executive Director ever put that into the definition. But I don't see it.

Mr. DeLaney: Because here we have Business Day capitalized, relating to the term for the business day. I think Business Day in the definitions on page 6 of the draft that went to the Law Department means 9 to 4 o'clock. It's really talking about the business day of the Loft Board.

Mr. Hylton: For a Business Day and Business Hours, right? "Nine to six Monday to Friday, except Federal holidays, and Business Hours." So, it seems that Business Day means a business day, which is Monday to Friday, as defined here. But Business Hours is referring to the New York City Loft Board business hours. A little sloppy, I would say, right there.

Mr. DeLaney: Yeah. And here we....

Mr. Hylton: Maybe not, Mr. DeLaney, one second. I take that back. I think what they're saying here is that the business days... Oh, no. Go ahead. I'm wrong.

Mr. DeLaney: As I recall, we made a conscious -- and Mr. Barowitz, I would hope you'd remember this. In the rules, as they exist now, there are places where it says Calendar Days, places where it says Business Days, and places where it just says day. We all agreed, I think, that when we say day, it means Calendar Day. And I don't know that many places where we call out Business Days.

Mr. Barowitz: Yeah, that was my understanding.

Mr. DeLaney: And I certainly don't understand... Since we define 9 to 4, Monday through Friday, as Business Hours, that makes perfect sense to me. So, you've got a deposit, and it has to be received by the Loft Board within its regular business hours. But if business day is a way of counting days, then why we have it defined as 9 to 4pm makes no sense to me.

Mr. Hylton: So, this is all to do with the time we give people -- owners -- to post certain notices, right? And after an Order. So, can it just be days here? Do we need to define days?

Mr. DeLaney: Maybe we're trying to give him a break or give him a signal. What if we just said seven days?

Mr. Hylton: And you're saying days is not defined, Mr. Clarke? I don't see it either.

Mr. Clarke: Right

Mr. Hylton: And you probably don't need to define it, if it's just days, right? Business days and business hours makes a big difference in terms of defining it. But yes, I will go along with that, Mr. DeLaney. Just make it seven days; so that there is no issue about business or taking into account holidays, because most of the time, unless you happen to be lucky, or unlucky, some weeks may have a holiday in addition to the weekends, right? So, let's just make it seven days.

Ms. Lin: I will say that in other places in the rules, we do specify Calendar Days and Business Days. So, if we leave this portion silent, it could create an ambiguity as to whether we meant business days or calendar days. Someone could argue they get seven business days when they see days. If we want to limit the ambiguity, I would say that we put down seven Calendar Days, as we do in other sections.

Mr. DeLaney: Are you sure we do that in other sections, too?

Ms. Lin: Yes. I'm seeing it....Let's see, under 1-29, we say Calendar Days for adjournments. 1-32, I see Calendar Days throughout our rules. We also refer to Calendar Days when we define months.

Mr. DeLaney: I thought our goal was to get away from Business Days, and my recollection was we just used days. But if we're using Calendar Days, that's fine, too. We just should try to be as consistent as possible.

Mr. Hylton: In this particular instance, I think it was meant to be Calendar Days, right?

Mr. Clarke: I think that would make sense.

Ms. Lin: Five business days. But if we change it to seven, I think that would pretty much even out to seven calendar days. Notwithstanding holidays.

Mr. Hylton: Okay, that sounds simple enough, and I appreciate that, Mr. DeLaney. Seven Calendar Days, Mr. Clarke. Could we just make a note of that?

Mr. Clarke: Sure. Are there any more comments on this issue? If not, then we have issue number 7 under 2-07, Sale of Improvements. Here, units are being defined, and the Law Department thinks the term unit, as defined here, is inconsistent with the global definition. Unit is not defined in our global definition. But we do have a definition for Residential Units. And that's very specific. As opposed to unit.

So, the Loft Board staff said, we only define Residential Unit in our global definitions. We think adding a global definition for unit will be confusing, because there are other places we use the word unit. So, we'd have to be very careful throughout our entire rules wherever we use unit, if we're creating a global definition for unit. We think we should leave this section as is or delete this part as unnecessary.

The reason we feel this might be unnecessary is that further along in 2-07, we define unit for purposes of sales of improvements. A unit that was formerly registered as an IMD is still included as a unit, and we wanted to make that very clear in this section -- that you can have sales of improvements for units that were formerly registered as IMDs but have subsequently been legalized and removed from the Loft Board's jurisdiction. Former IMDs, removed from our jurisdiction, can still be subject to a sale of improvements. So, we think that's why they wanted to include that, specifically, in our rule here. But we do mention it later on, in that same rule, so we think it might be duplicative. Further on down in the rule, in §2-07(b), for the right to sell, it says:

“The residential occupants of an IMD unit, which is qualified for protection under Article 7-C, may sell the improvements of the unit to the owner or to a prospective tenant, either before or after such unit has been legalized and registered with DHCR, subject to the procedures established in these rules.”

So, we think we can either take out the definition of unit here, or just leave it as-is. That might have been a little confusing, but if anybody has any questions, I'll try my best to clarify it.

Mr. Barowitz: I think I suggested to you that we should insert either residential or dwelling before unit. Once again, I'm not a lawyer, but when you look up the definition, it has nothing to do with living space. So, I would just include either residential or dwelling prior to unit, and let it go with that.

Mr. Clarke: Mr. Barowitz, are you saying for this particular section, put residential or dwelling in front of unit? Or in the global definition? We have, in the global definition, Residential Unit already defined.

Mr. Barowitz: I know that. That's right. But then when you just get to unit with this particular area here, it gets a little confusing.

Mr. Hylton: Mr. Clarke, does the global definition of Residential Unit conflict with this definition?

Mr. DeLaney: It does to some degree, because the definition is just, "Residential Unit means any space used for residential purposes within an IMD building." So, for example, in my building, which had three residential units that were covered as part of the Interim Multiple Dwelling, the landlord later created a fourth residential unit, that has never been covered by the Loft Law. But if you said Residential Units can sell fixtures, there'd be no way to differentiate that.

Mr. Hylton: Okay, lawyers, do you have any suggestion?

Ms. Lin: I think we should ask the Law Department to let us keep this section as it is. I would prefer to make as few changes to Section 2 as possible. As far as I can tell, what we've done to Section 2 is change some capitalization and to incorporate the 2019 change in the law. And that's the way I think we should push Law Department for now, and just explain to them, yes, we recognize there are some aspects of Section 2 that need work, and we will get to that as soon as we pass Section 1. I'm hoping that will be sufficient. If we get a lot of pushback, and they say, no, you must take it out, then we should just take it out. But also, there are two alternatives. Option A, and if that doesn't work, we have a backup option. Just take it out altogether.

Mr. Hylton: So, Ms. Lin, the Law Department is only going to opine on what we give them, right? If we decide not to do it; not to change it; leave it as-is; Law will have no reason to comment, will they?

Ms. Lin: I suppose that's true, if we don't change anything in 2-07. Because I believe this only went to Law Department because we changed some capitalizations to fit within the global definition. I don't believe there are any substantive changes to 2-07.

Mr. Hylton: Right. And we can fix those later, right? When we get to Chapter 2?

Ms. Lin: Possibly, although then you would have just one section that doesn't refer back to the global definitions, which might be a little confusing. Because throughout Chapter 2, we did.

Mr. Hylton: It goes back to global definitions; it just doesn't capitalize the first letters of residential unit, right? It still has the words residential unit is an IMD in an IMD building. It seems that we're just fixing this because we have global definitions for these now. But if we left it alone, it still reads that way.

Ms. Lin: Yes, it still reads. It would just be in lowercase. It doesn't go back to the global definitions. It would be, I guess, technically an undefined residential unit.

Mr. Hylton: But does it confuse? Does it add any confusion if it doesn't go back to the global definitions?

Ms. Lin: I don't think so. But I suppose someone who's being very pedantic and reading through these rules very carefully and who wants to nitpick can say look, you guys capitalized Residential Unit in 2-06, but not 2-07. This must mean something different. So yes, you could definitely make a legal argument. I'd have to think about it more to see whether it would be a successful legal argument, but I think they can certainly try to raise some arguments about that.

Mr. Hylton: So, Mr. Clarke, when the Law Department said, I don't see the point of this. It also conflicts with the stated definition. What's the conflict?

Ms. Lin: I think the conflict here is that in the global definition of Residential Unit, there's the implication that it's tied to a current IMD space. In the global definition, it says, "Any space used for residential purposes within an IMD building." And then here, in this section, we go on to define only unit, specifically, and that it encompasses units which have already been removed. It talks about formerly registered IMD units. And that creates a bit of tension between these two definitions.

Mr. Hylton: And your suggestion?

Ms. Lin: Go back to the Law Department and ask them to please let us keep it. We know it's confusing, but we will fix it in the next round. We promise.

Mr. Hylton: All right. When you say keep it -- meaning, don't even include this in the rules?

Ms. Lin: I mean just leave it as-is. Because I don't understand the point of this. And we'll just go back and explain, this is what's been written in our Loft Board rules. We know there might be some tension between this and the global definition. But it's existed this way, and we're hoping to just keep it as it is. And fix it in the next round.

Mr. Hylton: Okay, let's try that.

Ms. Torres-Moskovitz: I was just wondering if we could fix it now by just highlighting residential unit; calling it formerly registered or a former residential unit; and underline residential unit in part 2, so that if they're related to each other -- one's a former one and one's an IMD residential unit -- and then ...it doesn't seem that confusing to me, if you do it that way; if that makes sense to you. Did that make sense?

Ms. Lin: I think the definition of unit will still conflict with what's in the global definition. It seems like the implication set by the global definition is that a Residential Unit is a current IMD unit. But here we go on to say a unit means something else.

Mr. Clarke: Right. So, embedded in the Residential Unit global definition is that it's current. So, if we included that in (ii), it would be saying former and current at the same time. Does that make sense?

Ms. Torres-Moskovitz: Yes, but can that be okay? It doesn't seem that off. I was just wondering if the unit at the top of three... If we wrote Residential Unit, and then (i) says Residential Unit, and (ii), or whatever, says former Residential Unit... It's clear to me. I never understood that, but I'm sure it's very rare. The (ii) is probably a very rare situation, but it's good that it's included here. I just don't think it's worth redefining Residential Unit in the global definitions. Nor is it worth taking this out completely, because it's useful information. We could do it with what you were saying -- just deal with it later -- but perhaps we could tackle it right now.

Mr. Clarke: So, you're saying that (ii) would read, "For purposes of sales of improvements governed by this section only, formerly registered unit as an IMD unit"?

Ms. Torres-Moskovitz: Yes. I think what I'm suggesting is, maybe if we have Residential Unit underlined in both (i) and (ii), that you could make a clear connection that, okay, it's a residential unit, and it's former. And that's the only difference. That's what we're saying is the only difference.

Ms. Lin: I think the Law Department's objection to this is the fact that we try to define unit at all in a way that they feel is contrary to how we define Residential Unit in the global definition. They seem to feel that if we define the word unit to encompass a former IMD unit, then it's problematic that we have in the global definitions the definition of Residential Unit as only current units.

Ms. Torres-Moskovitz: Yes, I see that. Is there any other case where a former residential unit has any other rights besides sale of improvements?

Ms. Lin: I would have to look into it more. Nothing comes to mind. Mr. Clarke?

Mr. Clarke: Nothing comes to mind. I think this is the only time that comes into play. And it does happen sometimes. We have had sales of improvements come in after a building was removed from our jurisdiction.

Ms. Lin: Maybe we could try adding the word qualifying -- qualifying unit -- to make it a different definition? Maybe that would work.

Ms. Torres-Moskovitz: Qualifying residential, though, right? Because sometimes residential units flip back to being commercial units within a residential IMD building, right?

Mr. Clarke: If you put qualified there, then (i) would say, a Residential Unit. It would define it as a Residential Unit, as opposed to a commercial unit.

Ms. Torres-Moskovitz: Okay, and you'd have to then put the qualified unit in the global definitions?

Mr. Clarke: Probably, yes.

Ms. Lin: I'm not sure if we'd have to. I guess it depends. We might have some flexibility there. This really only applies to this one section.

Ms. Torres-Moskovitz: But it's not a big deal to add one more definition to the global definitions, is it?

Ms. Lin: I'd have to check the rules again, but the only potential complication I can think of is if we use qualifying unit in other sections. I would have to check the rules again. I'm not sure if those specific words pop up anywhere else. I think if we try to limit it to, a qualifying unit under this section is defined as ... 3(i), and 3(2)...3(ii), that might work.

Ms. Torres-Moskovitz: Yeah, I think so. I think we're almost there. I just want to complete the task. But I see what you're saying. Now you have to check if qualifying unit is cross-referenced.

Mr. Clarke: Right

Ms. Torres-Moskovitz: If you do that, that would be great. I think we can almost get this one done. I'm just trying to check things off the list, like you are.

Ms. Lin: Right. So, we can certainly do some more research into this item. We can check the other sections of the rules to see whether we use qualifying unit anywhere else. And we can see if adding qualifying unit here would change this section, specifically, in some way. So, we can table this and bring it back to the Board at a future meeting, after we do some research into it, if the Board is amenable to that.

Ms. Torres-Moskovitz: Yes, sounds good to me.

Mr. DeLaney: Anything to kick the can down the road.

Mr. Hylton: Not what we want to do here, but I guess we have to sometimes. Okay, so let's move on Mr. Clarke.

Mr. Clarke: Item number 8. This is language that relates to MDL §282-8. We're removing this language because the law changed and makes this language moot. So, we just want to bring that to the Board's attention. Pretty straightforward, but if there are any questions, I'm happy to answer them. If there are no questions, we have one more item...

Mr. DeLaney: Can you just give me a minute while I look at page 127?

Mr. Clarke: Sure

Mr. DeLaney: Right. Doesn't seem to be needed.

Mr. Clarke: Okay, so as there are no other questions, we'll get to the last item, which is under §2-08 Coverage.

There was some deletion here, under section (d), and we felt that the deletion was correct, because it was put back in after section (f). And I'll just leave it open, if anybody has any comments.

Ms. Torres-Moskovitz: I had a question, if you don't mind, just because you're more in the details here. What's the value of moving it to after (f)?

Mr. Clarke: Just for clarity

Ms. Torres-Moskovitz: Clarity. These are all Certificate of Occupancy issues it looks like. I was trying to remember what the point was. The larger point of why they're all just...

Mr. Clarke: So, this particular rule relates to the fact that some buildings come into our jurisdiction with a Certificate of Occupancy. So, this just speaks to them -- as to what buildings would be exempt from coverage, and for which buildings there would be no basis for exemption. With that, if there are no additional comments, Chairperson Hylton, we are finished with the discussions for today. That was what I had prepared, and I'd like to thank the Board members.

Mr. Barowitz: You did a great job. Thank you very much.

Mr. Hylton: Yes, absolutely. Thank you so much, Mr. Clarke. You got the timing down right. It's like you could estimate how long each Board member would speak. And you got it done at 4:30...very nicely done. I am going to ask, does anyone have any other questions or anything else they want to ask, before I close the meeting?

Mr. DeLaney: I have one observation and one question. The observation being that I will, in the next couple of weeks, provide you with the language I propose for a resolution regarding the certification issue that we've discussed and agreed to put on the agenda for January. And the question I have is, can you help the Board members get a sense of where we are? With how we're going to get through the rules? It seems that things are coming back from the Law Department in dribs and drabs. Do we have a

sense whether we've gotten ninety percent of their comments, or only sixty percent of their comments? Do we see a roadmap for wrapping things up with those? I know, you've got a few things to research...

Ms. Lin: I will speak to that as best as I can. So, we don't really have anything outstanding at the Law Department per se. The comments we got back from the Law Department were in response to follow-ups that we initiated, based on the Board members' comments to us. The Law Department was done with their review. And that is still the state we are in today. I will say, in the past, I found a couple of emails. This is an ongoing effort; not just for us, but city-wide. When you do rulemaking, an issue might come up city-wide that they feel is relevant to us, and they'll reach out and let us know. But short of any such developments, there's nothing outstanding from the Law Department at the moment.

I don't believe we need to go back to OATH on anything that we've discussed here today. What is left on the OATH portion is for the Board members to approve the language, which I recognize needs some research from staff to better inform the Board members. That's where we are with that portion.

Next is for the staff to research those two OATH items for the Board, and then we can also do line-by-line changes of the rules. So, as I think I previously mentioned, there were some language changes to the rules; comments that are, basically, changes from Operations. And then Operations sent their draft to Law Department. So, the draft we got back already incorporates Operations' comments.

So, in order for the Board to see the full picture of everything that's been changed since you all last looked at it in February, when you sent it out review, we have to merge these documents together and look at it to see what's been changed. And this next portion is very dry, but there won't be any issues for debate. It's just language changes.

Mr. DeLaney: So, I know that we've now discussed all the comments. We went from having a document with all of the Law Department's comments to kind of dealing with excerpts. And I don't have a clear sense of whether the excerpts have covered all the comments. But is that, indeed, the case?

Ms. Lin: I believe it is. I'll have to ask Mr. Clarke. He prepared the comment sections. But I believe we pulled all the comments Law Department made that we thought would engender discussion with the Board, so we could tackle the big-ticket items first, before we move on to the smaller things. Mr. Clarke,

can you remind me whether we have any outstanding comments from the Law Department that we have to discuss?

Mr. Clarke: We spoke about all the outstanding comments from the Law Department, and as Acting Director Lin stated, the remainder of the comments from the Law Department are smaller issues. We basically pulled apart the bigger issues that we felt required some discussion and the Board members' attention. Now, we'll be going over the smaller issues.

Mr. DeLaney: And will those smaller issues come to us for review?

Mr. Clarke: Yes

Mr. DeLaney: So, there are more things we need to discuss, although what we went through today are things that you would deem bigger-ticket issues?

Mr. Clarke: Correct

Mr. Hylton: So, Ms. Lin, do you think February is a good estimate of when we should be able to give the Board members a final, complete version of whatever we have? So, we can make it formal?

Ms. Lin: I think that would have to depend on the January meeting and how far we're able to get on the OATH portion. Because there are still some portions for which we do not yet have the Board's approval. If the Board agrees, we can certainly put together a new draft, but those are the things that are outstanding; things that require the Board to give us a yes or no. And we'll have research...

Mr. Hylton: March, then?

Ms. Lin: Yes, depending on how the Board discussions go.

Mr. Hylton: Okay, you hear that Board members? That's really good news in terms of how far we've come. And it seems like we're seeing some light at the end of the tunnel in terms of rulemaking, of what we've been trying to do for the past, I think it's what, three years now?

Mr. DeLaney: At least

Mr. Hylton: Okay, any other observations?

Ms. Torres-Moskovitz: You had mentioned previously that the Narrative Statement in...was it Chapter 2? You were saying that there were some issues there. Are we reviewing that on a certain calendar day?

Ms. Lin: No. So the entire Chapter 2 hasn't really been changed. There have been revisions to it that are supposed to be minor, just in terms of capitalization, so we can reference the global definitions, and to update and incorporate the 2019 law. There needs to be an overhaul of all of Chapter 2, but that's not going to come until we finish this round of rulemaking. And then we'll start back up.

Ms. Torres-Moskovitz: Okay. Does everyone understand how that works? I don't quite understand. So, one round of rulemaking. And then we go back to this Narrative Statement chapter later? When does that happen?

Mr. Hylton: Well, we will probably take a little six-month break before then. This is not something we're going to rush right into. But that definitely needs to be done. Of course, it's up to the Board. In terms of procedure, and Ms. Lin, please jump in if I'm wrong, but what I'm trying to do is to get all this discussion into one final document for the Board, which they can review and vote on. And that will be your final document to be sent to the Law Department for certification, right?

Ms. Lin: Yes

Mr. Hylton: Then once the Law Department certifies it, it comes back to you, right? And we'll schedule a public hearing, correct? No, I'm sorry. Let me get that right.

Ms. Lin: They have to vote it out for a public hearing.

Mr. Hylton: The Board votes on it and sends it back to the Law Department for certification, correct?

Ms. Lin: Yes, we need to get certification before we can vote it out for a public hearing. It's up to the Board members whether they want it again.

Mr. Hylton: So, I was right the first time. Law Department certifies it; it comes back; then we set it up for public hearing; and we have a public hearing. And then the Board will make any kind of modifications

they need to from the public hearing or vote to not make any changes. And then it goes back to the Law Department, right? Or it just gets published?

Ms. Lin: I guess if the Board makes changes, the Law Department will have to look at it again. And Operations as well. I should say Law Department, but we need both to sign off.

Mr. Hylton: Right. But if there are no changes from the Board, then the Board votes, and it becomes law, final, thirty days after the Board gives its final vote.

Ms. Torres-Moskovitz: So where does the Narrative Statement work fit into that schedule? You just named like four steps.

Ms. Lin: The Narrative Statement, which is done in Chapter 2, would be done after all this is done. After all of this is over. And that will be in the far, far future, when we start another round of rulemaking. It would not be part of this, what we're discussing right now.

Ms. Torres-Moskovitz: So, the Narrative Statement is staying the same as it's always been right now?

Ms. Lin: Anything in Chapter 2 is pretty much the same.

Ms. Torres-Moskovitz: Okay. Thank you.

Mr. Hylton: Okay, I want to say this has been a heck of a year for everyone. First, I want to say thank you to Ms. Lin and her staff for taking us through this whole pandemic with adjustments to operations, adjustments to procedures, and we haven't skipped a beat, in terms of what we do at the Loft Board. We've continued right on with what we were doing throughout. So, a lot of kudos to her and her staff for continuing the work of the Loft Board in difficult times.

And I want to say thank you to the Board members for adjusting what you do normally and agreeing to all these different types of meetings, online conferences, and so on. It's been quite an adjustment for you, too. I know you have your own family matters and personal safety to attend to during this time, but everyone really pulled together, and I'm very, very, very, very proud of all of you and the staff and the Board members. And I thank you so much for a very impactful year. Or what would have been a very

impactful year, for it has not really impacted the Loft Board in much of what we do. So, thank you. Thank you. Thank you.

I want to say again, welcome to Ms. Rajan, our newest Board member, but I want to also wish everyone a very, very safe holiday season. This is one for the record books. If you don't have grandchildren yet, be sure to write it down. You'll have stories to tell. But thank you guys for everything and just be safe. Enjoy the holidays. Merry Christmas, Happy Kwanzaa, Happy Hanukkah, and for those who don't celebrate just have a great end of the year celebration. Happy New Year.

Next time we meet, hopefully, you will be introduced to our next newest Board member, Mr. Christian Hylton, who is no relation. Christian Hylton is the new real estate representative appointed by the Mayor today. The news came during this meeting. So, we will get to meet him, and I'm sure we'll have a bio to share between now and then. His name is spelled Christian like C-h-r-i-s-t-i-a-n and H-y-l-t-o-n, like myself, but as I said, no relation.

This will conclude our December 10th, 2020 Loft Board meeting. Our next public meeting will be held on Thursday, January 21, 2021, at 2pm. The Governor's suspension of the in-person meeting requirement of the Open Meetings Law is still in effect until January 1, 2021. At that point, we will know whether we can conduct our next meeting virtually. Board members, we will update you as soon as we know the format of our next Board meeting, and we'll post that information to the Loft Board website as well as the Loft Board listserv, to which, I hope, everyone has subscribed. Board members, please sign and email in your attendance sheet. Thank you very much. Have a happy holiday. Happy New Year to everyone.