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Transcript of the May 20, 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: 2:07 PM

1 **Chairperson Hylton:** Okay, good afternoon. My name is Renaldo Hylton, the Chairperson designee of
2 the New York City Loft Board. Welcome to our May 20th, 2021, public meeting. This meeting is being
3 held via teleconference pursuant to the Governor's Executive Order 202.1 due to the coronavirus
4 emergency.

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

12 Before I start, I have two short comments. First, we have a new Board member with us today, and that's
13 Ms. Nicole Oddo. Nicole is a skilled financial executive and Certified Public Accountant with over fifteen
14 years of experience as an accountant and operations professional. Her experiences growing up fueled a
15 desire to help build power for working class communities, immigrants, and other vulnerable members of
16 society. Among other notable achievements, including work at leading contemporary art galleries,
17 Nicole began her career as an auditor and tax accountant in a wide variety of industries, including
18 government contracting, nonprofits, food and beverage, real estate, and luxury retail. She further
19 developed her nonprofit expertise in the role of Director of Finance and HR, and later CFO, at Make the
20 Road New York, a multi-funded social justice organization with over two hundred employees and sites
21 throughout the New York metropolitan area. Nicole is excited to be back at a place where her work
22 contributes to making people's lives better and is honored to join the New York City Loft Board. Nicole,
23 do you want to just say hi, and welcome folks?

24 **Ms. Oddo:** Renaldo, I'm just very grateful to be able to lend my experiences to helping support people,
25 especially in New York. I've lived here for a long time, and it's really something I enjoy doing. So, thank
26 you for having me today.

27

1 **Chairperson Hylton:** Thank you, Nicole. Welcome to the Board. There's a lot of work here, so I
2 appreciate your being a hard worker. All right, secondly, item number 8 on today's agenda will be a
3 discussion of an active litigation matter against the Loft Board: *Matter of Dezer Properties II LLC versus*
4 *New York City Loft Board*. So, my aim today is for the Board to consider this item after all other agenda
5 items have been addressed. At that time, I will entertain a motion for the Board to enter in executive
6 session to discuss this matter. Okay?

7 So, we first turn to a vote on the minutes from the March 18th, 2021, public meeting. Before we vote, I
8 have one comment on the March 18 minutes. So, at the March 18 meeting, I, as Chairperson,
9 inadvertently announced the details of docket number LE-0715. LE-0715 was not on the agenda, on the
10 calendar. And that intended case included docket numbers LE 0722 and RG 0211. And that case was the
11 Broadway Corporate Group LLC, at 496 Broadway in Brooklyn. So, to be clear, documents for LE 0722
12 and RG 0211 were, in fact, presented to the Board and voted upon. And LE-0715 was not presented for
13 discussion at the March 18 meeting. But the minutes from the March 18 meeting reflect the Board's
14 vote on LE-0722 and RG-0211. Is there any question about that? This was just a naming. I just called
15 the wrong case. It was not on the agenda, but you debated and voted on the case that's reflected in the
16 minutes. All right? It was just a typo on my sheet. Okay. So, are there any comments or corrections to
17 the minutes apart from what I just mentioned? Mr. DeLaney?

18 **Mr. DeLaney:** Thank you, Renaldo. On page 4, I had asked a question with regard to resuming our
19 enforcement efforts. And at that time, Acting Executive Director Lin pointed out that our enforcement
20 attorney was out on leave at that time, but I see him in the room today, so I'm just inquiring, for either
21 now or when the Executive Director gives his report, for an update on our plans going forward with
22 enforcement.

23 **Chairperson Hylton:** Just leave that to Mr. Schultz's Executive Director's Report. Is that good, Mr.
24 DeLaney?

25 **Mr. DeLaney:** Sure. Other than that, I looked as hard as I could to find at least one typo in this, and I
26 was unable to, so Ms. Ryan, congratulations.

27

1 **Ms. Ryan:** Thank you. One for Ryan, zero for DeLaney this week so far.

2 **Mr. DeLaney:** You're going to be up to two in few minutes.

3 **Chairperson Hylton:** Perfection is our goal. Okay, very good. So, without any other comments, is there a
4 motion then to accept these minutes? Mr. DeLaney, and Mr. Barowitz is the second. Ms. Rivera.

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

6 **Mr. Barowitz:** Yes

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

8 **Chairperson Hylton:** I don't think he heard it. Mr. Roche, they're calling your name.

9 **Mr. Roche:** Yes

10 **Ms. Rivera:** Ms. Hayashi?

11 **Ms. Hayashi:** Was that Hayashi? Yes.

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

13 **Chairperson Hylton:** Christian, are you there?

14 **Ms. Roslund:** We may have lost him.

15 **Chairperson Hylton:** One second. I wonder if he...Christian, if you are any one of these callers, and I
16 have you...One second. Christian, is that you?

17 **Mr. Hylton:** Yes, yes

18 **Chairperson Hylton:** Did you hear the vote on the minutes?

19 **Mr. Hylton:** Yes I did. I heard everything.

20 **Chairperson Hylton:** Are you voting in the affirmative for the minutes?

21 **Mr. Hylton:** Yes

1 **Chairperson Hylton:** Okay, very good. Let me just name you. One second. Let me just name Christian.

2 I'm sorry, I had Christian on mute. Okay.

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

4 **Mr. DeLaney:** Yes

5 **Ms. Rivera:** Ms. Roslund?

6 **Ms. Roslund:** Yes

7 **Ms. Rivera:** Ms. Oddo?

8 **Ms. Oddo:** Yes

9 **Ms. Rivera:** Ms. Rajan?

10 **Ms. Rajan:** Yes

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

12 **Chairperson Hylton:** Yes

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

14 **Chairperson Hylton:** Thank you. So, we now turn to the vote of the March 25th public meeting. Are

15 there any corrections or comments to these minutes?

16 **Mr. DeLaney:** I do have one question. In the minutes, early on, we discussed the issue of the handling,

17 tracking, and scheduling if OATH were to pass that to us. And in the March minutes, Chairperson Hylton

18 agreed on page 3 and asked the staff to circle back to OATH and discuss this in a little more depth and

19 report back next month. So, I'm curious when we might get a report on that question. How we would

20 handle the logistics.

21 **Chairperson Hylton:** I thought we handled that at the last meeting, was it not?

1 **Mr. Schultz:** The notice that OATH has been handling for us, should we have to take it over, how that
2 might go. Is that the topic?

3 **Mr. DeLaney:** Yes

4 **Mr. Schultz:** Yeah, we covered it last month, but I'm happy to cover it again in my Executive Report. Or
5 now.

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

7 **Chairperson Hylton:** Very good. Without any other comments or corrections, can I have a vote on the
8 minutes? Can I entertain a motion to accept the minutes? Mr. Barowitz. A second. Ms. Roslund, is that
9 you indicating...? Mr. Roche.

10 **Mr. Roche:** Second.

11 **Chairperson Hylton:** Mr. Roche is second. Thank you. Please poll the Board members.

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

13 **Mr. Barowitz:** Yes

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

15 **Mr. Roche:** Yes

16 **Ms. Rivera:** Ms. Hayashi?

17 **Ms. Hayashi:** Yes

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

19 **Mr. Hylton:** Yes

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

21 **Mr. DeLaney:** Yes

1 **Ms. Rivera:** Ms. Roslund?

2 **Ms. Roslund:** Yes

3 **Ms. Rivera:** Ms. Oddo?

4 **Ms. Oddo:** Yes

5 **Ms. Rivera:** Ms. Rajan?

6 **Ms. Rajan:** Yes

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

8 **Chairperson Hylton:** Yes

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

10 **Chairperson Hylton:** Thank you. Thank you for your patience. Now, I will turn it over to Kevin for his
11 Executive Director's Report.

12 **Mr. Schultz:** Thank you, everyone. Thanks for joining us today. I'll make my first two items, items that
13 Mr. DeLaney mentioned. With respect to enforcement, you're correct. Our enforcement attorney is
14 back. We're very, very happy to have him, and what we've been doing is, we've had a scheduled, weekly
15 meeting, and we haven't missed one yet, that focuses exclusively on enforcement. (It's) largely getting
16 myself up to speed on things and pulling up some old documents -- several documents that laid out
17 some plans in a wonderful presentation prepared by Mr. Argov's predecessor, that we're working from.

18 And some of the topics that we're covering week-to-week are some of the owner defenses that are
19 baked into the rules and how we can address those, both in combating those defenses if necessary but
20 also potentially avoiding having to confront those defenses in the first place. And there's conversation
21 about, I think it was called cooperative compliance. If that wasn't quite the phrase, the meaning of it
22 was ways to try to communicate, warn, advise, perhaps collectively, the owner community in ways that
23 they can avoid enforcement altogether.

1 And then when it comes down to doing enforcement, there's quite a bit of discussion about the venue.
2 Again, I'm getting debriefed week-by-week. Last I understand is OATH Trials is the venue, and for
3 reasons that we're sussing out whether or not that is the best venue, whether OATH Hearings is an
4 option. So, these are the active discussions we're having on enforcement.

5 **Mr. DeLaney:** Okay, I guess, in follow up, I would ask two questions. The first is, as you discussed, the
6 tools that are available, Article 7-C, the Loft Law does have a provision that allows circumstances where
7 either the Board or tenants in the building could bring a motion for specific performance. Have you
8 discussed that?

9 **Mr. Schultz:** I have seen it; we haven't discussed it. But I will gladly put that on the next enforcement
10 meeting agenda.

11 **Mr. DeLaney:** I would appreciate that. For those newer Board members, and I'm talking in rough
12 figures, under the original Loft Law in the 80s, there were about nine hundred buildings that registered
13 as IMDs. There are still about two hundred of those buildings that have not completed the process. And
14 maybe they're waiting for the fortieth anniversary of the Loft Law next year; maybe not; I don't know.
15 But while -- what was the term you used? Constructive compliance?

16 **Mr. Schultz:** Cooperative compliance

17 **Mr. DeLaney:** Cooperative compliance. While cooperative compliance sounds like something that
18 would be a wonderful vehicle if it works, at some point.... There are a few really egregious owners out
19 there. There are owners who haven't registered their bloody building in ten years. We don't know if we
20 have the right emergency contact (information for them). So, at some point, it would seem to me that
21 the Board might entertain using the stick of specific performance in a building or two. I know it's
22 arduous, but it's never happened in close to forty years, and particularly, there are owners that are out
23 there on the field doing the exercises, but there are some still sitting in the locker room. They haven't
24 even showed up on the playing field. So, at some point...And if they get away with it, what message does
25 that send to everybody else?

26 **Mr. Schultz:** Thank you for flagging that. I've written it down.

1 **Mr. DeLaney:** Thank you

2 **Mr. Schultz:** Did you have a second question about enforcement also?

3 **Mr. DeLaney:** I did, but I got so upset about the first one, I forgot the second.

4 **Mr. Schultz:** Okay, if you want to circle back, be my guest.

5 **Mr. DeLaney:** I remember now. Thank you very much for reminding me. At the time that memo by the
6 former enforcement counsel was written, there had been kind of a select group of buildings designated
7 for heightened scrutiny, or maybe cooperative compliance. I don't know what.... Have you reviewed that
8 list? And is there any good news out of that?

9 **Mr. Schultz:** No, I haven't reviewed that list. In fact, I'm going to find that list now that you've
10 mentioned it. It's possible it got to me, and I didn't recognize it for what it is at the time. But thank you
11 for flagging it.

12 **Mr. DeLaney:** Thank you.

13 **Mr. Barowitz:** One of these days, we'll have a new mayor, and I wonder whether somehow we could
14 put this problem on the agenda for the new mayor, or the old mayor, to get more enforcement officers.
15 The fact that there are so many original buildings that still haven't been legalized is really a shame, and I
16 don't know what to say about it. But the only way that could be done is if there were more enforcement
17 officers to go around and to check up on those buildings. So, do you think it's possible that we could ask
18 the mayor or the new mayor to give us a little more help here?

19 **Mr. Schultz:** I have work boots. I have a helmet. I don't know if I have the expertise. To the extent I took
20 note of that, as we are trying to build a comprehensive and effective enforcement plan, that question,
21 comment, and request is going to become part of it. And it's obvious that more resources are always
22 better. But it's also more than that. We want to ask for the right resources, and I think that might very
23 well be one of the right resources to try to get. So, thank you for that. Absolutely. Anything else on the
24 enforcement update? All right, thank you.

1 The second thing Mr. DeLaney asked for was a little update on, I believe, a matter relating to updating
2 the rules. There is a rule by which the Loft Board, and more specifically the Loft Board staff, is
3 responsible for service of documents in the pendency or before an OATH proceeding. And in real life
4 practice, OATH has very kindly, and efficiently, and with a great appreciation, been doing that. And the
5 question...We couldn't change the rules to say they should do it from now on. That's not something they
6 were willing to accept. And so appropriately, the question arose, what happens if and when OATH
7 decides they no longer can do this for us?

8 And in sum, I had a very good conversation with the folks at OATH. We all have a good rapport. And it
9 was clearly explained that there wouldn't be any drop in our laps unexpectedly. There'd be a
10 conversation with lead time; providing of draft documents to use; and a very crucial piece, Mr. DeLaney,
11 and I remember you were interested in that, and I want to make sure I hit it. It was that, basically, we
12 would serve as the mailing agent, but the arrangement of the schedules, would happen by their
13 calendaring unit. We would not be trying to reach out to all the parties to set dates or anything like that.
14 That was the crux of that conversation. If there's any more, I can definitely try to seek that out.

15 **Mr. DeLaney:** That's good. Thanks.

16 **Mr. Schultz:** Okay. Other parts of the update, due to the ongoing public health crisis in accordance with
17 the Governor's Executive Order, 202.105, issued on April 27th, 2021, the suspension of required,
18 in-person Board meetings has been extended through May 27th, 2021.

19 With respect to revenue, the unofficial Loft Board revenue for April was \$950.

20 With respect to enforcement, there were two violations issued in April. On April 2nd, one violation was
21 issued at 73 Leonard Street for no running water in the building. And also on April 2nd, one violation
22 was issued at 517-525 West 45th Street for inadequate heat.

23 I have some litigation updates. There was one new... It's not even really a new case; it's a new motion on
24 an old case. The case is called *Rusudan Grigolia, et al v. Cretan's Association Omonoia, Inc, and DOB,*
25 *HPD, and Loft Board.* And in that case, back in 2015, the tenant had signed a settlement stipulation. And
26 they have now filed a motion to enforce that stipulation. And the terms of that stipulation that are

1 problematic are really the landlord's; they're not us. We remain a party on paper, but according to Loft
2 Board, and by what I've seen, while we're included as a party, the motion isn't an action involving us in
3 any way or the city in any way. It's seeking specific compliance on things that the landlord had said they
4 would do back in 2015.

5 Next, there are three decisions. One is *Robinson, et al v. the New York City Loft Board*. In this case,
6 tenants filed an Article 78 challenging Loft Board Order 4854, which was dated February 21st, 2019, and
7 another Order 4948, dated March 19th, 2020. The tenants have claimed that they were rent-stabilized
8 tenants under Rent Stabilization Law and not the Loft Law. The Orders found that the building was an
9 IMD under the Loft Law, and Order 4854 refused to reject registration for coverage despite the tenants'
10 protest and preference to be covered by the Emergency Tenant Protection Act. And the second Order,
11 4948, denied reconsideration of that, saying that the tenants failed to show error or denial of due
12 process. And most notably, the Board rejected tenants' claim that an informal conference that was
13 scheduled pursuant to Loft Board rules should have complied with CAPA notice and requirements. And
14 the court dismissed the Article 78 petition, finding that the Loft Board's Orders were not arbitrary,
15 capricious, or contrary to law.

16 The second decision update is *James Gubelmann versus the New York City Loft Board, Cynthia Law, and*
17 *Frank Lam*. In that case, the petitioner filed an Article 78 challenging Loft Board Order 4819 denying
18 coverage and protected occupant status because the tenant failed to prove that one of the three units
19 occupied during the Window Period had a front-facing window, as required -- front-facing street, a yard,
20 or a court. Mr. Gubelmann was permitted to withdraw his petition as moot, ultimately, because he
21 reapplied for coverage under new standards that were amended and made retroactive in 2019's Loft
22 Law updates.

23 The third case is *Nazor and Mickle versus the New York City Loft Board and Sydney Sol Group, Ltd*. In that
24 case, the petitioner, the tenants of 544 West 27th Street in Manhattan, filed an Article 78 seeking an
25 Order to compel the Loft Board to reconsider their application a second time. It had already been
26 reconsidered once, and they sought another reconsideration. And these tenants had unsuccessfully
27 challenged two Loft Board Orders in a prior Article 78, so this one was to compel another review. The
28 Loft Board Orders at issue accepted an OATH ALJ's recommendation and denied their application

1 seeking coverage and protected occupant status because the new tenant resided in the building for
2 twelve consecutive months during the Window Period in 2008 and 2009. And the second Order they
3 issued reconsidered, but also denied it. The court dismissed the tenants' Article 78 in this situation,
4 finding that the Loft Board's denying a second reconsideration was rational. It was not arbitrary; it was
5 not capricious, or contrary to law. So those are the litigation updates.

6 And I have one more update that relates to some legislation that I found out about yesterday. So, I really
7 just want to flag it for everybody. It's from the State Assembly. It's bill number A 07667. And it's
8 changes to the Multiple Dwelling Law – proposed changes, I should say -- to the Multiple Dwelling Law
9 282. And I'm just going to read it as the description gives it.

10 It would require owners to provide essential services and habitability for Interim Multiple Dwelling units
11 – and allow occupants of Interim Multiple Dwelling units to bring an action in a court of competent
12 jurisdiction. This adds on some rights and protections for tenants insofar as potential action for essential
13 services and habitability issues in IMDs. And within the language, it discusses, specifically for these
14 issues, being able to bring them to the New York City Civil Court housing part. So, there's more to learn
15 about this. I've told you all I know about it at this time, but I did want to flag it for everyone because it's
16 obviously very, very pertinent to what we do. That is everything I have for the Executive Director's
17 Report.

18 **Chairperson Hylton:** Questions for Mr. Schultz?

19 **Mr. Hylton:** Kevin, in terms of that last legislation you're discussing, do you know who introduced that?

20 **Mr. Schultz:** Yes, it was Glick. Ms. Glick, and I don't have her first name. Assemblywoman Glick.

21 **Mr. DeLaney:** Deborah Glick

22 **Mr. Schultz:** Yes. Thank you. Deborah Glick

23 **Chairperson Hylton:** Is she Manhattan or Brooklyn, Chuck? Do you know?

24 **Mr. DeLaney:** She's Manhattan. Greenwich Village, down to Soho, up a bit to Chelsea.

1 **Chairperson Hylton:** All right. I think Chuck has something.

2 **Mr. DeLaney:** I do have a couple of questions, Kevin. First off, with regard to that new motion in the first
3 case that you recited, where the tenants signed a stipulation in 2015. I didn't get the name of it. Could
4 you send me the papers on that, please?

5 **Mr. Schultz:** Certainly, yes.

6 **Mr. DeLaney:** Okay. Second, further on your report. Can you give me the street address for the first
7 case you reported on, *Robinson, et al*?

8 **Mr. Schultz:** I can give it to you later because I don't see it in my notes, and it should be there. If anyone
9 on the staff can get it before the end of the meeting, I'd appreciate it. And I will try to look it up as well
10 and get it to you before the end of the meeting. I should be able to.

11 **Ms. Lin:** I believe that address is 47 Thames Street, Brooklyn, New York.

12 **Mr. DeLaney:** 47 Thames

13 **Mr. Schultz:** Thank you.

14 **Mr. DeLaney:** Yes, a rare building that doesn't want to be covered by the Loft Law. Now, I do have a
15 couple of other questions on topics that we have not touched upon yet, for you, Kevin. First and
16 foremost, on Monday of this week, the City Planning Commission certified a ULURP item relating to a
17 proposed rezoning of Soho and Noho. This comes after a long period of discussion that originally began
18 in community meetings, and it has some impact on the loft world because of the artist-owned zoning in
19 Soho and Noho; the number of IMDs in Soho and Noho; and in fact, the former Executive Director and
20 Counsel, Ms. Balsam and Ms. Cruz, had attended a number of those community meetings. I just wonder
21 what and how the Board has any intention of playing any role, or staying informed, or briefing the Board
22 members on that topic.

23 **Mr. Barowitz:** Let me add something to what Chuck just said. I got very involved and was on several
24 committees in the new zoning. For example, last week, in the Daily News, there were two long articles --

1 more or less on the Op Ed page, whatever it is in the Daily News -- one by an architect supporting the
2 rezoning of Soho and Noho and another by a housing group that was against it. Interesting, neither of
3 those articles -- and they were all, I would say, quite lengthy -- neither of them mentioned artists. And it
4 begins to sort of grieve me, since that community was, at least the Soho community, was made by
5 artists. And I am getting to the point now where I just, whatever I say, it doesn't seem to matter.

6 I sent two long letters, not identifying myself as a member of the Loft Board, to the Department of
7 Planning, and got no response. So, I think that we have a somewhat uphill battle here for the
8 recognition of artists and others that live in lofts. And I just hope that we can make ourselves known,
9 because also it was really quite clear from the last Zoom meeting I attended on Soho-Noho, that most
10 people had no idea what the Loft Law is, who it covered, and why. And that's really just too bad. I don't
11 know what else to say.

12 **Chairperson Hylton:** Thank you, Mr. Barowitz. Okay, we want to move on. Any other quick comment?
13 Thank you, Kevin.

14 **Mr. DeLaney:** I'm sorry, I don't think I got an answer to my question. I have another one as well, but...

15 **Mr. Schultz:** Sure. I'll answer. Personally, I have to thank Mr. Barowitz. Within, I think, my first, second,
16 or third day of being in this position, he forwarded me a meeting, one of the public meetings. One of the
17 bigger ones, and I was able to join it and listen in. And so to the extent that I and we are staying abreast
18 of this, that certainly is true. In so far as providing updates to you, I can certainly confer closer with the
19 staff to get, personally, a better understanding of the interaction. And I know there is plenty of
20 interaction between what we do and the rezoning, specifically insofar as impacts that we can update
21 you on. Please allow me to confer with the staff on that. And we will.

22 **Mr. DeLaney:** Perhaps you could provide us with an update next month?

23 **Mr. Schultz:** Certainly, yes.

24 **Mr. DeLaney:** Okay. And my last question regarding your report is an expression of concern with
25there's an old saying that any road will do if you don't know where you're going. And the Loft Board
26 has really fallen down, in my view, in providing members with statistics. Back eight, ten years ago, this

1 was a regular, quarterly report; and we got a few of them. But the last one's probably two years old. And
2 without knowing... I've mentioned earlier the fact that of the nine hundred or so buildings that originally
3 registered under the original Loft Law, there are two hundred left in the system. The reports we used to
4 get would tell us how many buildings are in our jurisdiction; how many are under 281(1); 281(5); and
5 now 281(6); where they are; it would identify how many where the landlord hasn't done anything; it
6 would tell us how many had reached a T C of O; how many had obtained permits -- that kind of
7 information. And without those kind of key performance indicators, the road we're on is fine, because
8 we don't know where we're going.

9 Similarly, we used to get a report of how many cases are pending based on flavor: how many coverage;
10 how many legalizations; and all that has kind of disappeared, which is a real concern to me. And I think,
11 with new Board members and a lot of relatively new staff members, it's time to get back on track with
12 that. Because, for example, we often hear the argument that the Loft Law doesn't work, and no
13 buildings are being legalized. But in reality, we have -- we did -- I don't know now, because it's been over
14 a year since I've seen any figures -- we had a significant number of buildings that had reached Certificate
15 of Occupancy; a number of them that had filed LE cases, removal cases. We had more buildings that had
16 really finished the process, except for getting their exit visa, than was evident in the stats.

17 So, I think it's time that that has to be... We have to find a way to provide that kind of reporting again.
18 So, I guess my question to you is, would you take a look at that, and also update us about that at next
19 month's Board meeting?

20 **Mr. Schultz:** Yes, I will work to get my hands on one of those reports you're referencing and see what
21 can be replicated. And if I can't find it, I'll reach out to you to see if I can make sure I know I'm looking at
22 what you're talking about. My guess is that I'll find it.

23 **Mr. DeLaney:** And I can certainly rummage through the old downloads of the Loft Board materials and
24 supply you with some of them. The stats that were provided some years ago were better than the most
25 recent ones. But anything is better than nothing.

26 **Mr. Schultz:** I know our staff are excellent record keepers. So, I have pretty good faith I'll find what
27 you're talking about.

1 **Chairperson Hylton:** Yeah, and we have some of that stuff already. Kevin, Ms. Rivera is kind enough to
2 say she knows that she has it. Previous reports. And thank you for that, Mr. DeLaney, for flagging that. I
3 think we got a little side-stepped there with rulemaking for the past couple of years here. But yes, we do
4 have some information that we can share, actually. So, we can do that, yeah. Quarterly... We'll come
5 back and we'll talk about it staff-wise, but I hate to do this every month. I mean, it would really be a little
6 bit too much in terms of taking up meetings, but we could certainly plan quarterly.

7 **Mr. DeLaney:** Exactly in the same way that we, in the proposed rules, are easing the requirement of
8 owners to file legalization updates once a quarter rather than once a month, we don't need these every
9 month by any means. But quarterly would be wonderful. And we could see how we're doing.

10 **Chairperson Hylton:** Right. Thank you. Okay, I take it there's no more questions for Mr. Schultz? Okay,
11 great. So, the floor is yours, Mr. DeLaney, regarding self-certification.

12 **Mr. DeLaney:** Okay, I didn't realize that was the order we were going in.

13 **Chairperson Hylton:** Did you want to delay a little bit? I could go on to cases.

14 **Mr. DeLaney:** No, that's fine. That's fine. I just I hadn't looked at the agenda in that much detail. Once
15 again, particularly for the new members of the Board, several years ago at this point, a former Board
16 member, Julie Torres-Moskovitz, asked for a meeting with the Department of Buildings expert on a
17 series of topics. Mr. Rebholz, I believe, Martin Rebholz...

18 **Chairperson Hylton:** Yes, he's the Deputy Commissioner.

19 **Mr. DeLaney:** Yes. And, in particular, there have been some loft buildings that have been able to make
20 progress through the legalization route in the Department of Buildings in ways that make no sense. And
21 in some instances, I think, demonstrate kind of flagrant abuse of the system. There's a building that --
22 and I didn't have time to pull the specifics for this meeting -- but there's a building where the owner
23 applied to legalize twenty units but got a Certificate of Occupancy for forty units. And there have been
24 cases, and litigation, and all kinds of stuff. There's another building that got a Certificate of Occupancy --
25 255 18th Street in Brooklyn -- got a Certificate of Occupancy despite having basement units, which
26 should have never been legalized.

1 And that led Ms. Moskowitz who, like Heather Roslund, is an architect, to question the role of both the
2 professional certifications and the self-certification process. And that's not to imply that there are a
3 massive number of landlords who would resort to extraordinary and questionable tactics to make
4 progress through the Loft Law and bring the building to compliance. But it has always been the case,
5 since the 70s, that the loft world -- because back in those days, there was no regulation whatsoever --
6 seemed to be more attractive to people with questionable intention or who were willing to utilize
7 extraordinary means to get around the normal routine.

8 And what we learned first from Mr. Rebholz is the distinction between professional certification and
9 self-certification, all of which is summarized much better than I can by comments from Heather and
10 former member Julie Torres-Moskovitz in, I want to say, the November 2020 and the January 2021
11 minutes. And what we learned from Mr. Rebholz was that about twenty percent of self-certification
12 advancements that are given get audited by the Department of Buildings. They also audit self-
13 certification...

14 **Ms. Roslund:** Professional certification

15 **Mr. DeLaney:** Professional certification. They also audit professional certification if there's a complaint
16 raised. And the question came up -- and it turns out, there's quite a few of these -- would it make
17 sense for the Board to express a desire to the Department of Buildings that review of professional
18 certification be routine for IMD buildings, since there does seem to be -- there are at least half a dozen
19 incidences of stuff that just shouldn't take place. Many years ago, there was a building on Beach Street,
20 4860 Beach Street, an IMD building. The owner got a Certificate of Occupancy for the building even
21 though it was over 5000 square feet and would have needed certification in Tribeca to accomplish that.
22 Boom, the owner just got it. The tenants had to hire a law firm to go in the Board of Standards and
23 Appeals along with the city to ask that the Certificate of Occupancy be revoked, which it eventually was.
24 And the Department of Buildings employee who had made that magical Certificate of Occupancy appear
25 was dismissed from the Department of Buildings for that activity and was back the next week as an
26 expeditor.

1 So, the Department of Buildings has made a lot of progress since those days. But still, there's just
2 something about the opportunities in loft buildings that seems to attract a measurable percentage of
3 people who don't want to play by the rules. So, the question is, should self-certification in loft buildings
4 be subject to automatic review? Would that help keep the kinds of things that happen down going
5 forward in the future? And this has been something that we've talked about multiple times, and I have
6 opted not to press forward because I don't think it's fair to say to someone, in this case, Ms. Oddo, hi,
7 it's your first meeting, make a big policy decision. But I think I've been deferring it now for three or four
8 months. So, I would think at least some discussion would make sense. And then if there is interest on
9 the part of the Board, I'd be happy to whip up some kind of resolution or go back and provide some
10 more detail of the kind of abuse we're talking about.

11 **Chairperson Hylton:** Thank you. Right. So, I just want to be clear. So, when Chuck says twenty percent
12 are self-certification, he means, I think, the Department audits twenty percent of all certified jobs.

13 **Ms. Roslund:** Professionally certified.

14 **Chairperson Hylton:** Professionally certified. I just want to make it clear on the terminology. Okay.

15 **Ms. Roslund:** And I would add that it's not just the issue that a building owner might hire an
16 unscrupulous professional to get a building through the Buildings Department; that it's also the nature
17 of the beast with spaces that have been built-out without any forethought; without a team of
18 professionals; without licensed contractors. It's everybody who's involved in the construction of a loft is
19 at play here. So, when a professional has been certifying to the Department of Buildings that this
20 building is legal, there's so much room for error; it's such a morass, that to have someone just say that
21 it's okay, without there being any sort of review or scrutiny, is where the focus of the meeting really lies.

22 **Mr. Hylton:** I would say that we also need greater scrutiny in terms of what qualifies for self-cert. Not
23 everything qualifies for self-cert. And what instances are we talking about in terms of what was cited in
24 the letter that we looked at? That was many years ago discovered by Department of Buildings of a
25 specific architect on multiple sites, and it was remedied. So, are we looking for an issue? Or is there a
26 genuine issue here that requires addressing? Have there been several cases of architects since then
27 self-certifying, and Department of Buildings issuing violations, and suspending architects' licenses, and

1 things of that nature? Have we seen that around? And also, there's a specific group of architects who
2 typically work on loft buildings. Have we seen that amongst those practitioners? I want to be clear as to
3 what's being proposed and what remedy is being proposed. And to what result.

4 **Chairperson Hylton:** Well, no one's answering. So, I would just say that I don't believe this debate, right
5 now, is going to happen, correct? From what my understanding is, let's think about it, come back,
6 Chuck, for the debate. Is that what you're suggesting? Because we really don't have the time to delve
7 into all this debate today.

8 **Mr. DeLaney:** I think the questions Christian raises are good questions. It's certainly true that this is a
9 relatively small universe of architects who deal with these buildings. And the answer to how prevalent
10 are the problems? The answer to that is, I don't know. What we hear about are the most egregious
11 ones that surface, and I suppose perhaps Kevin may have some sense based on his prior role at the
12 Department of Buildings. So, my interest was really to get a sense from other Board members whether
13 this was a topic that merited some research and study to proceed, or not.

14 **Mr. Schultz:** As far as knowing how prevalent the problems are, it's something I can look into. I think I
15 know who to call to see if there's anything about that. So certainly.

16 **Mr. DeLaney:** And Heather makes a very good point. That the circumstances in loft buildings are
17 complicated by the fact that they've been built-out often by artists, craftspeople, tenants, who may or
18 may not have a thorough understanding of code. And now the owner is being asked to legalize the unit
19 with the tenants in place, which is quite different from the construction of new housing, where nobody
20 moves in until there is a Certificate of Occupancy. So those are kind of the issues as they are.

21 **Chairperson Hylton:** I want to make something clear, and I know there's always room for errors and
22 stuff, and sometimes misdeeds, but before any Certificate of Occupancy is issued by the Department,
23 there is a final construction inspection. I leave it at that. There is always room for error and misdeeds,
24 but there is a final construction inspection done by a Department employee to make sure that what is
25 on the construction documents is actually, or should be, what is actually in the building. Chuck
26 mentioned some anomalies there, but process-wise, that is what's occurred. Okay?

1 All right. So, Chuck, thank you. We just want to move along. But I want to make clear what we're doing
2 with this next month. We'll come back. We want to allot maybe fifteen minutes for discussion on this. Is
3 that what you're saying, Chuck?

4 **Mr. DeLaney:** Sure. I think that's fine.

5 **Chairperson Hylton:** Thank you. So, in the interest of time, let's move on. Thank you very much, Chuck,
6 by the way, for that presentation. Next on the agenda is a vote on the cases, or votes on cases, and the
7 Appeals and Reconsideration Calendar is the first one. There's one case on the Appeals and
8 Reconsideration Calendar:

9 Case #1 16 Cypress Avenue Realty LLC 476 Jefferson Street, Brooklyn Docket number R-0385
10 Ms. Lin, she will present this case.

11 **Ms. Lin:** Thank you, Chairperson. Case number 1, *In the Matter of 16 Cypress Avenue Realty, LLC* is a
12 reconsideration application filed by the owner of 476 Jefferson Street, Brooklyn, New York, which seeks
13 reconsideration of Loft Board Order number 4995, dated July 16th, 2020. Loft Board Order number
14 4995 granted protected occupancy status to the current tenants of unit 306 of the subject building,
15 finding that the unit was not deregulated through sales of Loft Law rights by prior tenants. Owner now
16 challenges Loft Board Order 4995, arguing that the Loft Board erred in finding that the sale of rights by
17 prior tenant, Scott Reihs, was invalid.

18 First, the Proposed Order finds that the owner was not denied due process due to the current tenants'
19 failure to amend its pleadings to specify that the Reihs sale was invalid. The validity of a sales agreement
20 is an affirmative defense to be pled and proven by the Owner. Second, the Proposed Order rejects
21 owner's assertion that a sale of rights does not require an analysis of whether the selling tenant has
22 knowingly waived his rights. Owner argues that MDL 286(12) should be read in two parts and that
23 "waiver of rights" only applies to agreements made prior to the Loft Law's enactment. Owner did not
24 offer any legal support for this interpretation. The Loft Board has long interpreted a waiver of rights as a
25 necessary analysis in determining whether a sales agreement is valid. Third, the Proposed Order finds
26 that there was no error in the underlying Order's finding that Scott Riehs did not effectuate a knowing
27 waiver of his Loft Law rights. The sales agreement signed by Mr. Riehs did not reference the Loft Law or

1 the Multiple Dwelling Law. At trial, Mr. Riehs had testified that he signed the agreement in order to
2 receive his security deposit back, and the presiding administrative law judge credited his testimony.

3 Owner alleges that the Loft Board should find the Riehs sales agreement valid because a registration
4 application was mailed to Mr. Riehs around the time he signed the sales agreement and that he had
5 signed a sales record form six months after he vacated the unit. The Proposed Order finds that these
6 circumstances are insufficient to demonstrate that Mr. Riehs intended to sell his rights at the time he
7 signed the sales agreement. Therefore, the Proposed Order rejects the owner's reconsideration
8 application.

9 **Chairperson Hylton:** Thank you, Ms. Lin. Is there a motion then to accept this case? Mr. DeLaney has
10 indicated. Is there a second? Second motion, Ms. Roslund. Thank you. Then are there any comments on
11 this case?

12 **Mr. DeLaney:** Yes. I had mentioned to my colleagues in the private session prior to the public meeting
13 that this is one of several cases on today's agenda that deals with the desire in many instances of
14 owners to present something as a sale of rights document pursuant to Section 286(12) of the Multiple
15 Dwelling Law, and that this is an area that's become quite a headache for the Loft Board in terms of
16 litigation around it and teasing out what is a legitimate sale of rights document versus what isn't.

17 **Chairperson Hylton:** Thank you. Any other comments? Without any comments, Ms. Rivera, could you
18 please poll the Board members?

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

20 **Chairperson Hylton:** Mr. Barowitz is no longer on the call. He's left the call.

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

22 **Chairperson Hylton:** Mr. Roche?

23 **Mr. Roche:** Yes

24 **Ms. Rivera:** Ms. Hayashi?

1 **Ms. Hayashi:** 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. Oddo?

9 **Ms. Oddo:** 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 absent

15 **Chairperson Hylton:** I just need to clarify that Mr. Barowitz was part of this meeting before, but he had
16 to leave to attend to a family matter. So, he's absent now, but he was present previously in this meeting.
17 All right. Thank you.

18 There are four cases on the Summary Calendar. They're voted on as a group. These cases are:

19 Case #2 222 Varet Realty Corp. 222 Varet Street, Brooklyn, New York Docket # LB-0195

20

21 Case #3 Tamar Halpern 144 Spencer Street, Brooklyn, New York Docket # PO-0090/ TA-0256

22

23

1 Case #4 Marie Estrada, 473-493 Kent Avenue, Brooklyn, New York Docket # TR-1384
2 Eric Jacobsen

3
4 Case #5 Maciek Jasik 1609 Dekalb Avenue, Brooklyn, New York Docket # TR-1391
5

6 Do I have a motion to accept these cases? Board members. Ms. Rajan has moved, and Ms. Roslund has
7 seconded. Sorry, Mr. Hylton, I was looking at Ms. Roslund's hand. Okay. Do we have any comments on
8 these cases? Mr. DeLaney has indicated.

9 **Mr. DeLaney:** Yes. In the private meeting, I did indicate that I wanted, mostly for the edification of the
10 new Board members, to make a couple of comments in the public session that weren't really appropriate
11 for the private session. Case 222 Varet, number 2 on the agenda, is an abandonment application, where
12 the owner withdrew the motion for abandonment. And just so you're aware, we haven't seen a lot of
13 these recently, but the concept of abandonment came up out of the idea, which seemed pretty unusual
14 at the time, that a tenant would just leave a protected unit. But by leaving, the tenant's not there; the
15 unit's vacant; what can the landlord do? Can the landlord rent it to somebody else? If so, is it still at the
16 protected rent? Does the owner have to legalize?

17 So, over a number of years, the Board developed a theory, following a court case. And the court case
18 involved a tenant who left his unit, but he, at the point of his departure, owed the landlord some
19 amount of money, some several thousand dollars, as I recall. And the owner went to court, and the
20 court judge determined that what had happened is that the landlord had made what the judge called a
21 constructive purchase of fixtures. There's another section of the Loft Law, 286(6), which posits the idea
22 that an outgoing tenant can sell their fixtures to an incoming tenant if they're first offered to the
23 landlord, who has the right of first refusal. But this tenant just blew town, owing some back rent, so the
24 judge said, well, basically, you purchased the fixtures, so the unit's deregulated. That led the Board to
25 craft an abandonment regulation, which attempts to address the issue of what happens when someone
26 just leaves.

27 It got out of control, particularly in the 1990s. The Loft Board had a case where the tenant of a given
28 unit in the East Village was shot and killed in a robbery in front of his own building. And the Loft Board
29 somehow concluded that he had abandoned the unit. And that was following the logic that death in a

1 unit could equal abandonment under certain circumstances. The abandonment rule has been cleaned
2 up quite a bit, but there still is this question, which we saw here, where one of the big issues is how
3 vigorously the owner attempts to locate the person who has, allegedly, abandoned. And we've run the
4 gamut from owners doing a lot of work, and finding somebody, and lo and behold, they didn't really
5 abandon; as opposed to the owner just didn't file notice to the tenant; the tenant pops up and says, I'm
6 here. I'm living right where I was. I haven't abandoned anything.

7 So, there's kind of a wide range of cases, but this one seems to be in the process of resolving itself. But I
8 promised you all that I'd spend a few minutes covering the thumbnail history, and that I've done. Thank
9 you for your patience.

10 **Chairperson Hylton:** I appreciate that, Mr. DeLaney. Any other comments? You did a good job, Mr.
11 DeLaney. So now we'll have Ms. Rivera poll the Board members, please.

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

13 **Chairperson Hylton:** Mr. Roche?

14 **Mr. Roche:** Yes

15 **Ms. Rivera:** Ms. Hayashi?

16 **Chairperson Hylton:** Ms. Hayashi? Ms. Hayashi? Kei? I see, she's looking at me...Ms. Hayashi? No. Okay,
17 let's skip over.

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. Oddo?
- 2 **Ms. Oddo:** Yes
- 3 **Ms. Rivera:** Ms. Rajan?
- 4 **Ms. Rajan:** Yes
- 5 **Ms. Rivera:** Chairperson Hylton?
- 6 **Chairperson Hylton:** Now go back to Ms. Hayashi.
- 7 **Ms. Rivera:** Ms. Hayashi?
- 8 **Chairperson Hylton:** Ms. Hayashi, can you hear me? Can you hear us? Ok, go ahead and call me again.
- 9 **Ms. Rivera:** Chairperson Hylton?
- 10 **Chairperson Hylton:** Yes. Do you have a majority?
- 11 **Ms. Rivera:** Yes
- 12 **Chairperson Hylton:** How much?
- 13 **Ms. Rivera:** Seven
- 14 **Chairperson Hylton:** So that's seven; one abstain?
- 15 **Ms. Rivera:** Yes
- 16 **Chairperson Hylton:** OK, so that vote...Ms. Hayashi, are you there? So, we'll call that an abstention. So,
17 you have seven...
- 18 **Ms. Rivera:** Seven in favor; one abstain; one absent
- 19 **Chairperson Hylton:** Thank you. Seven in favor; one absent; one abstain. Thank you.
- 20 There is one case on the Master Calendar, and that case is:

1 Case # 6 Julian Bozeman 473-493 Kent Avenue, Brooklyn (New York) Docket # PO-0075. And
2 Mr. Schultz will make a short presentation in this case.

3 **Mr. Schultz:** Case number 6 relates to IMD number 30080. In 2017, tenant Mr. Bozeman, at 475 Kent
4 Avenue, filed an application for protected occupancy status. Later in 2017, the Loft Board transferred
5 that application to the New York City Office of Administrative Trials and Hearings, OATH. A trial was held,
6 and the administrative law judge recommended that the application for protected occupant status be
7 denied. In 2020, June of 2020, the Loft Board rejected that ALJ's recommendation and granted
8 protected occupant status. The owner filed an Article 78 to annul the Loft Board's Order, arguing,
9 amongst other things, that the Board had failed to consider certain post-trial briefs that were submitted
10 after the OATH trial. And this Order calls to vacate that prior Order and remand the matter back to the
11 Loft Board itself, in order to ensure that all the relevant documents and briefs have been reviewed in
12 the Order.

13 **Chairperson Hylton:** Thank you. So, due to the nature of this case, there will be no discussion. Is there a
14 motion to accept this case? Ms. Rajan, is there a second? Thank you, Miss Oddo. Ms. Rivera, could you
15 please poll the Board members?

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

17 **Mr. Roche:** Yes

18 **Ms. Rivera:** Ms. Hayashi?

19 **Ms. Hayashi:** Yes

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

21 **Mr. Hylton:** Yes

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

23 **Mr. DeLaney:** Yes

24 **Ms. Rivera:** Ms. Roslund?

1 **Ms. Roslund:** Yes

2 **Ms. Rivera:** Ms. Oddo?

3 **Ms. Oddo:** Yes

4 **Ms. Rivera:** Ms. Rajan?

5 **Ms. Rajan:** Yes

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

7 **Chairperson Hylton:** Yes

8 **Ms. Rivera:** Eight in favor; one absent

9 **Chairperson Hylton:** Thank you, Ms. Rivera. So, this ends our cases for the evening. I will now turn this
10 matter over to Mr. Schultz to lead the discussion on the rules.

11 **Mr. Schultz:** Hello, again, everybody. So, we're on to rulemaking, and this conversation today is a clean-
12 up on a few comments from last time; flagging a few things that were changed since the last time we
13 met. So, I'm just going to work my way through those, I think, altogether, if that's okay. Maybe I'll pause
14 at each one. No, I'm going to go through them all. Try to save questions for the end. If you have a
15 burning question and want to raise your hand or speak up, please do. Otherwise, I'll work top to bottom.

16 Last time we met about rulemaking, there were some questions about tables of contents. The draft we
17 had been working with had removed the table of contents. And as promised, I conferred with the Law
18 Department on why that was done. The answer is that, essentially, regularly for them in rulemaking,
19 they've recommended that tables of contents are unnecessary. And for modern use on computers,
20 people's use of rules, they have links that essentially create a table of contents. And those aren't in the
21 rules themselves. Including them in the rules themselves, as Law Department said, creates another area
22 that requires review and editing. So, for that reason, they, as a practice, have been removing tables of
23 contents.

1 The second note I wanted to make was that the Statement of Basis and Purpose for the proposed rule
2 was edited. Specifically, section three was edited. In conversations over the meetings, we've talked
3 about the scope of that, and that section has now been revised to really just reflect, essentially,
4 ministerial and form changes that have been made, as the content changes, for the most part, were
5 entirely or almost entirely, removed.

6 Another note, there was a question last meeting about Housing Stability and Tenant Protection Act
7 conformance. And there was a request that we review certain language in the new rules and make sure
8 it conformed with that, and we have done that. And the HSTPA changed a four-year timeline to a six-
9 year timeline, and we did the same. So, we do comply with that.

10 A few other items that that changed, I think relatively minor but would want to flag them. On pages 64
11 and 65, we changed the word monthly to quarterly in a few occasions because the reporting
12 requirements have changed from monthly to quarterly in other sections. So that's just for consistency of
13 that change. On page 96, there's a chart that describes the temperatures by which an owner must
14 provide heat. And with the changes in the 2019 rules, I believe, there was a notation of below 40 that
15 was there before. But now, there really is no floor; there is no minimum there. And so rather than
16 leaving the box blank, which the edits kind of did, we've added suggested language: in any temperature.
17 At any temperature in that situation, the owner must provide heat. And it's within a certain date range.
18 It's on page 96. Pages 122 to 124 remove some section labels. It was formatting on some re-numbering;
19 some periods where they weren't supposed to be. Page 125 moved a bracket over to delete section G,
20 that doesn't need to be there anymore. And pages 171 to 172 capitalize the word Prime Lessee. It's a
21 defined term that's been used.

22 So, I'll pause there for comment or question on any of that. And really anything else. If anyone is talking,
23 they're on mute. Maybe there are no questions.

24 **Chairperson Hylton:** That was me talking on mute. So, first of all, I want to congratulate staff on this
25 document, which I thought was looking so nicely, professionally put together and in ready format to go
26 forward. And for the time and effort that was put in, over these last four years or so. I know I'm not
27 exaggerating if I say four years. It's been a long stretch, and we do come to a point now where we have

1 a document that is good, and ready to go, and that I believe improves upon the current rules so much.
2 And not just improves on but actually accounts for a lot of changes that needed to happen because of
3 legislation.

4 I want to thank the Board, past and present folks, who put a lot of time into these rules and tried to
5 figure things out. Now we do have a lawyer on the Board. And it is not easy for me, as a non-lawyer, to
6 kind of understand this, and....Mr. DeLaney is...What are you, Mr. DeLaney, a Philadelphia lawyer? Is
7 that what they call you? But yeah, this has been quite a bit of work. And you're now ready to at least
8 give the Law Department a stab at giving us preliminary approval so we can get public comments, and
9 get to a final rule, hopefully, soon after. So, my heart goes out to everybody who has been involved in
10 these rules. Kevin, I even want to thank former Executive Director Balsam for her stab at starting this.
11 We know in her heart she wanted to get this done before she left and retired. And now Kevin gets the
12 praise for this, but...

13 **Mr. Schultz:** Maybe I'll share what I shared before. This is like getting to start the New York City
14 Marathon somewhere in the north part of Central Park and cross the finish line. So very little credit to
15 me. This is a long-time coming.

16 **Chairperson Hylton:** So, if you want to stay on the marathon analogy, we just want to get through the
17 finish line with this. And I think we're almost there. And I appreciate everyone's thoughts, comments,
18 input, hard work, research, writing, editing, that kind of stuff. Everything that went into this. It wasn't
19 easy. So, thanks again. So, I'm going to, at this point, if no one has any comments...

20 **Mr. DeLaney:** Yes, I'm sorry. I have a couple of questions. First off, going back to the table on page 96,
21 with regard to heat. That's not something I've been thinking about. How do the figures that we have in
22 here now for our minimum housing maintenance standards compare with the standard heat law in the
23 city?

24 **Mr. Schultz:** I do not know. If anyone on the staff does, they're welcome to pipe in, and we can certainly
25 try to do some research, literally, immediately.

1 **Ms. Lin:** It matches. I believe this is why it was originally taken out in the first place. It was changed to
2 reflect the updates to the Housing and Maintenance Code.

3 **Mr. DeLaney:** Because that was raised from nighttime heat between 10 and 6AM from 55 to 62 a few
4 years ago, if I'm remembering that correctly.

5 **Chairperson Hylton:** Something like that

6 **Mr. DeLaney:** Okay, yes, thank you. And similarly, any temperature... if the temperature outside is any
7 temperature that requires the heat inside to be 62 degrees Fahrenheit. Whereas, during the day, the
8 provision is that it has to be below 55 to require the heat to be at least 68 inside. We're saying, any
9 temperature, we've got to be at least 62. But during the day, it's a different...there is a minimum.

10 **Mr. Schultz:** Yeah, during the day, there's a minimum temperature that can dictate what the landlord
11 must provide. At nighttime, there's no temperature that dictates that the landlord must keep it at 62
12 degrees.

13 **Chairperson Hylton:** Right. So, I think the idea here is, it doesn't matter what the temperature is
14 outside at night when you're sleeping; it matters what the temperature is on the inside.

15 **Mr. Schultz:** Yes.so there's basically an unequivocal expectation for the landlord at night to keep it at
16 62.

17 **Chairperson Hylton:** Right. Any other questions, comments on these rules?

18 **Ms. Roslund:** Well, I sort of wonder if that will change a little bit after the last year. Because a big
19 presumption of the daytime temperature is that people are not in the apartment during the day, right?
20 But now that everyone has worked from home for a year and a half, it may change.

21 **Chairperson Hylton:** Yeah, very possible. We just hope that this was a temporary setting, and we're out
22 of it. Any further questions? Mr. DeLaney?

23 **Mr. DeLaney:** Just a couple more. In terms of how we proceed, are you looking for us to vote to send
24 this to the Law Department?

1 **Chairperson Hylton:** Yes, sir. Kevin? I think it's okay? Okay. So, yes, the next step would be your vote,
2 Board approval, to send this to the Law Department for preliminary approval. It's going to come back to
3 you if there are....Well, it's going to come back to you one way or the other. If the Law Department feels
4 that there is stuff to be done that are substantive changes to the rules, it will have to come back to you
5 for vote and changes; discussion and vote; to send it back to them for another approval. If there are no
6 substantive changes, then they will send a preliminary approval, with ministerial changes if there are
7 ministerial changes. And that would start the comment period, at which point, you will have public
8 hearings. Then you will go back after you've voted on any....if you've decided not to... Let's just go on
9 what we call the happy path, where there are no changes. Then it goes back to the Law Department for
10 final approval. Then you have a thirty- day window before the rule takes effect, if there are hiccups in
11 between, where it could be going back and forth to the Law Department.

12 **Mr. DeLaney:** Not to belabor the point, but just so I'm clear, because it's been a while since....as you
13 pointed out, it's been four years we've been working on this rule. It goes to the Law Department; the
14 Law Department comes back and says, there's change a must to a shall, or whatever, a couple little
15 changes. We then vote it out to be published, and that starts the comment period, correct?

16 **Chairperson Hylton:** Yes. Not final publication. It has to be published as a draft rule, and then comment
17 period. Yes.

18 **Mr. DeLaney:** Yes, yes. It gets published as a draft in the city record. And that publication, the city
19 record, also triggers the clock for public comment, and we will hold the public hearing, correct?

20 **Chairperson Hylton:** Yes. And after that public hearing, you may, as a Board, decide you want to change
21 something or not.

22 **Mr. DeLaney:** And it would then come back to us for discussion, maybe some changes. If the changes
23 are substantive, it would go back to the Law Department and come back. But after the appropriate
24 comment period, at some point we would vote to make this official.

25 **Chairperson Hylton:** Yes, that's right. And then after that, it has to be published for thirty days before it
26 takes effect.

1 **Mr. DeLaney:** And so my last question is, in the draft that we have, the notice of public hearing posits
2 that that's going to be a virtual hearing. But it seems to me quite possible by that time that the Open
3 Meetings Law may be back into effect.

4 **Chairperson Hylton:** That is actually my hope. I don't know about you, but that is actually my hope.

5 **Mr. DeLaney:** So that would require just changing the opening notice.

6 **Mr. Schultz:** Yes, that's absolutely a good note. It's a little hard to tell right now, but I agree with the
7 Chairperson. We hope to be able to do it publicly. And I don't know if I'll be so bold and say expect, but it
8 certainly seems hopeful. So yes, that language would have to adapt, and I believe I've seen what that
9 language looks like, because this started before these hearings were teleconferenced.

10 **Chairperson Hylton:** Any other comments or questions for Mr. Schultz? So again, I just want to say
11 thank you, without saying thank you too many times. I do want to say thank you.

12 I lost my place. The last item on the agenda concerns an active litigation matter against the Loft Board.
13 The matter is *Dezer Properties II, LLC versus the New York City Loft Board*. Pursuant to the Open
14 Meetings Law, section 105, a public body may conduct an executive session to discuss proposed,
15 pending, or current litigation. At this time, do I have a motion for the Board to go into Executive Session
16 to discuss litigation strategy in the *Matter of Dezer Properties II, LLC versus the New York City Loft Board*
17 and to related strategy for future, similarly situated cases and relevant post litigation?

18 **Mr. Schultz:** Chairperson, did we vote on the rules?

19 **Chairperson Hylton:** Oh, no, we did not. I was so thankful for everyone that I thought maybe that came
20 with an automatic, unanimous decision to go. So, I'm sorry. Let me go back. I won't have to read this
21 again, hopefully. But let me go back to a motion to accept these rules as drafted and to be sent to the
22 New York City Law Department for preliminary approval and, I believe, to the Mayor's Office of
23 Operations for a look-over. Do I have a motion on the rules? Thank you. The Fire Department makes a
24 motion. That's a start. All right. Mr. DeLaney seconds. And then Ms. Rivera, could you please poll the
25 board members.

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

2 **Mr. Roche:** Yes

3 **Ms. Rivera:** Ms. Hayashi?

4 **Ms. Hayashi:** Yes

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

6 **Mr. Hylton:** Yes

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

8 **Mr. DeLaney:** Yes

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

10 **Ms. Roslund:** Yes

11 **Ms. Rivera:** Ms. Oddo?

12 **Ms. Oddo:** Yes

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

14 **Ms. Rajan:** Yes

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

16 **Chairperson Hylton:** Yes

17 **Ms. Rivera:** Eight in favor; one absent

18 **Chairperson Hylton:** I have to say this. This must hurt Mr. Barowitz, not being here to vote on these
19 rules. Okay. Anyway, I'm not going to necessarily repeat the reading that I just made. But do I have a
20 motion then for executive session to discuss the *Dezer Properties II, LLC versus New York City Loft Board*
21 matter?

1 **Ms. Hayashi:** So moved.

2 **Chairperson Hylton:** That is Ms. Roslund, am I correct?

3 **Ms. Hayashi:** Kei Hayashi

4 **Chairperson Hylton:** Oh, Ms. Hayashi. I'm sorry, I wasn't looking sorry. It was Kei Hayashi. And who's
5 second?

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

7 **Chairperson Hylton:** Thank you. Ms. Rivera, could you please poll the Board members.

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

9 **Mr. Roche:** Yes

10 **Ms. Rivera:** Ms. Hayashi?

11 **Ms. Hayashi:** Yes

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

13 **Mr. Hylton:** Yes

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

15 **Mr. DeLaney:** Yes

16 **Ms. Rivera:** Ms. Roslund?

17 **Ms. Roslund:** Yes

18 **Ms. Rivera:** Ms. Oddo?

19 **Ms. Oddo:** Yes

20 **Ms. Rivera:** Ms. Rajan?

1 **Ms. Rajan:** Yes

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

3 **Chairperson Hylton:** Yes

4 **Ms. Rivera:** Eight in favor; one absent.

5 **Chairperson Hylton:** Thank you. So, I have certain instructions to read. Just bear with me for a second.
6 So, the motion passed, and we will go into executive session after I'm finished speaking. I'm not finished
7 yet. When I'm finished speaking, I would ask members of the public to sign-off so that the Board may go
8 into executive session to discuss this matter.

9 This will conclude the public session of our May 20th, 2021, Board meeting. As a reminder, our next
10 public meeting will be held on Thursday, June 17th, 2021, at 2pm. The Governor's suspension of the
11 in-person meeting requirement of the Open Meetings Law is in effect until May 27th, 2021. So, at this
12 time, as usual, we do not know whether the meeting will be held virtually or not. When we have further
13 information, we will update the Loft Board website and send an email update through the Loft Board
14 announcement listserv. Thank you, everyone. Board members, please stay on for the executive session.
15 Members of the public, I ask you to log off at this time.