



Transcript of the January 21, 2021

Meeting of the

New York City Loft Board

This transcript has been prepared pursuant to Governor Cuomo's Executive Order 202.1, which suspended Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

The meeting began at: 2:06 PM

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3 **Chairperson Hylton:** Good afternoon. My name is Renaldo Hylton, the Chairperson designee of the New  
4 York City Loft Board. Welcome to our January 21, 2021 public meeting. Happy New Year. This meeting is  
5 being held via teleconference pursuant to Governor Cuomo's Executive Order 202.1, due to the  
6 coronavirus emergency.

7 Section 282 of the New York State Multiple Dwelling Law establishes the New York City Loft Board. The  
8 Board is charged with overseeing the legalization of Interim Multiple Dwelling buildings from  
9 commercial and manufacturing spaces to safe, rent-regulated residences that comply with the minimum  
10 standards of safety and fire protection stated in Article 7-B of the New York State Multiple Dwelling Law.  
11 To achieve this goal, the Board adjudicates and mediates disputes between owners and tenants; tracks  
12 the progress of each building undergoing legalization; and prosecutes parties who violate the Loft Law  
13 and the Loft Board rules.

14 Before we get started, I would first like to welcome our newest Board member, Mr. Christian Hylton.  
15 Christian Hylton joins the Board today as the Owners' Representative. Christian has been an attorney  
16 practicing in New York for over twenty years, with a focus on land use matters. He has worked  
17 extensively in the public and private sectors as Counsel to the Land Use Committee at the New York City  
18 Council and is currently a partner at Phillips Nizer LLP.

19 So, welcome Christian. I don't know, Christian, did you want to say a few words to the public? No? You  
20 can take yourself off mute. Yeah.

21 **Mr. Hylton:** Not necessary (inaudible)

22 **Chairperson Hylton:** Okay, great. Thank you, Christian. Okay, we have an addition to today's agenda.  
23 Item number 5 will be on the topic of professional certification, self-certification processes at the  
24 Department of Buildings. We had previously discussed the matter in November, and the Board had  
25 discussed the possibility of passing a resolution at today's meeting; however, as this is Mr. Hylton's first  
26 Board meeting, Mr. DeLaney rightly pointed out that it would be kind of unfair to ask Mr. Hylton to vote

1 on a resolution right away. So, Mr. Delaney will provide an overview of the topic when we get to item  
2 number 5, and I will table the resolution for February's Board meeting.

3 We first turn to a vote of the minutes from the November 19<sup>th</sup>, 2020 public meeting. Are there any  
4 corrections or comments on the meeting? Ms. Lin, did you want to make mention of one correction?

5 **Ms. Lin:** Oh, yes. Thank you, Chairperson. On page 6, halfway down the page, there's one typo, where it  
6 says, the Board and the Chairperson is encouraging people to sign up, it says s-i-n-g instead of s-i-g-n.  
7 And that will be corrected before it's posted.

8 **Chairperson Hylton:** Great. Thank you, Ms. Lin. Do I have a motion, then, to accept the minutes? Board  
9 members, you remember you have to take yourself off mute to make that motion. Okay, **Mr.**

10 **Hernandez, and Mr. Barowitz** is seconding the motion. Ms. Rivera, could you please poll the Board  
11 members.

12 **Ms. Rivera:** Mr. Barowitz?

13 **Mr. Barowitz:** Yes

14 **Ms. Rivera:** Mr. Roche?

15 **Mr. Roche:** Yes

16 **Ms. Rivera:** Mr. Hernandez?

17 **Mr. Hernandez:** Yes

18 **Ms. Rivera:** Mr. Hylton?

19 **Mr. Hylton:** Yes

20 **Ms. Rivera:** Mr. DeLaney?

21 **Mr. DeLaney:** Yes

22 **Ms. Rivera:** Ms. Roslund?

23 **Ms. Roslund:** Yes

1 **Ms. Rivera:** Ms. Torres?

2 **Ms. Torres:** Yes

3 **Ms. Rivera:** Ms. Rajan?

4 **Ms. Rajan:** Yes

5 **Ms. Rivera:** Chairperson Hylton?

6 **Chairperson Hylton:** Yes

7 **Ms. Rivera:** Nine in favor

8 **Chairperson Hylton:** Thank you, Ms. Rivera. The next item on the agenda is our Acting Executive  
9 Director's report. Ms. Lin?

10 **Ms. Lin:** Thank you, Chairperson. On December 30th, the Governor issued Executive Order 202.87,  
11 which suspends the in-person meeting requirements of the Open Meetings Law to January 29, 2021.  
12 That's why we're allowed to meet virtually today.

13 In terms of revenue, the unofficial Loft Board revenue for December 2020, was \$13,175.00.

14 In enforcement, we issued one violation in December 2020. One violation was issued at 144 Spencer  
15 Street, Unit 610, Brooklyn, New York for inadequate heat.

16 In terms of litigation, we have one decision. That's *Barrett Japaning, Inc. versus Anna Bialobroda and*  
17 *New York City Loft Board*. The Appellate Division, First Department, issued a decision affirming the lower  
18 court's dismissal of this Article 78 petition challenging Loft Board Order No. 4575, dated November 17,  
19 2016. LBO 4575 denied owner's letter seeking reconsideration of LBO No. 4510 as incomplete and  
20 untimely. Owner had submitted the application letter by fax; did not include required Loft Board forms;  
21 failed to timely pay the application fee; and failed to provide proof of service. The lower court had  
22 dismissed the Article 78 petition and owner appealed. The First Department now affirms the dismissal,  
23 finding that Loft Board's construction of its rules as requiring Reconsideration applications be filed by  
24 mail or hand delivery is rational and entitled to deference. And that's my report.

1 **Chairperson Hylton:** That’s all we have? Are there any questions for Ms. Lin? Mr. DeLaney?

2 **Mr. DeLaney:** I have one question. Do you have any update on the matter that we discussed in  
3 executive session back in November?

4 **Ms. Lin:** No, not yet.

5 **Mr. DeLaney:** Okay, thank you.

6 **Chairperson Hylton:** Ms. Lin, I have a question on the enforcement matter, the Spencer Street violation.  
7 Is there a status on that? Did they correct the violation? Cure it?

8 **Ms. Lin:** I don't have that information available right now. Let me check with our inspector, and I will  
9 report back to the Board.

10 **Chairperson Hylton:** Thank you. All right. Are there any other questions for Ms. Lin? Okay. We now go to  
11 a vote on the cases. The first item on the Appeal and Reconsideration calendar – there's only one case  
12 on this calendar – and that case is,

13 Case #1 475 Kent Owner, LLC 473 - 493 Kent Avenue in Brooklyn Docket #AD-0104  
14 and Mr. Argov will present this case.

15 **Mr. Argov:** Thank you. Good afternoon. Before I begin the presentation, I’d just like to apologize for and  
16 note a minor error in this Proposed Order. On the middle of page two, you'll find a paragraph which  
17 begins, “On November 27, 2018, owner filed an amended Narrative Statement.” At the bottom of that  
18 paragraph, there's an additional and unnecessary “the” before the words, “gas system.” We will remove  
19 that the before gas system, so the revised version will just read, “the existing gas system.” I apologize for  
20 any confusion for that error. Now on to the Proposed Order.

21 This Proposed Order rejects the appeal filed by the owner of the building located at 473-493 Kent  
22 Avenue. The appeal challenged the administrative determination which denied owner’s second request  
23 for an extension to its code compliance deadline (“Second Extension Application”). Owner filed its first  
24 extension application in February 2017. In that application, owner requests that its code compliance

1 deadlines be extended and requested its Multiple Dwelling Law Article 7-B compliance be extended to  
2 July 24, 2019. In April 2017, the 2017 Determination was issued, which granted owner's first extension  
3 application. Owner's Article 7-B compliance deadline was extended to July 24<sup>th</sup>, 2019, as owner  
4 requested.

5 In February 2018, the Kent Tenants Association, or KTA, a group of tenants within the building,  
6 requested additional time to file comments for alternate plans to owner's proposed legalization plans  
7 for the building. KTA's request was granted in an administrative determination, referred to as the 2018  
8 Determination, which gave owner and KTA twenty-one additional days to reach an agreement on the  
9 plans and to also provide the owner with a twenty-one-day extension to its permit deadline. In  
10 November 2018, owner filed revised plans with the Loft Board, which replaced the building's gas  
11 system, even though previous plans retained the existing system. In April 2019, KTA filed an alternate  
12 plan in response to owner's revised legalization plan. In June 2019, owner commenced litigation in New  
13 York State Supreme Court, seeking an injunction, claiming that KTA was barred from filing an alternate  
14 plan due to a prior settlement agreement.

15 Owner's request for an injunction was ultimately denied in Supreme Court in April 2020. On August 14<sup>th</sup>,  
16 2019, owner filed its second extension application after its July 24<sup>th</sup>, Article 7-B compliance deadline  
17 had already passed. On January 23<sup>rd</sup>, 2020, the administrative determination was issued, denying the  
18 second extension application due to its untimeliness; the fact that owner was previously granted an  
19 extension; and that owner failed to meet the statutory standards for an extension. In March 2020,  
20 owner filed its appeal.

21 This Proposed Order rejects owner's claim that his application was timely. MDL section 284 does not  
22 automatically provide an owner an eighteen-month extension to achieve Article 7-B compliance. Rather,  
23 an owner is required to achieve Article 7-B compliance within eighteen months of obtaining a permit  
24 under the MDL. Owner also argues in its appeal that its Article 7-B deadline should have been extended  
25 by twenty-one days when owner's permit deadline was extended by twenty-one days in the 2018  
26 Determination. The extension owner was granted for securing a permit applied to that deadline alone  
27 and not to other deadlines. The former Executive Director was, therefore, justified in denying the

1 application based on its untimeliness. Additionally, owner's challenges to the deadline set by the 2017  
2 Determination and 2018 Determination are untimely. Owner had the opportunity to appeal these  
3 determinations but chose not to, and it's time to do so has long since expired.

4 Owner also cannot be granted an additional extension under 29 RCNY section 2-01(b)(3), since it already  
5 received one. In its appeal, owner claims that 29 RCNY section 2-01(b)(1) and (b)(3) allow for separate  
6 extensions of the code compliance deadlines but offers no legal authority to support these unfounded  
7 assertions. Since 29 RCNY section 2-01(b)(3) clearly states a party is limited to one extension, owner's  
8 claim that it was entitled to an additional extension is baseless.

9 This Proposed Order also denies owner's appeal since owner has failed to meet the statutory standards  
10 for receiving an extension. Owner contends that its compliance efforts were thwarted by circumstances  
11 beyond its control, such as the lack of access to units within the building, and the fact that KTA filed an  
12 alternate plan. Owner, however, failed to provide sufficient proof of impeded access. Furthermore,  
13 owner took steps that were entirely within its control by changing the building's legalization plans and  
14 commencing litigation.

15 Therefore, this Proposed Order rejects owner's contention that it was unable to meet its legalization  
16 deadline due to circumstances beyond its control. Owner also failed to prove its good faith-efforts to  
17 legalize the building. In the appeal, owner argues that the affidavit of its project manager is sufficient  
18 proof of good-faith efforts under Loft Board rules. While an architect's statement is mentioned in Loft  
19 Board rules as a possible form of proof, a statement by an architect without corroborating proof is not,  
20 in and of itself, proof that good-faith efforts were made. And owner bears the burden of proof to  
21 demonstrate its good-faith efforts to legalize the building. And in the instant case, owner did not provide  
22 sufficient proof of its good faith-efforts and, therefore, failed to demonstrate it was statutorily entitled  
23 to receive an extension of its Article 7-B deadline.

24 This Proposed Order finds the administrative determination properly denied owner's code compliance  
25 extension application due to its untimeliness, as a previous extension was already granted, and because  
26 owner failed to prove it was statutorily entitled to an extension. As such, this Proposed Order rejects  
27 owner's appeal.

1 **Chairperson Hylton:** Thank you, Mr. Argov. Well presented. Do we have a motion to accept this case?

2 **Mr. DeLaney:** I'll move.

3 **Chairperson Hylton:** **Mr. DeLaney** has moved. Is there a second?

4 **Ms. Roslund:** I'll second.

5 **Chairperson Hylton:** Is that Ms. Roslund?

6 **Ms. Roslund:** Yes

7 **Chairperson Hylton:** Ms. Roslund, second. Are there any comments in this case?

8 **Mr. DeLaney:** I'd like to make one comment.

9 **Chairperson Hylton:** Go ahead, Chuck.

10 **Mr. DeLaney:** As the Board members are aware, we have a draft set of revised and new rules that we've  
11 been working on now for more than a couple of years. And one of the provisions in that is to give all  
12 owners a one-time extension --- the right to make one more extension application, regardless of  
13 whether they've missed the deadline that they're applying for an extension for. And you've heard me,  
14 and some of you have heard a letter from New York City Loft Tenants, expressing dismay at that  
15 provision and a concern that the proposed rule, as it is currently before us, does not carve out any  
16 exceptions for people who have kind of made lots of applications such as this. And for the public, the  
17 record for this administrative determination, including a bunch of other cases, admittedly, is 1400  
18 pages. It's a lot of work. And here, we have an owner who seems to put a lot of energy into appealing  
19 deadlines that, for whatever reason, can't be met. So, this is just another example of the kind of  
20 extension application/ administrative determination/ reconsideration appeal that leaves me scratching  
21 my head about that rule as we currently have it set forth. Thank you.

22 **Chairperson Hylton:** Thank you. Any other comments from anyone?

23 **Ms. Roslund:** I'd like to make some comments.

24 **Chairperson Hylton:** Ms. Roslund, could you just identify...



1 **Ms. Roslund:** Oh, yes. Heather Roslund. Well, given what we were presented to read through this week  
2 prior to this meeting, even within that information, there were so many interesting and complex issues  
3 and questions that were raised, which we discussed a little bit earlier. And I found both the applicant's  
4 arguments and the Loft Board staff's arguments compelling in many cases and not compelling or  
5 convincing in many cases. I think this could be a much longer conversation even than we had.  
6 But in this particular case, it really comes down to this July 24<sup>th</sup>, 2019 date, which was requested by the  
7 owner. So, it's a lot of background and a lot of information here that is with a Proposed Order that is  
8 determined by a technicality, more so, in my eyes, than a real, solid argument from one side or the  
9 other.

10 **Chairperson Hylton:** Thank you, Heather. Thank you. Do we have any additional comments? Ms. Rivera,  
11 would you please poll the Board members.

12 **Ms. Rivera:** Mr. Barowitz?

13 **Chairperson Hylton:** Mr. Barowitz? Elliott?

14 **Mr. Barowitz:** Did you not hear me? Yes

15 **Ms. Rivera:** Mr. Roche?

16 **Mr. Roche:** Yes

17 **Ms. Rivera:** Mr. Hernandez?

18 **Mr. Hernandez:** Yes. ~~You~~We can hardly hear you, by the way.

19 **Ms. Rivera:** Mr. Hylton?

20 **Mr. Hylton:** Yes

21 **Ms. Rivera:** Mr. DeLaney?

22 **Mr. DeLaney:** Yes

23 **Ms. Rivera:** Ms. Roslund?

24 **Ms. Roslund:** Yes

1 **Ms. Rivera:** Ms. Torres?

2 **Ms. Torres-Moskovitz:** Yes

3 **Ms. Rivera:** Ms. Rajan?

4 **Ms. Rajan:** Yes

5 **Ms. Rivera:** Chairperson Hylton?

6 **Chairperson Hylton:** Yes

7 **Ms. Rivera:** Nine in favor

8 **Chairperson Hylton:** Thank you, Ms. Rivera. Motion? Motion? There are three cases on the Summary  
9 Calendar. They are voted on as a group, and those cases are:

10 Case #2: American Package Company Inc. 226-240 Franklin St., Brooklyn, NY Docket # LS-0259

11 Case #3: Stephen Mennitt 239 Banker St., 4C, Brooklyn, NY Docket # PO-0139

12 Case #4: Raoul Arboite, 239 Banker St., 1E, Brooklyn, NY Docket# PO-0144

13 Theodore Shier &

14 Aubrianna McCarter

15 **Chairperson Hylton:** Do I have a motion to accept these cases?

16 **Chairperson Hylton:** **Mr. Delaney.** And Mr. Hylton, a second.

17 **Mr. Hylton:** Second

18 **Chairperson Hylton:** Thank you. Does anyone have any comments with these cases? No comments. So,  
19 Ms. Rivera, could you please poll the Board members.

20 **Ms. Rivera:** Mr. Barowitz?

21 **Mr. Barowitz:** Yes

1 **Ms. Rivera:** Mr. Roche?

2 **Mr. Roche:** Yes

3 **Ms. Rivera:** Mr. Hernandez?

4 **Mr. Hernandez:** Yes.

5 **Ms. Rivera:** Mr. Hylton?

6 **Mr. Hylton:** Yes

7 **Ms. Rivera:** Mr. DeLaney?

8 **Mr. DeLaney:** Yes

9 **Ms. Rivera:** Ms. Roslund?

10 **Ms. Roslund:** Yes

11 **Ms. Rivera:** Ms. Torres?

12 **Ms. Torres-Moskovitz:** Yes

13 **Ms. Rivera:** Ms. Rajan?

14 **Ms. Rajan:** Yes

15 **Ms. Rivera:** Chairperson Hylton?

16 **Chairperson Hylton:** Yes

17 **Ms. Rivera:** Nine in favor

18 **Chairperson Hylton:** Thank you. The motion's passed. There are three Proposed Orders on the Master  
19 Calendar. The first case is,

1 Case # 5 Tenants of 475 Kent Avenue 473-493 Kent Avenue in Brooklyn Docket # TM-0099

2 **Ms. Lee** will present this case.

3 **Ms. Lee:** (Garbled)

4 **Chairperson Hylton:** Ms. Lee, I think we have a very muffled sound. I don't know if everyone else is  
5 experiencing that. Can you just test yourself again, Ms. Lee.

6 **Ms. Lee:** This is a test.

7 **Chairperson Hylton:** Yeah. Are you calling from your device?

8 **Ms. Lee:** No, I'm using my computer.

9 **Chairperson Hylton:** Oh, could you do me a favor? Could you just call in, and I will let you in on the  
10 phone. Just give her a second please. Is that you Ms. Lee? Just say something. Can you hear me?

11 (Recorder: This conference will now be recorded)

12 **Chairperson Hylton:** Are you hearing me? Did everyone hear an announcement a while ago about the  
13 conference now being recorded? You have a backup recording? Okay. We have a backup recording just  
14 in case something went wrong by the way. I didn't take it off record before. Ms. Lee, are you hearing?  
15 You are? Could you take your phone off mute? I'm not hearing you. One second. Ms. Lee, if you can  
16 hear me please just raise your hand. Okay, just say something. It looks like you're unmuted, but I'm not  
17 hearing you at all.

18 **Ms. Lee:** Can you hear me now?

19 **Chairperson Hylton:** I'm hearing you. Good. Thank you. Go ahead, Ms. Lee.

20 **Ms. Lee:** I apologize. This case involves a diminution of services application that was filed by the  
21 tenants of three residential units in the building located at 473-493 Kent Avenue in Brooklyn, New York.  
22 The tenants allege that they had previously entered into mutual agreements with the prior owner of the  
23 building for permission to park their vehicles inside a freight garage on the premises and that the

1 current owner, after acquiring the building, diminished their ability to access and use their indoor  
2 parking spaces. Opposing the tenants' claims, the current owner contends that it did not diminish any  
3 services that are required under the Loft Board's rules.

4 This Proposed Order finds that indoor parking is not a minimum housing maintenance service which the  
5 owner has an affirmative duty to provide under 29 RCNY § 2-04(b). However, the Loft Board's rules,  
6 specifically 29 RCNY section 2-04(c), bar a reduction in prior services that were supplied by mutual  
7 agreement. Here, the record sufficiently demonstrates that the prior owner consented to the tenants'  
8 use of the freight garage for indoor parking purposes. There were valid mutual agreements between the  
9 tenants and the prior owner. This Proposed Order finds that, although they exceed the minimum  
10 housing maintenance services which are mandated by 29 RCNY section 2-04(b), the tenants' indoor  
11 parking spaces constitute "prior services," which the current owner is prohibited from diminishing under  
12 29 RCNY section 2-04(c).

13 This Proposed Order further finds that there has been a diminution of services. The record shows that  
14 the current owner has interfered with, and reduced, the tenants' access to their indoor parking spaces,  
15 in violation of 29 RCNY section 2-04(c). Prior to the current owner's acquisition of the building, the  
16 tenants had round-the-clock access to their indoor parking spaces. After it purchased the building, the  
17 current owner repeatedly had dumpsters delivered to the site and allowed contractors to perform  
18 construction activities on the premises, which hindered the tenants' use of their indoor parking spaces.  
19 In addition, the current owner allowed a film shoot to take place on the premises for four days in June  
20 2019, without the tenants' consent.

21 Moreover, the current owner issued a notice whereby it advised the tenants that they were no longer  
22 permitted to park their vehicles inside the freight garage, as well as letters whereby it repeatedly  
23 rejected the tenants' payments for parking.

24 This Proposed Order finds that said notice and letters constitute a diminution of services. The Loft Board  
25 has previously held, in *Matter of Ohanesian*, that, where a tenant's use of his or her parking space is a  
26 service which an owner must continue to provide under 29 RCNY section 2-04(c), the owner's attempt

1 to bar such use by repeatedly rejecting the tenant's payments and demanding that the tenant stop such  
2 use is a diminution of services.

3 As to other encumbrances alleged by the tenants, including the replacement of a remote-controlled  
4 gate mechanism and garbage cans that were placed in an adjoining driveway, this Proposed Order finds  
5 that such events did not amount to an unlawful diminution of services.

6 In sum, this Proposed Order grants the tenants' application and directs the current owner to cease all  
7 efforts that preclude the tenants' use of their indoor parking spaces.

8 **Chairperson Hylton:** Thank you, Ms. Lee. Do we have a motion to accept this case? **Mr. DeLaney** is  
9 raising his hand. Is there a second? **Mr. Barowitz** seconded. Any questions or...excuse me. Any  
10 comments on this case? No comments? Ms. Lee, was this case ever before us? Prior?

11 **Ms. Lee:** This particular case was not before us, before.

12 **Chairperson Hylton:** But there was a case for Kent Avenue diminishing of services before us?

13 **Ms. Lee:** Yes. It was *Matter of Ohanesian*, Loft Board Order Number 4859.

14 **Chairperson Hylton:** Same finding, correct?

15 **Ms. Lee:** Similar finding, yes.

16 **Chairperson Hylton:** Okay. Thank you. Any other questions for Ms. Lee, or comments? Ms. Rivera, could  
17 you please poll the Board members.

18 **Ms. Rivera:** Mr. Barowitz?

19 **Mr. Barowitz:** Yes

20 **Ms. Rivera:** Mr. Roche?

21 **Mr. Roche:** Yes

22 **Ms. Rivera:** Mr. Hernandez?

23 **Chairperson Hylton:** Mr. Hernandez?

1 **Mr. Hernandez:** Yes

2 **Ms. Rivera:** Mr. Hylton?

3 **Mr. Hylton:** Yes

4 **Ms. Rivera:** Mr. DeLaney?

5 **Mr. DeLaney:** Yes

6 **Ms. Rivera:** Ms. Roslund?

7 **Ms. Roslund:** Abstain

8 **Ms. Rivera:** Ms. Torres?

9 **Ms. Torres-Moskovitz:** Yes

10 **Ms. Rivera:** Ms. Rajan?

11 **Ms. Rajan:** Yes

12 **Ms. Rivera:** Chairperson Hylton?

13 **Chairperson Hylton:** Yes

14 **Ms. Rivera:** Eight in favor; one abstain.

15 **Chairperson Hylton:** The motion's passed. The second case on the Master Calendar is

16 Case # 6: Kathleen Carretta 210 Cook St., Brooklyn, NY Docket # TR-1399

17 And this is Ms. Lee's case again.

18 **Ms. Lee:** Thank you, Chairperson Hylton. This case involves a Coverage application that was filed by the  
19 alleged residential occupant of Unit 304 in the building located at 210 Cook Street in Brooklyn, New  
20 York. No answers were filed in response to the Coverage application. The Loft Board staff transferred  
21 the case to OATH, which assigned the matter to Administrative Law Judge Kara J. Miller for adjudication.

1 In August 2020, Judge Miller issued a Combined Notice, informing the owner of the building that it was  
2 in default for failing to file an answer and advising both parties that a preliminary conference would be  
3 conducted in September 2020. Neither party appeared at the scheduled conference.

4 Then, Judge Miller issued a Final Notice of Conference, informing both parties that a second conference  
5 would be conducted in October 2020. Because neither party appeared at the September conference  
6 and because the applicant did not contact OATH to request an adjournment, Judge Miller marked the  
7 October conference as final against both parties.

8 The owner's counsel subsequently filed a motion to vacate the owner's default, which Judge Miller  
9 granted. In October 2020, the owner's counsel appeared at the second conference. However, the  
10 applicant failed to appear. Therefore, Judge Miller notified the Loft Board that, pursuant to 29 RCNY  
11 section 1-06(k)(4), she was dismissing the Coverage application with prejudice for failure to prosecute.

12 Because Judge Miller marked the October conference as final against the applicant; because the  
13 applicant failed to appear at the October conference; and because the applicant neither contacted  
14 OATH nor submitted a written request for reinstatement of her Coverage application within the  
15 prescribed thirty-day period as set forth in 29 RCNY section 1-06(k)(4), this Proposed Order agrees with  
16 Judge Miller and dismisses the Coverage application with prejudice for failure to prosecute.

17 **Chairperson Hylton:** Thank you, Ms. Lee. Do I have a motion to accept this case?

18 **Ms. Roslund:** I'll make a motion.

19 **Chairperson Hylton:** Ms. Roslund. Do I have a second? **Mr. DeLaney.** I'm sorry, Mr. DeLaney. Yes. Do  
20 we have any questions? Comments? Ms. Rivera, could you please poll the Board members?

21 **Ms. Rivera:** Mr. Barowitz?

22 **Mr. Barowitz:** Yes

23 **Ms. Rivera:** Mr. Roche?

24 **Chairperson Hylton:** Mr. Roche has indicated yes.

25 **Ms. Rivera:** Mr. Hernandez?



1 **Mr. Hernandez:** Yes.

2 **Ms. Rivera:** Mr. Hylton?

3 **Mr. Hylton:** Yes

4 **Ms. Rivera:** Mr. DeLaney?

5 **Mr. DeLaney:** Yes

6 **Ms. Rivera:** Ms. Roslund?

7 **Ms. Roslund:** Yes

8 **Ms. Rivera:** Ms. Torres?

9 **Ms. Torres-Moskovitz:** Yes

10 **Ms. Rivera:** Ms. Rajan?

11 **Ms. Rajan:** Yes

12 **Ms. Rivera:** Chairperson Hylton?

13 **Chairperson Hylton:** Yes

14 **Ms. Rivera:** Nine in favor

15 **Chairperson Hylton:** Thank you. The other case is

16 Case # 7 Downing St., LLC      53 Downing St., New York, NY      Docket # LE-0720

17 This is a removal case, by the way, so there will be no presentation. Do I have a motion to accept this  
18 case? **Mr. Barowitz** moved, and **Mr. Hernandez** seconded. Do you have any questions or comments on  
19 this case? Mr. Rivera, could you please poll the Board members?

20 **Ms. Rivera:** Mr. Barowitz?

21 **Mr. Barowitz:** Yes

22 **Ms. Rivera:** Mr. Roche?

1 **Mr. Roche:** Yes

2 **Ms. Rivera:** Mr. Hernandez?

3 **Mr. Hernandez:** Yes

4 **Ms. Rivera:** Mr. Hylton?

5 **Mr. Hylton:** Yes

6 **Ms. Rivera:** Mr. DeLaney?

7 **Mr. DeLaney:** Yes

8 **Ms. Rivera:** Ms. Roslund?

9 **Ms. Roslund:** Yes

10 **Ms. Rivera:** Ms. Torres?

11 **Ms. Torres-Moskovitz:** Yes

12 **Ms. Rivera:** Ms. Rajan?

13 **Ms. Rajan:** Yes

14 **Ms. Rivera:** Chairperson Hylton?

15 **Chairperson Hylton:** Yes

16 **Ms. Rivera:** Nine in favor

17 **Chairperson Hylton:** All of a sudden, Ms. Rivera has a stutter. I wonder where it's coming from. Okay.  
18 That motion is passed. So that's the end of the cases. First of all, I want to say thank you to the staff. I  
19 know they've been working very hard to get these cases together, and with such a limited amount of  
20 resources during this time. So, I want to thank the staff, Ms. Lin, and your staff for putting this whole  
21 thing together. And so that's the end of the cases today.

22 Before we go into Mr. DeLaney's portion about self-certification, I want to encourage the public to  
23 continue to sign up, if you haven't done so yet, for the Loft Board Listserv, so you can get notices from

1 the Loft Board in a fast and more convenient manner right to your email. And I think it's been working  
2 greatly so far. So, kudos, again to staff for maintaining that list. But I want to encourage members of the  
3 public to the extent that you can, if you have friends or neighbors that would sign up for these  
4 notifications, that will increase the relevance of the Loft Board, in a way, for people. So just encourage  
5 them to sign up. To sign up, they just have to go to [www.nyc.gov/loftboard](http://www.nyc.gov/loftboard), and sign up there. There'll  
6 be a link to sign up. Thank you. Mr. DeLaney will now present...We'll now have a discussion on self-  
7 certification and professional certification for Loft Board buildings.

8 **Mr. DeLaney:** Okay, thank you, Chairperson Hylton. First off, I want to commend, as I frequently do, the  
9 high quality of the minutes of our Loft Board meetings as they've been prepared over the past year plus.  
10 And particularly, the November minutes have a very useful summary of this issue from pages 10 to 14.  
11 And those minutes are available to the public, or will be. I think the draft form is up on the website even  
12 before we approve the minutes. And the reason that the summary is so good is because Ms. Roslund  
13 and Ms. Torres-Moskovitz filled in a lot of the gaps in my understanding of the processes because of  
14 their professional expertise as architects who practice before the Department of Buildings from time to  
15 time.

16 And the issue that we're interested in, for those who haven't heard it discussed before, is the  
17 appropriateness of both self-certification and professional certification in IMD legalization work. And I  
18 learned, when we met with Mr. Martin Rebholz of Department of Buildings, who is apparently quite  
19 knowledgeable on this topic, that professional certification is actually a certification by a professional  
20 who is licensed by the Department of Buildings, such as a plumber; or I guess it could be someone in the  
21 various elevator classifications. Whereas self-certification is certification of the appropriateness of plans  
22 by an architect. And I'm going to stop right there and ask either Julie or Heather to tell me if I got that. If  
23 there's anything you'd like to add or amend to what I've said thus far.

24 **Ms. Roslund:** No, you're doing great, Chuck.

25 **Mr. DeLaney:** Okay. And, as we learned, the Department does a significant amount of random spot  
26 checking of professional self-certification submissions. And they also investigate any complaints. So the  
27 idea that's on the table, is that, while mandating that IMDs, for example, not be allowed to use these

1 certifications would require action by the City Council and the Mayor's Office, the Department of  
2 Buildings would have it within its authority to -- particularly if asked by the Loft Board to do so -- to  
3 include the relatively small number of IMD certifications as part of what would be automatically audited.

4 So that's the germ of an idea that I'm still reflecting on. But what I would like to spend a minute on today  
5 is this discussion with Mr. Rebholz came about because Ms. Torres-Moskovitz wrote a letter to  
6 Chairman Hylton some, oh now, maybe a year and three-quarters ago. It took us a while to get through  
7 it. But the most salient fact is that the concerns which prompted Ms. Torres-Moskovitz to write that  
8 letter really stemmed from some egregious circumstances in loft buildings.

9 There's one where the plans were approved for -- and I'm rounding the numbers, I don't have them  
10 right in front of me -- but the plans were approved for twenty-two units; but lo and behold, the final C of  
11 O was for forty-four units. Where did the other twenty-two units come from? We had a building where  
12 the Loft Board joined in the effort to have the Certificate of Occupancy revoked, because the C of O was  
13 granted that had residential units in the basement.

14 So... and there are several other buildings that seem to have been, in some instances, certifications  
15 were put forth by people that you can really only think of as bad actors. And in my mind, one architect  
16 suffered what I consider a slap on the wrist and losing the right to self-certify, whereas frankly, I think an  
17 appeal to the New York State Department of Education to look into licensure overall would have been  
18 more appropriate.

19 But it does appear that there are circumstances about the wild and wooly nature of loft conversion and  
20 loft development that seems to attract the occasional person with a dubious approach to how to  
21 perform what should be thought of as compliance or legalization. So that's why we're having this  
22 discussion.

23 Chairperson Hylton was correct. I did contact him yesterday and say, having thought about this, I don't  
24 think it's fair to drop this in the lap of a new member right away. So, let's leave the presentation of a  
25 resolution to the February meeting rather than today. I know if I had just joined the Board and was  
26 trying to represent tenants, I'd want a little time to get my feet under me. So, that's where we are, and

1 that's what I have to say. Yes, and I look forward, Mr. Hylton, to... if you'd like to discuss the matter more  
2 between now and next month, I'd be happy to chat with you.

3 **Mr. Hylton:** I'll reach out.

4 **Ms. Roslund:** So, can I...I'd like to add a few additional points.

5 **Mr. DeLaney:** Please

6 **Ms. Roslund:** We also discussed the complexities of code compliance in a building that has not been  
7 thought through from the beginning, but rather developed or built-out in an ad hoc manner; and the  
8 risk of coming to a point during the construction process where, if the plans are professionally certified,  
9 that something cannot be followed through, because something was either inadvertently or on purpose  
10 missed by the architect; and how that could cause a delay is an issue with the tenants. So if, for instance,  
11 as part of the narrative process that there's an agreement that's come to, but... and then if the architect  
12 professionally certifies, and then nine months down the road, it turns out that, oh no, this wall has to  
13 move, or it could be detrimental to the to the legalization or to the to the tenants. That was a big fear.

14 **Mr. DeLaney:** And, Heather, I agree. And in particular, obviously, irregular construction of residential  
15 units, it's done before anybody moves in. Here, you're doing legalization work with tenants in place,  
16 which is...adds another factor to the complexity.

17 **Ms. Roslund:** Right, and if/when you have a blank slate, you can ensure that the room sizes and the  
18 windows and all of the code regulations are adhered to. When you have... when you're starting with an  
19 existing condition, there are so many...there's so much minutia that can get missed, because one would  
20 be documented in an existing building that... There's just a lot. There's so much room for error.

21 **Chairperson Hylton:** Thank you.

22 **Mr. DeLaney:** Julie, you look like you had something to add?

23 **Ms. Torres-Moskovitz:** Yeah, I was just going to add...welcome, Christian, to our Board. It's great to have  
24 you. It's good to have every position full. I would just add the point of view from the owner's

1 perspective, too, because as an architect who works for clients that are owners -- actually, I've never  
2 had a tenant as a client -- but I am a Loft Law tenant, just so you know. So, I think there's both  
3 perspectives at play.

4 For an owner, this could lead to a lot of hardship down the road, if sort of this maverick professional  
5 certification of a complex building with tenants in it, meeting Loft Law certification, also goes all the way  
6 through to construction or midway and, you know, there's a stop-work order or violation, or audit, and  
7 they find that, actually, this decision that the architect took into their own hands is not what the DOB  
8 believes is the correct interpretation of code. I feel like it could lead not only to tenant issues, but also  
9 to cost ramifications for owners of buildings, too.

10 That was what I wanted to add. And I can also send my letter maybe, Renaldo? Or I don't know if you  
11 would, to Christian, so he can see the original letter I wrote in 2019 or 18?

12 **Chairperson Hylton:** Sure, I'll send it right after this meeting to Christian.

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

14 **Chairperson Hylton:** Maybe, I'll just send it to everyone. Thank you. Are there any other comments?  
15 Thank you. So just to recap, Chuck will attempt to do this through a resolution to Department of  
16 Buildings -- a non-binding resolution to Department Buildings -- which we'll vote on, obviously, in  
17 February. And the language, I guess, Chuck, you'll try to circulate some language prior to this?

18 **Mr. DeLaney:** Yes, I will do that and will attempt to have it to people two weeks ahead of time, so that  
19 they have a chance to look at it.

20 **Chairperson Hylton:** Thank you for that, Chuck. Thanks for the opportunity and the respect to Mr.  
21 Hylton to chime in. Okay, thank you, Mr. DeLaney. We're now going to go into the second part of our  
22 meeting, which is rulemaking. Before I begin that, I just want to... I know last month, maybe it was the  
23 holiday spirit and stuff in me, but I did kind of say something like, I hope, and we are hoping, and we  
24 probably will have rules ready by April. I could have not necessarily misspoken, but just out of an

1 abundance of optimism there....I'm not saying it can't be, but it doesn't seem that April is any longer a  
2 reasonable timeframe to get final rules.

3 But we're working hard at it. And it all depends on how quickly we move. But more realistically, towards  
4 the summer, the summertime, would be a more realistic timeframe for us to get to the rules. And then  
5 again, it all depends, of course, upon the Law Department's review and also your actions in moving this  
6 stuff forward. Did I get that right, Ms. Lin? Okay, great. Okay. Mr. Clarke, who's been doing an  
7 exceptional job at this, is going to take over from here. And just so we'll know, we're going to try to do  
8 this by four o'clock. An hour spent on rules. Yes, Mr. Clarke, is good?

9 **Ms. Lin:** Sorry, Chairperson. Before Mr. Clarke begins, I just had one item to discuss with the Board  
10 regarding rulemaking. I would like to ask the Board members if they would like to revisit rule 2-01(b) for  
11 next month's Board meeting. Mr. DeLaney actually referred to this earlier. So, currently 2-01(b)(3) of our  
12 rules say that the owner can only receive one extension of code compliance deadlines per deadline. So,  
13 once the owner has received an extension of compliance deadlines, they can't receive a second one,  
14 even if it's not their fault that they can't proceed with legalization.

15 So, I believe that the Board had previously discussed this issue in, maybe 2019, and came up with new  
16 rules for this. So under our current proposed rules -- 2-01(b)(4)(i) -- the one-exception-per-deadline rule  
17 is removed; and under the newly proposed 2-01(b)(1), within thirty days of the enactment of this rule,  
18 any owner can reapply for an extension even if they were previously denied. So, after the Board voted  
19 to send the rules to the Law Department and Operations for review, a group of loft tenants submitted  
20 their comments and their own proposal on these provisions. The tenants are asking to restrict who can  
21 reapply and to keep the one extension per deadline rule. And those materials were circulated to the  
22 Board in March 2020. But at the time, because the rules were already being reviewed by outside  
23 agencies, and because we didn't have an Owners' Rep at the time, the Board hasn't had a chance to  
24 revisit this topic yet.

25 But now the rules are back before the Board, and we have a full Board. So, if the Board members are  
26 amenable, we can place this topic back on the agenda for the February Board meeting, and I can

1 recirculate the tenants' proposal after this meeting, so the Board members will have a month to review  
2 and consider the material.

3 **Chairperson Hylton:** Thank you, Ms. Lin. I didn't have that -- to call on you to do that. I'm sorry for over-  
4 looking. So, yeah. This is just advising the Board that we're doing that right? We don't necessarily need  
5 any comments on this? We're going to bring it before the Board starting February.

6 **Mr. DeLaney:** Well, you certainly get my thanks.

7 **Chairperson Hylton:** I'll give you my routing number and bank account number after this meeting, Mr.  
8 DeLaney. Off the record. Okay...

9 **Mr. DeLaney:** I think Rich has a question here.

10 **Mr. Roche:** Mr. Chairman, I just wondered if you anticipated any additional meetings this month or in  
11 February for rulemaking purposes? Or is it too early to make that determination?

12 **Chairperson Hylton:** Okay, so I'm not doing it for this month for sure. And I don't think I'll do it for  
13 February. So, let's see how we move along. But in order to really expedite these rules, depends on how  
14 we are, we can possibly look at March and April for additional rulemaking meetings, if we have a  
15 quorum. So yes, I think, Mr. Roche, you should probably anticipate March and April, if everyone is  
16 amenable.

17 **Mr. Roche:** Thank you. Mr. Chairman.

18 **Chairperson Hylton:** Any other comments? Thank you. Mr. Clarke.

19 **Mr. Clarke:** Thank you, Chairperson Hylton. I want to make sure everybody can hear me clearly. Any  
20 issues? Ok, great. All right, so, excuse me. This morning, I sent out an email that has all the documents  
21 that we're going to be using today. Sorry about the last minute sending two of those documents, but  
22 those two documents are more so just to make it easier for everybody to follow along with what we're  
23 doing today.



1 One of the documents we're going to start with is a document that we've already been using. This is for  
2 Mr. Hylton, who is joining us now, as the Owners' Rep. We've been getting a series of comments from  
3 OATH. That's the Office of Administrative Trials and Hearings, I'm sure you know. But, they wanted to  
4 weigh in and comment on the portions of our rules that affect OATH. So, they did, in fact, do that. They  
5 sent us their comments, and what we're doing now is we're reviewing the comments from OATH. And  
6 the Board members must decide if they're okay with the comments from OATH or if there are any  
7 changes that they would like to make.

8 So, we've been working off the sheet -- at the top of the sheet it says 1-12 Definitions -- and everything  
9 on this particular document the Board members have agreed with, except for three points. And our goal  
10 today is to try to go through those three points, and, if possible, get back to OATH after this meeting,  
11 and let them know what it is the Board members have accepted and what it is the Board members  
12 would like to change.

13 So, like I said, there are three issues that are still outstanding with respect to the OATH rules. And I  
14 would like to go into the first outstanding issue. I would like to go into 1-31, which is Decisions. 1-31  
15 under Decisions, section (c). This particular issue, Mr. DeLaney wanted us to look at a little bit further.  
16 This section says that the Report and Recommendation that the administrative law judge issues... Oh,  
17 no; this says that the Report and Recommendation that the Loft Board Adjudicator must include -- and it  
18 lists certain things that the Report and Recommendation must include. Mr. DeLaney wanted us to look  
19 at the current Reports and Recommendations that OATH gives us just to make sure that the current  
20 Reports and Recommendations that OATH is already giving us include the information that's listed under  
21 sub-subsection (c).

22 So, another document that I sent, at the top of it, it starts with Tenants, and it's a Report and  
23 Recommendation. It's kind of an abbreviated Report and Recommendation, and I thought it would be  
24 easier for everybody to see some of the information that's included in the Report and Recommendation  
25 that OATH currently gives us. I looked through it, and all of the sub-sections of (c) that are in our  
26 proposed rules, OATH is already including them in our Report and Recommendation. And I can just walk  
27 you through that briefly. Like I said, it's just a shortened version. If you want to read the entire Report

1 and Recommendation, you can find that on the New York Law School website with our Proposed Orders.  
2 They do have the Report and Recommendation that OATH gives to us that we use to make our Proposed  
3 Orders and that the Board members actually use to make their final Proposed Order.

4 So, at the top of the sheet, you can see OATH includes the OATH index numbers. They also include the  
5 Loft Board docket numbers. And that goes to number (1) on subsection (c), where it says,

6 “The Report and Recommendation must include a description of the application, the names of the  
7 parties, their counsel, and other persons affected by the application;”

8 So, at the very top of this sheet, we have OATH identifying the index number and the Loft Board docket  
9 number. Below that, there's a short paragraph with a description of what the case is about. And  
10 immediately below that, the parties are listed for this particular application that was submitted. If you  
11 flip to the last page of that sheet, at the very end, OATH will always include the attorneys that are  
12 involved in the matter. They will list any pro se litigants that are involved in the matter. So, all of that  
13 information is included in the Report and Recommendations that we're getting from OATH.

14 Anybody can stop me at any time if they have any questions. So that checks off, number (1). Number  
15 (2), the Report and Recommendation is supposed to include,

16 “a summary of the facts disputed, and the facts found during any investigation and of testimony and  
17 other proofs taken at the hearing or inquest.”

18 So, at the very beginning, again, going back to that first page, the Report and Recommendation, the  
19 administrative law judge will immediately go into the procedures of the case; the factual background of  
20 the case; and then will proceed to do a full analysis of all the factual information that was discovered  
21 during the hearing. So, this would have been fifteen pages for all of you to go through, so, I don't have  
22 all the facts, the additional pages in the complete analysis, but that is what OATH does regularly with  
23 their Report and Recommendations. They list the factual background, and then they do an analysis. So  
24 that is checked off from number (2) -- a summary of all the facts and all the investigative information.

25 The third part, number (3), says the Report and Recommendation must contain,

26 “copies of the application and of all affidavits, memoranda, and briefs submitted by the parties;”

1 So, what happens after OATH submits their Report and Recommendation, they will send back the entire  
2 record to the Loft Board. And that record does, in fact, include any affidavits, memoranda, post-trial  
3 briefs, and exhibits. The Loft Board staff has that. And we use that information to write the Proposed  
4 Orders that we bring to you for your vote. So that is there as well.

5 And then the final issue, number (4), says the Report and Recommendation must include a  
6 “recommendation to the Loft Board regarding disposition of the application with the summary of the  
7 factual and legal basis for such recommendation.”

8 Again, the OATH ALJs do a fantastic job writing up summaries of factual and legal bases and coming up  
9 with an analysis. If you flip to the second page of this document, towards the bottom, it says Findings  
10 and Conclusions. There's where you find -- the ALJ, basically, summarizes the findings and makes a  
11 conclusion and a recommendation to the Loft Board. You can see from the second page going on to the  
12 third page, at the very end of all the findings, in this particular case, the ALJ says, “Accordingly, the  
13 parties’ applications should be granted.” And that's their recommendation to the Loft Board.

14 So, with respect to doing this research here, we feel that the current Reports and Recommendations  
15 that OATH is providing to us, do, in fact, include all of the information that our proposed rules are  
16 requiring. And I just wanted to give anybody an opportunity to comment if they have any questions  
17 about that. That was one of the outstanding issues with respect to OATH’s comments.

18 **Mr. DeLaney:** I think it's time for me to say thank you, again.

19 **Mr. Clarke:** (Garbled, muffled) I’m sorry, I didn’t hear.

20 **Mr. DeLaney:** I think it's time for me to say thank you, again.

21 **Mr. Clarke:** (Garbled, muffled) Oh, no problem, okay.

22 **Chairperson Hylton:** Stephan, there's something going wrong with your device. You're coming in  
23 muffled.

24 **Ms. Lin:** There’s a problem with your mic, too.

1 **Chairperson Hylton:** My mic, also?

2 **Ms. Lin:** Yeah, I'm hearing a reverb on your end as well.

3 **Chairperson Hylton:** Stephan, let me test you first. Go ahead.

4 **Mr. Clarke:** (Extremely muffled) Okay, can everybody hear me clearly?

5 **Ms. Roslund:** No, it got suddenly garbled. Oh, I'm garbled, too.

6 (Various garbled, inaudible)

7 **Chairperson Hylton:** I'm sorry. Go ahead, Heather. I didn't hear you.

8 **Ms. Roslund:** It sounds...It was all...Oh yeah, it's better.

9 **Chairperson Hylton:** How about me? Is everyone hearing me? Okay, because it's all about me. Stephan,  
10 can you just speak?

11 **Mr. Clarke:** (Garbled, muffled, inaudible)

12 **Chairperson Hylton:** No. It's really bad.

13 **Mr. Clarke:** I'm going to come over there.

14 **Chairperson Hylton:** Yeah, please.

15 **Ms. Lin:** Renaldo, I think you have to unmute caller 17. I think Stephan's dialing in.

16 **Chairperson Hylton:** Stephan, could you turn the volume on your device down? Use your phone.

17 **Ms. Lin:** Stephan, I think you have to turn off the sound on your laptop and listen in on your phone.

18 **Mr. Clarke:** Yes. Can you guys hear me now?

19 **Chairperson Hylton:** Excellent. Thank you.

20 **Mr. Clarke:** Okay, so, I think Mr. DeLaney just stepped away for one moment. So, once he returns, we'll  
21 pick it back up. Or if you want....

1 **Chairperson Hylton:** I think he just said, thank you. I think he... correct me if I'm wrong... he said he was  
2 saying thank you before.

3 **Mr. Clarke:** Okay

4 **Chairperson Hylton:** Does anyone else want to have anything else to say about what Mr. Clarke has  
5 presented so far?

6 **Mr. Clarke:** Okay. Since I know we don't have that much time left, I'll go ahead, and we'll go into the  
7 next document, which is a comparison. This is the largest document that was sent. And this document is  
8 actually another request from Mr. DeLaney; and this request is under 1-27 Hearings. This is section (e).  
9 And the reason why Mr. Glen Argov undertook the task of comparing OATH's procedural rules with the  
10 Loft Board rules --- under (e), it says that,

11 "Where OATH conducts a hearing and the Loft Board's rules conflict with OATH's procedural rules,  
12 OATH's procedural rules of practice will apply unless otherwise provided by law."

13 Then it goes on to say,

14 "Where there is no OATH rule or practice regarding a procedural issue, the Loft Board's rules will apply."

15 So, the reason why Glen took on the task of putting this comparison sheet together is Mr. DeLaney  
16 wanted to find out the differences between OATH's procedural rules and the Loft Board's procedural  
17 rules. Because what would happen if the Loft Board members accept the change in the rules -- in our  
18 rules, under 1-27 Hearings -- then what would happen if, as soon as we send our cases down to OATH,  
19 all of OATH's procedural rules will govern? If the Loft Board rules and OATH rules conflict, OATH's  
20 procedural rules will govern. If there is an issue that arises where the OATH rules are silent, then the Loft  
21 Board rules would apply.

22 So, this sheet that we have has various procedural issues that might come into play. Whether it's,  
23 essentially, a conflict between OATH's procedural rules and the Loft Board's procedural rules. And I  
24 just... before we go into the document, we're going to go through each of the issues here. I think there  
25 are about....there's thirteen of them. We'll get through them, but I wanted to make sure that everybody

1 had time to just familiarize themselves with this a little bit. And then also just to explain that the only  
2 time this comes into play is when the Loft Board sends our cases down to OATH.

3 So, when somebody files an application with the Loft Board, there's various phases that the application  
4 goes through. The first phase is the filing, where the parties file the application; the opposing party has  
5 time to answer; there might be some amending going on. But that's phase one. That's not at OATH yet.  
6 Phase two is after the Loft Board makes sure that we have the application, the parties have answered,  
7 and there's proper proof of service; all of our rules would apply to phase one. Phase two now is when  
8 we actually send it to OATH to adjudicate the matter. And this is where procedural rules might conflict.  
9 So, I just want everybody to keep that in mind.

10 Phase two includes when we send it to OATH up until OATH writes the Report and Recommendation  
11 and sends it back to the Loft Board. After that, I guess you could say phase three would be the Loft  
12 Board staff going through the information and writing our proposed rules (sic); submitting that to the  
13 Board members for their final Order. That's phase three. And then the last phase is any type of appeal  
14 process that might happen. So, we're really, again, looking at phase two: when we send it to OATH.  
15 That time period between when we send the application to OATH and when OATH writes their Report  
16 and Recommendation. So, the very first issue that we have on this sheet....

17 **Mr. DeLaney:** Stephan, can I interrupt for one second. First off, thank you for doing this. And Glen. I  
18 know this was a significant undertaking, and I very much appreciate it. But just for some of the newer  
19 members, maybe it would be worth pointing out that, when a case goes to OATH, it first goes to a  
20 settlement judge, who attempts to see if the issue can be settled via conference. So, my question to you  
21 is, do any of these procedural rules apply to that period? Or only if, when the parties can't agree, as I  
22 understand it, it then goes to a different OATH judge for a trial; the theory being that the settlement  
23 judge may have been party to discussions that would have exposed him or her to issues and questions  
24 that would not be appropriate for somebody who's now going to actually try the case.

25 **Mr. Clarke:** Thank you, Mr. DeLaney. That's a great question. I think Executive Director Lin can chime in  
26 or Glen can chime in, but I think that that would still fall within this purview of OATH's procedural rules  
27 applying. Because that's no longer in the Loft Board staff's... We wouldn't be handling any of that. We

1 never know when that's happening. So, that's all OATH's undertaking. So, I would assume that that  
2 would fall under OATH's procedural rules as well, but...Executive Director Lin, I'm not sure if you have a  
3 difference of opinion, but that's what I....

4 **Ms. Lin:** No, I agree. I think once it's before OATH, including the settlement portion, their rules would  
5 apply. And some of these rules probably would apply. For example, OATH has rules on who can appear  
6 before them. And I would think that their procedural rules would apply at settlement conferences as  
7 well.

8 **Chairperson Hylton:** But Mr. DeLaney's correct in that the settlement judge is not the trial judge.

9 **Ms. Lin:** Yes, that's correct.

10 **Mr. Clarke:** Correct. Okay, so, if there are no further comments, we can get right into the documents  
11 with the first issue. Page one is the Computation of Time. This is basically whether or not... So, the  
12 computation of time, for both the OATH rules and the Loft Board rules, is basically, how much time do  
13 the parties have to do something? The OATH rules are...They talk about calendar days, and the Loft  
14 Board rules, they speak of business days. And then the Loft Board rules further define business days as  
15 ending at 4pm, from 9am, to 4pm. And that's the only difference with the computation of time.

16 And that, if something happens when the case is before OATH, the computation of time is going to be  
17 calendar days, as opposed to business days. But we don't believe that that has any real effect on  
18 anything. But calendar days is different from business days; business days being defined as 9am to 4pm.  
19 But OATH rules would apply if the case is before OATH at that time, and there's a certain amount of time  
20 that the party has to submit or do something. OATH rules would apply, and that would be calendar days.

21 **Ms. Lin:** Just to clarify, Mr. Clarke is referring to the comparison between OATH's current rules and our  
22 current rules. Our proposed rules do actually go on to say calendar days. And again, as Mr. Clarke  
23 pointed out, you know, it's just a difference in terminology. I think, practically, the effects would be the  
24 same.

25 **Mr. Clarke:** Yes, you're right. Thank you, Director Lin. Our new rules do say calendar days.

1 **Chairperson Hylton:** Meaning that we are adopting OATH's procedural...

2 **Mr. Clarke:** Right. It, practically, for all intents and purposes, would be the same. Okay, if there are no  
3 issues with that, we can move on to the second issue, which is OATH's rule 1-07, Filing Papers and Proof  
4 of Service. For the most part, when somebody files an application with the Loft Board, that is not before  
5 OATH at that time, so the Loft Board rules would apply with respect to filing the papers and the proof of  
6 service. But there might be instances where the parties need to file when the application is before  
7 OATH, and they need to submit proof of service. So then OATH's procedural rules would come into play  
8 and apply. So, I see on the sheet, OATH allows electronic service, and that is one of the major  
9 differences between OATH's rules and our current rules.

10 However, our proposed rules.... Okay, let me break this down into two. First there's the service; the  
11 actual service. OATH allows electronic service, and our rules, I don't think they changed, our proposed  
12 rules.

13 **Ms. Lin:** No Stephan, we did change. We are trying to allow for electronic service now. So once the  
14 proposed rules are passed, it would conform with the OATH requirements on service and what's  
15 allowed.

16 **Mr. Clarke:** Right. Yes. So, then both of those, the service, would allow electronic service. Yes. So, those  
17 two issues look the same, and we don't think there's any conflict there. Proof of service is the next part  
18 of that that rule, and the proof of service is, OATH requires an affidavit from the person effecting  
19 service, or acknowledgement by the person receiving the service. Our proof of service, under the  
20 proposed rules...Our proof of service, again, allows for email, fax, and first-class mail, and private  
21 delivery.

22 So, there is a minor discrepancy between these two with respect to proof of service. If the case is before  
23 OATH, OATH's procedural rules, would govern. And OATH requires proof of service in the form of an  
24 affidavit by the person effecting service, or acknowledgement by the person receiving service. So that's  
25 the only....and Executive Director Lin or Glen can step in, but that's the potential conflict that might  
26 arise. And OATH's rules would apply in that situation. It's different than our rules. But if it's before



1 OATH, proof of service that OATH requires is an affidavit by the person affecting service or  
2 acknowledgment by the person receiving service.

3 **Chairperson Hylton:** And what is in our proposed rules again?

4 **Ms. Lin:** It requires something a bit more. Either an email or fax delivery receipt. So, something other  
5 than a statement saying you did it, or an affidavit. And it's just my two cents, you know, I'm not sure if it  
6 has really any prejudicial effect as different. Because again, the applications that are filed with the Loft  
7 Board are filed with the Loft Board. And we're still going to require them to provide these fax delivery  
8 receipts, or an email, or a certified mailing receipt. So that's all still Loft Board rules. What's being filed  
9 before OATH, what this would dictate, would be things like motions and the memos that they file with  
10 the parties already before the OATH judge. And I think there's probably, in my opinion, less of a concern  
11 of requiring a very specific proof of service.

12 **Chairperson Hylton:** So, no big deal there, right?

13 **Ms. Lin:** Not in my opinion, but of course, I'm open to hearing thoughts from the Board members.

14 **Chairperson Hylton:** All right. I like no big deal, because we got to go through this. All right, let's go on.

15 **Mr. Clarke:** Okay. If there are no comments, we'll move on to the next one.

16 **Chairperson Hylton:** I want to recognize Chuck first, and then Heather.

17 **Mr. Clarke:** Sure

18 **Mr. DeLaney:** Okay, so Tina, you make an important point there. Our rules would remain our rules for  
19 the inception of the case, until we hand it off to OATH. But then, for subsequent filings, there'd  
20 be...OATH's rules would apply. And, obviously, part of my interest in understanding the difference  
21 between the OATH procedural rules and ours is -- and I think it's true for practitioners, whether they  
22 represent tenants or whether they represent owners -- they've been used to doing things a certain way  
23 in the Loft Board, and I'd hate to see clients be affected negatively, because there's a different rule now  
24 that somebody hasn't had the chance to get up to speed on. So, actually, for this, we'd still have kind of

1 a parallel universe, where our rules would apply until the handoff, and then a different set of rules  
2 would apply.

3 **Ms. Lin:** Yeah, so, Mr. DeLaney, I think that's correct. So, in terms of actual service – the method in  
4 which you can serve -- I don't think there'll be a difference, because now we're just going to allow for  
5 electronic service, same as OATH. The difference comes down to what proof of service is required, and I  
6 think that's an easy fix. As I mentioned, I think OATH's rules are less onerous than ours, in that OATH  
7 isn't requiring them to hold on to any receipts; they're just requiring an affidavit or an  
8 acknowledgement of receipt, which I think is a lower bar. I do feel like, if people can get through the  
9 hurdle of filing an application with the Loft Board, they can certainly effectuate proper service at OATH,  
10 which – if I understand it -- often that email service is acceptable.

11 **Mr. DeLaney:** So then, in your take on the matter, the OATH rules are easier. So, the likelihood of  
12 anyone getting caught on this particular aspect is low.

13 **Ms. Lin:** Yeah, that's my opinion. And from what I understand, I think the ALJ's are pretty good about  
14 explaining to pro se.

15 **Mr. DeLaney:** Okay. Thank you.

16 **Mr. Clarke:** I think Ms. Roslund had a comment as well.

17 **Ms. Roslund:** And a question, the...One purpose of this exercise is to ensure that none of the conflicts  
18 are so.... are detrimental or egregious as to cause a real issue. And then, am I correct that...So we have  
19 no say over OATH's rules, obviously. But are we also wanting to understand maybe if there are some  
20 places where the two can come closer together? Across the board? Is that something we want to  
21 pursue? Do we want to have a discussion about any of these conflicts to see if there is a reason why we  
22 might want to alter our rules slightly, to be closer to OATH's rules? Or are we just making sure that there  
23 are no unforeseen issues that would arise out of these conflicts?

24 **Ms. Lin:** I believe it's the latter. We're just trying to ensure that the OATH procedures aren't going to be  
25 detrimental to the people who appear before them in any way, now that there's a difference in rules.

1 **Chairperson Hylton:** So, the point here is... I'm sorry, did I interrupt someone?

2 **Mr. Clarke:** Oh, no, I saw Ms. Torres-Moskovitz raising her hand. I was just acknowledging...

3 **Chairperson Hylton:** Okay, go ahead, Julie. I'm sorry. Go ahead.

4 **Ms. Torres-Moskovitz:** All right. Thank you. I was just wanting to make sure you guys are more in this  
5 chart than I am. I love it, but I want to make sure I'm understanding it right, because I have the  
6 perspective of actually being a Loft Law tenant. And one of the things I like about the Loft Board is how  
7 they communicate with other tenants that aren't Loft Board tenants, so that it makes them aware of  
8 things happening. Does anything change with that? I think that's what the certified mail does. It informs  
9 everyone else in the building, so that even if they're not involved in the case, they have a chance to  
10 understand what's happening in their building. Does this affect that at all? The ability of a tenant who's  
11 not a Loft Law tenant and not an IMD, who's in the building. Does it affect their ability to learn  
12 information, or no?

13 **Ms. Lin:** So, I believe this would fall under, again, initiating the application, which would fall under our  
14 jurisdiction still. And our rules still require them to serve affected parties. So, the people in the building  
15 would be served with a copy of the application.

16 **Ms. Torres-Moskovitz:** By digital means, or electronic means? I'm just wondering....

17 **Ms. Lin:** Right now, we don't allow for electronic service. But if our proposed rules pass, it will allow for  
18 digital service.

19 **Ms. Torres-Moskovitz:** So, if you had a building with, let's say with forty-eight tenants, and only ten of  
20 them are Loft Law tenants, you would have to...Loft Board would have to figure out everyone's email?  
21 Or am I getting this wrong?

22 **Ms. Lin:** For the filing of the application, it's the party who initiates the application that will have to do  
23 that. And they don't have to file by email if they don't want to. They can certainly still serve by the  
24 regular method. If they choose to, and the other party consents, they can serve by email. Under the  
25 proposed rules.

1 **Chairperson Hylton:** Yeah, it's important to note, too, that the email service is by consent only, correct?

2 **Ms. Lin:** So, that's something that we're actually going to get to in our rulemaking. I believe the version  
3 that the Board passed back last year doesn't have the consent provision. When we were doing the  
4 emergency rule-making, this issue came up, so that's part of the emergency rule-making on electronic  
5 service. So now, we have to go back and incorporate that into our regular rules.

6 **Mr. DeLaney:** Can you say that again, please?

7 **Ms. Lin:** Yeah, sure. So, the issue is about whether a party needs to consent to email service before they  
8 actually...before email service becomes effective. So back in February 2020, when the Board first passed  
9 the draft rules, consent was not something that was mentioned. And this issue came up during the  
10 course of the emergency rulemaking over the summer in response to...to address the pandemic. The  
11 Board passed a set of emergency rules providing for electronic service. And it was pointed out, I don't  
12 recall by whom -- possibly the Law Department -- the tenants or owners should consent to service  
13 before we can make electronic service a thing. So, we went back....So in the emergency rules that we  
14 passed over the summer, consent of the parties is necessary, before you can actually serve  
15 electronically. So, our current proposed rules don't reflect that, and that's something that staff still has  
16 to work out. How to incorporate the language.

17 **Mr. DeLaney:** Thank you.

18 **Mr. Clarke:** Okay. I'm sorry. Are there any other questions or comments on this issue? Or can we go to  
19 the next one? Okay, so we'll go to the next issue, which is Appearances. That's 1-11(a) for the OATH  
20 rules. And the difference between the OATH rules and Loft Board rules is the OATH rules, they seem to  
21 allow non-attorney representatives to appear before OATH; and the Loft Board rules, it appears they  
22 don't contemplate non-attorney representatives appearing at a hearing. I'm not sure if.... I don't think  
23 that's considered a major issue. But at the very least, the OATH rules are more liberal, and non-  
24 attorneys can appear.

25 **Chairperson Hylton:** Mr. Clarke, it says in our proposed rules, "The parties may be represented by  
26 counsel." Does that may mean it kind of mirrors the same? The proposed rules? Mirroring the...?

1 **Mr. Clarke:** I'm not sure if that "may" means that the parties have the option of representing  
2 themselves, or they have to be represented...

3 **Chairperson Hylton:** Well, I mean, the plain reading of the plain language, right? That "may" means that  
4 you have an alternative, right?

5 **Mr. Clarke:** You have an alternative, but we're not sure if an additional alternative is to have a non-  
6 attorney appear on someone's behalf.

7 **Mr. Hylton:** Is there a specific bar that says so?

8 **Mr. Clarke:** No, there isn't.

9 **Chairperson Hylton:** I don't see how else we can interpret this.

10 **Ms. Lin:** It could be interpreted as a party may represent themselves. So, OATH's rules explicitly  
11 authorizes representation by someone who is not an attorney, and our rules just don't explicitly say  
12 that. Our rules are a little bit ambiguous on that provision.

13 **Chairperson Hylton:** Okay, so leave it ambiguous. I mean, you know, right?

14 **Ms. Lin:** The only point of this exercise is to point out that there's no serious prejudice to the parties by  
15 us allowing OATH to apply their own procedural rules.

16 **Chairperson Hylton:** That's fine. (Inaudible)

17 **Mr. Clarke:** Okay, are there any questions about that? Basically, exactly what Executive Director Lin said.  
18 We don't believe there's any prejudice in applying OATH's rules.

19 **Chairperson Hylton:** Stephan, Mr. Barowitz is... he's going...

20 **Mr. Clarke:** Oh, I'm sorry. Mr. Barowitz. Please.

21 (Mr. Barowitz, muffled)

1 **Chairperson Hylton:** Elliott, could you speak up?

2 (Mr. Barowitz, muffled)

3 **Chairperson Hylton:** Elliott, could you speak up? Could you speak a little closer into your mic? We're  
4 not hearing you.

5 **Mr. Barowitz:** You don't hear me?

6 **Chairperson Hylton:** Yeah, you just keep where you are right there and speak. Yeah. We were not  
7 hearing before. Go ahead.

8 **Mr. Barowitz** (muffled) use the word counsel, they use the word attorney. This seems (muffled) to  
9 occur periodically. There's some words that have the same meaning. And it's a little confusing to have  
10 those terms in there. The one says an attorney, and the other says, on the other hand (muffled), lawyers  
11 on the Board.

12 **Chairperson Hylton:** Mr. Barowitz. I'm sorry, we're not we're not hearing you. I don't know if you could  
13 try your volume on your device?

14 **Mr. Barowitz:** Can you hear me now?

15 **Chairperson Hylton:** Is everyone hearing Mr. Barowitz?

16 **Mr. Clarke:** Very low

17 **Mr. Barowitz:** I don't know why. All right. Forget it.

18 **Chairperson Hylton:** That's good. That is good.

19 **Mr. Barowitz:** Oh, you got me now?

20 **Chairperson Hylton:** Yes

1 **Mr. Barowitz:** I'll repeat myself a third time. We use the word counsel. They use the word attorney.  
2 (muffled) to the lawyers on the Board here, does counsel always mean attorney? Does it mean a  
3 lawyer?

4 **Chairperson Hylton:** The question is, for those who didn't hear, he's asking if the term counsel and  
5 attorney are synonymous.

6 **Ms. Lin:** I believe they are.

7 **Mr. Hylton:** In my experience, they've always been interchangeable within rules and Administrative  
8 Code.

9 **Mr. Clarke:** Are there any other questions or comments?

10 **Chairperson Hylton:** Christian, Mr. Barowitz didn't hear what you said.

11 **Mr. Hylton:** I'm sorry. I just said, in my experience, they've always been interchangeable within the rules  
12 and Administrative Code.

13 **Chairperson Hylton:** So that's a yes, Mr. Barowitz.

14 **Mr. Clarke:** Mr. DeLaney?

15 **Mr. DeLaney:** I guess the question I would ask then is, maybe this is an example of an instance where  
16 we might want to consider changing our rule to comport with OATH's. I'm thinking, in particular, that  
17 it's possible that someone could have limited English ability, for example, and would want someone to  
18 pose questions or act on their behalf, who can provide some translation services. You know, some of us  
19 are getting up there. I might start to slip a little, and just need a little help. Not a high-priced attorney,  
20 but somebody to just tell me to... give me an elbow in the ribs when I say the same thing for the fifth  
21 time.

22 **Chairperson Hylton:** But Mr. Delaney, I believe the proposed language right now does just that. It gives  
23 the opportunity. I think this proposed language was just meant to simplify. What the current rule says,  
24 is that you are "... afforded the opportunity to be represented by counsel." And then, "Parties shall be

1 advised of their right to be represented by counsel.” It's the same as saying you may be. That's my point  
2 before, Mr. Clarke. It's that the word may there just means that you have other options. Counsel is one  
3 of them, or an attorney is one of them.

4 **Mr. Clarke:** They do have options; it's just not clear what those options are.

5 **Chairperson Hylton:** What other...Okay, so I would exclude animals and so on, right. But if you say here  
6 that you may be represented by counsel, and you say, well, I don't want to be represented by counsel,  
7 then you pick and choose. Who else do you want? I don't think it conflicts with OATH's language here. It  
8 certainly simplifies the other rule just for plain language. I think this was just plain language revision  
9 here. I don't think there's any conflict, in my opinion. And so, I don't see....

10 **Ms. Roslund:** Doesn't it leave some ambiguity about, if the person does actually represent the  
11 applicant? Or the whoever? Or does it need to be the same person? Can I have my friend come next  
12 week, and my mom show up next, the week after, and my next-door neighbor the week after?

13 **Chairperson Hylton:** Anyone have any experience, adjudicative experience here? Can you let me know?  
14 I don't know if you can switch representatives, but I don't think it really bars.... I know in ECB court, you  
15 can, at any time, you can choose whoever you want to appear. I don't know how it is at OATH. But I  
16 want to point something out before I give anybody a chance to say. I want to point something out. In  
17 OATH's rules, it says, “..or by a duly authorized representative.” So, it seems to me that OATH does have  
18 some restriction on who may appear there, right? It says, “a duly authorized representative,” meaning  
19 that maybe you have to be authorized. Maybe you have to have some sort of registration with OATH to  
20 appear. I'm not sure if anyone here can opine on that or inform me, but it seems that they're more  
21 restricted than our rule.

22 **Ms. Lin:** I think I interpret that as duly authorized by the litigants. You can designate a representative. I  
23 don't believe you need a license to practice before OATH. I'm pretty sure you do not need a license.

24 **Chairperson Hylton:** Okay. I'm pretty sure of that too, but I wasn't sure what that means.



1 **Ms. Lin:** To go back to Mr. DeLaney's point of whether we should expand our rules, there would be an  
2 easy fix, if the Board wants to do that -- to explicitly authorize for non-attorneys to represent litigants. If  
3 hearings ever fall back under Loft Board jurisdiction, we could just amend 1-27(c) to now read, at the  
4 hearing, parties may be represented by counsel or by a duly authorized representative, to conform with  
5 what OATH has to allow for non-attorney representative.

6 **Chairperson Hylton:** Yeah, that's simple enough. So, I think that's fine. Yes.

7 **Mr. DeLaney:** Yes, that's what I was suggesting. And it might be helpful....To my recollection, through all  
8 these years, we once had a tenant attempt to represent himself, who was clearly challenged in one or  
9 more ways, and it's possible that there might be a friend or a neighbor who could assist without being as  
10 costly as an attorney. So, I think if there's a way to authorize someone, that's a good idea.

11 **Mr. Clarke:** Okay. Thank you, everyone. Are there any more comments?

12 **Mr. Hylton:** I have a comment on that. I would only say that, it is also important that applicants  
13 understand, especially when you're entering a potentially quasi-judicial Board, and they do not wish to...  
14 They may want to avail themselves of legal representation. You don't want to give an impression that  
15 this is something less than what it is. And that there will be legal interpretations that they may want to  
16 consult someone with before they're choosing to represent themselves.

17 You know, obviously in court, a person can represent themselves pro se, but you understand what the  
18 jurisdiction is, and you understand the ramifications of that. And I think one of the things in terms of  
19 how the language is currently placed, it says you may, but that inference is that you probably would  
20 want an attorney to represent you on some of these matters. And I think it's important that persons  
21 understand the gravity of the situation in terms that they enter.

22 When I practice before OATH, and you do have to represent that you represent the applicant, even as  
23 an attorney. And if you're not an attorney, you have to have some particular link to the property itself,  
24 that -- and some type of authorization in terms of when you're appearing in front of hearings there. So,  
25 it's not just that anybody can come and represent anybody else, interchangeably, hearing to hearing. So,  
26 I'd just bear that in mind.

1 **Chairperson Hylton:** Are you proposing any particular change to the language that would bring out your  
2 point? Are you saying the word “may” here may say something different?

3 **Mr. Hylton:** No, I'm not. No, I'm just bringing something to light.

4 **Chairperson Hylton:** Okay, great. Because I was going to say, maybe at the hearing the parties have the  
5 right to be represented by counsel or a duly.... You know, maybe that's probably a better...

6 **Mr. Hylton:** It'd be....Have the right, would be a way of putting it.

7 **Chairperson Hylton:** In the interest of time, guys, I think if we could just replace the word may here  
8 with, at the hearing the party, the parties, have the right to be represented by counsel or by a duly  
9 authorized representative. Is that okay with everyone?

10 **Mr. DeLaney:** Doesn't right to counsel imply that, if I'm indigent, I have to be supplied with a counsel?

11 **Chairperson Hylton:** I don't know that. Can you Christian? You're the, you're the lawyer on the Board.

12 **Mr. Hylton:** Off-hand, I can't speak to that, out of mine. I would defer to counsel for the Loft Board.

13 **Ms. Lin:** Yeah. I have no idea. It's an interesting point. I don't know.

14 **Mr. DeLaney:** I know that in housing court now, there's a right-to-counsel initiative, that currently  
15 applies to a limited number of population districts, where it mandates that a lawyer be supplied if the  
16 tenant can't afford one.

17 **Chairperson Hylton:** Actually, that's a good point, Mr. DeLaney. Because if I think about... I watch a lot  
18 of cop movies and stuff, and you know, when they're making an arrest, they say, you have the right to  
19 remain silent, or you have the right to an attorney. So maybe you want to back off from that, after  
20 thinking twice about this.

21 **Mr. Hylton:** Brings it back to me.

1 **Chairperson Hylton:** Yeah. Okay. Let's move on. We've got proposed language. At a hearing, the parties  
2 may be represented by counsel or by a duly authorized representative, correct? That's the language we  
3 have.

4 **Mr. Clarke:** Right. Okay. I got it. Okay, so the next issue is Ex Parte Communications, and OATH deals  
5 with that issue in section 1-14. Our analysis is that both of the rules are similar. Both the OATH rules  
6 and the Loft Board rules are similar, in that ex parte communications are not permitted. In our current  
7 rules, we did have a section, in the proposed rules, we did have a section where we allowed for --  
8 there was a section about the Loft Board: "A member shall not communicate with any member ..." I'm  
9 sorry. In the proposed rule, it said that the Loft Board staff conducting a Narrative Statement. And we  
10 already addressed that, and we already removed that section, because we found it to be confusing. But  
11 other than that, it seems like the language...There's nothing conflicting between OATH and the Loft  
12 Board rules. Neither of them allow ex parte communications. But if anybody has any questions or  
13 comments, we can address them now. Okay. No comments?

14 Then we can move on to the next one, which is Amended Pleadings. It's OATH rule 1-25, and in my  
15 reading of this, there might be a potential conflict. If the case is before OATH, if the party wants to  
16 amend their pleading, they have to amend twenty-five days prior to the start of trial. But the Loft Board  
17 rules allow the parties to amend the pleadings at any time up until, even including, the date of, the first  
18 scheduled conference. So, there might be a possible...in my reading of...

19 **Chairperson Hylton:**....the amended piece, the proposed rule?

20 **Mr. Clarke:** Yeah. In the Amended Pleadings.

21 **Chairperson Hylton:** I got it.

22 **Mr. Clarke:** Yeah. Our proposed rules allow an applicant to submit an amended pleading at any time, up  
23 until and including the date of the first scheduled conference. But OATH has a time limit. They have to  
24 amend it twenty-five days prior. Unless they get the consent of the parties or the approval of an ALJ, the  
25 parties need to amend their pleadings twenty-five days prior to the start of trial. It's a slight difference

1 that... It's noticeable, but I don't think it's prejudicial to anyone. I'm not sure if Glen or Tina disagree with  
2 that.

3 **Ms. Lin:** No, and I would just point out that our rules really only apply to the first scheduled conference.  
4 Thereafter, you need the leave of the adjudicator in order to amend.

5 **Mr. Clarke:** Are there any comments on that?

6 **Mr. Delaney:** I'm sorry. I had my hand up. First, is it our intention to stop?

7 **Chairperson Hylton:** That was my intent. I mean, is anyone objectionable to going another fifteen  
8 minutes?

9 **Mr. Delaney:** Well, my comment was going to be, this is the first one of these that came up where I  
10 would like to get some input from the practitioners before I sign off on this one. And ah....

11 **Chairperson Hylton:** Okay. So, we could just leave this....

12 **Mr. Delaney:** And I appreciate that this is work product, so I have not shared this document with any of  
13 the practitioners. But this is the first one that kind of had me thinking I'd like to get some input, which I  
14 will do without sharing the document.

15 **Chairperson Hylton:** So, we can leave that as an open item, correct, Mr. Clarke?

16 **Mr. Clarke:** Yes

17 **Chairperson Hylton:** Okay. One second. It's now four o'clock. I said what I said, and I wanted to ask if  
18 there's anyone who's objectionable to going through to 4:15? Thank you for your patience, guys. Let's  
19 just try to get as much done by 4:15.

20 **Mr. DeLaney:** So, we're leaving 1-25 open?

21 **Mr. Clarke:** Yes

22 **Chairperson Hylton:** Yes

1 **Mr. Delaney:** Okay

2 **Mr. Clarke:** Okay. The next one, 1-26 might be my entire fifteen minutes that Chairperson Hylton just  
3 gave us. I'm not sure if we should leave that one an open item, or should we just try to move through  
4 that one now?

5 **Ms. Lin:** No, let's skip 1-28. That one does probably require some discussion. So, we're going to take up  
6 the OATH rules again at the next Board meeting. Let's table that.

7 **Mr. Clarke:** Okay. You said let's table it, right?

8 **Ms. Lin:** Yeah, so at the next Board meeting, just to clarify, we will revisit 1-25 and 1-28.

9 **Mr. Clarke:** Okay. Great. So, the next one will be 1-31. That's the Settlement of Conferences and  
10 Agreements. And both of the rules are similar, in that they require an agreement to be reduced into  
11 writing. But the Loft Board rules go a little bit further and require review by the Executive Director. But  
12 there's no conflict at that point. So, Loft Board rules will apply, and that's something that we're already  
13 currently doing with our settlements and our Summary cases. Are there any questions or comments?  
14 Yes, Mr. DeLaney.

15 **Mr. DeLaney:** I think this is worth spending a moment on, particularly for the benefit of the newer  
16 members. You can see that in the box marked difference, the last sentence points out that the new rule  
17 includes additional language that states, "The Loft Board must reject settlements that include terms  
18 which violate public policy or those which are void and unenforceable." And this has happened a  
19 number of times in the last, oh, five or six years, I'd say, where owners and tenants have come up with  
20 ideas like, okay, you withdraw your case; we won't be governed by the Loft Law, but I'll give you ten-  
21 year leases, and you'll give me eight years to bring the building up to code instead of the more stringent  
22 rules mandated by the Loft Law.

23 And we have rejected those as being against public policy. We've been taken to court, and I believe  
24 we've prevailed in all those cases. And obviously, I believe that we can't allow some parallel universe,  
25 where tenants and owners agree to be bound by a set of rules that don't relate to a state law or the

1 city's Administrative Code, even though there are times when there are tenants who have not been  
2 pleased with me taking that position.

3 And there have also been many times that tenants and owners come up with a stipulation, which  
4 includes some provisions that either make no sense or bind the Loft Board to do certain things. And the  
5 Loft Board has come up with an approach to say, we accept the settlement, but we neither accept nor  
6 reject the terms of the settlement -- which is something that those of you who've been on the Board for  
7 a while must be so sick of hearing me object to every time it comes up. We didn't have any on this  
8 docket, but if there's any way that we can, you know... I think it's important that we include what we put  
9 in involving our attitude toward things that violate public policy. And since, ultimately, the case comes  
10 back to us to approve, or reject, or modify, or send back to OATH, we have the final say. But this is an  
11 area that I think would benefit from some discussion and perhaps scrutiny.

12 **Mr. Barowitz:** I agree with Chuck totally. You know, when the first Loft Law came into effect, we saw a  
13 substantial number of tenants that made deals with landlords, and in fact (inaudible). And I don't think  
14 putting in an escape hatch here (inaudible). I mean, we have, oh, it's against public policy, but we really  
15 have to make that very clear. Either we're bound by the Loft Law, or we're not.

16 **Mr. Clarke:** Okay, thank you. Are there any other comments on this section? Okay. So then, we can  
17 move on to the next section, which is 1-32 Adjournments. So, the difference between the rules -- the  
18 OATH and the Loft Board rules-- is the Loft Board rule does not allow for more than two consecutive  
19 adjournments, unless the party requested five days in advance, at which point it may be granted. But  
20 OATH rules do not specify a limit on adjournments, basically. So, that is the only difference. We don't  
21 believe there's any prejudicial effect. It is a difference, but if it's before OATH, the OATH rules would  
22 apply. And OATH doesn't limit the amount of adjournments that can be allowed. Are there any  
23 comments?

24 **Ms. Roslund:** Why do we have this limit? Do you know where that came from?

25 **Mr. Clarke:** I'm not sure why the Loft Board decided to impose a limit on adjournments. Usually, a limit  
26 on an adjournment would....is to streamline the process and not unreasonably delay the trial or the

1 hearing. So, I can see why there would be a limit. But at OATH, their rules just don't specify a limit on  
2 adjournments. They give the control to the ALJ, who has the latitude, based on their discretion, to  
3 decide if there's any type of unreasonable delay or any type of reasons why they're no longer going to  
4 grant adjournments. So, it just, basically, gives the ALJ that control with OATH.

5 Are there any other questions or comments? No? Okay. So, we're almost there. The next one is 1-43.  
6 This speaks on subpoenas. And the Loft Board rules allow the parties, themselves, to issue subpoenas;  
7 where the OATH rules require the ALJ to issue it. That's the conflict. Basically, when it's before OATH,  
8 the parties have to get the approval of the ALJ, and the ALJ has to issue the subpoenas. We don't believe  
9 there's any prejudicial consequences to that, but if anybody has comments, we'll listen. Anybody have a  
10 comment or question?

11 **Mr. DeLaney:** This is another one I'd like to ask that we leave open, because I'd like to get some  
12 feedback from the practitioners.

13 **Mr. Clarke:** Okay. Anybody else with respect to subpoenas? Okay. So, we can move on to the next one,  
14 which is Failure to Appear. So, this one has....At various times throughout the hearing, parties can fail to  
15 appear. So, if it happens during the portion where it's before OATH....I'm sorry...OATH just requires the  
16 parties and attorneys to be present at the commencement of the trial. If not, then there's a failure to  
17 appear.

18 The Loft Board rules, we set timeframes and different criteria for vacating a default. So, a default  
19 happens when you fail to appear. There's a default judgment against the party. So, the Loft Board rules  
20 allow parties to vacate that default judgment, and it's specified in our rules. OATH pretty much just says  
21 that the parties should be there, and that absent good cause, the OATH judge will proceed without the  
22 party that's absent. Loft Board rules allow....

23 **Ms. Roslund:** I was going to say I'm getting a little bit lost with the breaks.

24 **Mr. Clarke:** Okay, I got what you're....I'm going to summarize it really quickly for you guys. Okay, so if a  
25 party fails to appear, the ALJ can grant release/relief, which means that, when the party fails to appear,  
26 there's a default judgment against the party, which means the hearing can move forward without that

1 particular party's input. They can't present their case because they've defaulted. In order to vacate that  
2 default under OATH's rules, it's in the discretion of the ALJ to vacate that default. The Loft Board rule  
3 has a specific process to vacate that default, and it includes time limits and a standard of care as well.  
4 And that's the difference between vacating defaults with OATH and the Loft Board rules. Basically, the  
5 ALJ has the discretion when it's before OATH. And if it's not before OATH, there are time limits that a  
6 party has to submit a request to vacate the judgment. I'm not sure if that's a little bit clearer, but that's  
7 the gist of what's happening here. The difference between the two.

8 **Chairperson Hylton:** So, Mr. Clarke, you're saying at OATH, there is no....

9 **Mr. Clarke:** I'm sorry, I couldn't hear you, Chairperson Hylton.

10 **Chairperson Hylton:** Are you saying at OATH, that there's no time limit to vacate the default?

11 **Mr. Clarke:** That's correct. And that's what I read. Do you agree, Mr. Argov?

12 **Mr. Argov:** So just to jump in... So, the OATH rules, they sort of say that a motion must be filed as  
13 promptly as possible, but it doesn't specify a particular timeframe. So, I don't know how open-ended it  
14 actually is in practice, but their rules say it has to be done as promptly as possible. It doesn't give us a  
15 certain amount of days, as our rules do.

16 **Ms. Lin:** I imagine they would have up until the close of record before the R&R is issued to do  
17 something. But that being said, it's now 4:15, and I do imagine this is something that Mr. DeLaney wants  
18 to take up with the practitioners, which I will find valuable myself. So why don't we say 1-45 will also be  
19 taken up later?

20 **Chairperson Hylton:** Thank you. So, at this point, Mr. Clarke, I'm going to ask that we cease the  
21 discussion of rules, right? So, it doesn't make any sense picking up another point here. So, we're going to  
22 table 1-43?

23 **Ms. Lin:** 1-46

24 **Mr. Clarke:** 1-45



1 **Ms. Lin:** I'm sorry. 1-45. You're correct.

2 **Chairperson Hylton:** Thank you. All right.

3 **Mr. DeLaney:** Mr. Chairman, before we conclude, I would just like once again to thank Glen and  
4 Stephan for their work on this. Plowing through this and comparing these, particularly if you've got a  
5 baby that keeps you up at night, has got to be a tall order, so...I asked you to...

6 **Ms. Roslund:** That's what he does at night while he's...

7 **Mr. DeLaney:** I asked you to do it, and I'm really very appreciative. You guys did a great job with this.

8 **Ms. Roslund:** Yeah, this is amazing. It's really quite easy to follow. I mean, the language is technical, but  
9 the structure is really brilliant.

10 **Ms. Torres-Moskovitz:** I also thank you for asking them to do it, because it's important. Clearly, there's a  
11 lot of issues that may be minor, but they seem like they add up to something that should be discussed,  
12 as long as we're doing rules. So, thank you, Chuck.

13 **Chairperson Hylton:** Okay, I appreciate it. Thank you. And, again, I say to staff, they've been, you know,  
14 they're doing this in addition to (inaudible). So, to the extent that anyone here on the Board -- and  
15 Christian, you're a welcome attorney addition to the Board -- if there's anything that pops up between  
16 Board meetings, you know, you can reach out to Ms. Lin, and to Stephan and Glen ahead of time. I  
17 guess, go through Ms. Lin in terms of sharing or pointing out some stuff, so that we can speed up  
18 discussion at the Board meeting. All right? So, I thank you very much. Without objection, I'm going to  
19 close the meeting.

20 So, this concludes our January 21<sup>st</sup>, 2021 Loft Board meeting. Our next public meeting will be held on  
21 Thursday February 18<sup>th</sup>, 2021, at 2pm. The Governor's suspension of in-person meeting requirements  
22 for the Open Meeting Law is in effect until January 29<sup>th</sup>, 2021, so at this point, we do not know whether  
23 the next Board meeting will be in person or via teleconference. But if you're playing the lotto, I would  
24 bet on another suspension. Board members, we will update you as soon as we know the format of the  
25 next meeting. We will also put that information on Loft Board Listserv and post the information on the

- 1 website of the Loft Board. Board members, please sign and email in your attendance sheets as soon as
- 2 possible. Thank you and have a great month of January. Thank you.