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Transcript of the March 17, 2022

Meeting of the

New York City Loft Board

This transcript has been prepared pursuant to legislation S.50001/A.40001 signed by Governor Hochul, 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: 2:12 P.M.

1 **Chairperson Hylton:** Good afternoon. My name is Renaldo Hylton, the Chairperson designee of the
2 New York City Loft Board. Welcome to our March 17th, 2022, public meeting. This meeting is being held
3 via teleconference in accordance with legislation signed by Governor Hochul on September 2nd, 2021,
4 due to the Coronavirus 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 conversion of Interim Multiple Dwelling buildings from commercial
7 and manufacturing spaces to safe, rent-regulated residences that comply with the minimum standards
8 of safety and fire protection stated in Article 7-B of the New York State Multiple Dwelling Law. To
9 achieve this goal, the Board adjudicates and mediates disputes between owners and tenants, tracks the
10 progress of each building undergoing legalization, and prosecutes parties who violate the Loft Law and
11 the Loft Board rules.

12 Before we begin our regular business, I have two staff announcements to make. On behalf of the Chair, I
13 want to thank the Board and our loft community for your patience, first of all, over the last couple of
14 months of canceled meetings. During this time, however, the Board continued its day-to-day functions,
15 addressing matters responding to inquiries and complaints, responding to administrative requests,
16 conducting legal reviews and case preparation as best as possible for this moment. Between the months
17 of November and December of last year, we lost critical staff in the form of our Executive Director and
18 Deputy Executive Director. I haven't had the opportunity to thank our previous Executive Director, Kevin
19 Schultz, for his service with us during the heart of the pandemic. He came in at a very difficult time and
20 provided excellent leadership and direction. Kevin resigned his distinguished career with the
21 Department and the city to pursue an opportunity that was, understandably, best for him and his family.
22 So, I speak on behalf of the Board in thanking Kevin and wishing him well in his current endeavors.

23 Today, it is my distinct honor to introduce our new Deputy Director and Deputy General Counsel of the
24 Loft Board, Stephan Clarke. Everyone knows Stephan. He has been an attorney and senior attorney with
25 Loft Board now for about five years and has distinguished himself in more ways than one. Most notably,
26 Stephan has, over the last two years, led our efforts in rulemaking and has done an excellent job in
27 coordinating our efforts to modernize the Loft Board rules. We are proud of your work, Stephan, and
28 look forward to your continued growth here with the Loft Board. All right. Thank you.

1 So, our new Executive Director and General Counsel of the Loft Board, Martha Cruz, needs no
2 introduction to those of you who have been around for some time. Martha is no stranger to the Loft
3 Board community. She served fourteen years previously with the New York City Loft Board, before
4 leaving in 2019. Of those years, Martha served with distinction in the role of Deputy General Counsel
5 for ten years, during which time she demonstrated her key knowledge of the Loft Law, the Loft Board
6 rules, and its procedures. So, I'm confident that Martha will step up into her new role as Executive
7 Director with the purpose and resolve needed to tackle the challenges we face and that she will
8 continue the important work of the Loft Board. Welcome, Martha. And the Chair asks everyone to
9 support our new leaders and to give them the opportunity to provide fresh direction and continued
10 leadership as they do the important business of the Loft Board. I just want to note, our mission here
11 hasn't changed. Our new leaders will continue to serve that mission. And I thank everyone again for
12 their patience and support. Thank you and welcome, guys.

13 **Mr. Clarke and Ms. Cruz:** Thank you.

14 **Chairperson Hylton:** Our first order of business is a vote on the minutes of the November 4th, 2021
15 meeting. It's been that long? We now turn to this vote. Are there any corrections or comments to
16 these minutes? Martha, you may want to, at this point -- I think there was an issue with the minutes that
17 we needed to -- Oh we did change.... It's the November 18th minutes, not the 4th, correct? The one that
18 we made a change to? Attendance?

19 **Ms. Cruz:** Yes, yes. You're right.

20 **Chairperson Hylton:** The November 4th minutes. Are there any corrections or comments to those
21 minutes? Okay, if there's no comments or corrections, then I will ask that there be a motion to accept
22 these minutes. Mr. Barowitz has moved. Do we have a second? Mr. Hylton. Thank you. Ms. Rivera. Could
23 you please poll the Board members?

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

25 **Mr. Barowitz:** Yes

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

2 **Mr. Roche:** Abstain

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

4 **Chairperson Hylton:** Ms. Hayashi's not here.

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. Oddo?

12 **Ms. Oddo:** Yes

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

14 **Chairperson Hylton:** Yes

15 **Ms. Rivera:** Six in favor; one abstain; two absent

16 **Chairperson Hylton:** Who is two absent? Oh yes, Ms. Rajan. Thank you. Ms. Rajan and Ms. Hayashi are
17 not present. Thank you, Ms. Rivera.

18 The motion is passed, and we next turn to the vote of the minutes on the November 18th, 2021
19 Public Meeting. Are there any corrections or comments? And I'll let you know right now that the initial
20 set of minutes that went out had Mr. Roche as being absent, but he was indeed present, so we've made
21 those changes. Absent those corrections, which are now being corrected in the minutes, do I have any
22 comments or corrections to those minutes?

1 **Chairperson Hylton:** Yes, Mr. DeLaney?

2 **Mr. DeLaney:** Yes, I would say in general that both sets of minutes, as usual, are very thorough and very
3 helpful to remember the events that are now three months in the rearview mirror. We had extensive
4 discussion on the 18th with regard to an incident that happened about a month earlier, when an
5 attorney provided communication to a limited number of Board members on a case that was before the
6 Board. It was not a case in which that attorney was directly involved, but for whatever reason, that
7 attorney felt that it would be good for him to let some members of the Board know why the Proposed
8 Order that was before the Board was a bad idea and would set bad precedent. And then-Executive
9 Director Schultz made the decision, since the cat was already out of the bag -- the attorney had emailed
10 several Board members -- that Executive Director Schultz distributed that email to all the other
11 members of the Board.

12 This led to a rather lengthy discussion on November 18th -- probably fifteen, twenty minutes -- as to
13 what should be the Board's stance on that kind of communication to Board members, particularly in the
14 case where it was only to some and not to others. And there were significant commitments made by
15 then-Executive Director Schultz to look into it and come back. I realize Ms. Cruz has just stepped into
16 this role earlier this month, so I don't expect her to have had the opportunity to fully acquaint herself
17 with the situation along with everything else. But I would like to know how we're going to proceed on
18 this, particularly since I'm still getting the sense that correspondence to Board members is not working
19 as well as I would like it to be.

20 **Chairperson Hylton:** Ms. Cruz, do you have a response on that, or do you want to wait until your
21 Executive Director report?

22 **Ms. Cruz:** Let's backtrack just a moment, Mr. DeLaney. The concern is that the Board members are
23 receiving unsolicited correspondence from the public about pending matters before it, correct?

24 **Mr. DeLaney:** Well, in this case, it wasn't a member of the public per se, it was an attorney who
25 practices regularly before this Board.

1 **Ms. Cruz:** Okay. So, the concern is that you would like the staff to come up with some protocol? Is that
2 what you would like?

3 **Mr. DeLaney:** I would think that would be helpful, yes.

4 **Ms. Cruz:** Okay. So as to when the staff or the Board members receive such correspondence, what to
5 do with it, correct?

6 **Mr. DeLaney:** Well, as you recall, back in the day, if a letter was sent via the Postal Service to a Board
7 member, care of the Loft Board, the Board would open the letter, determine if it had relevance to a
8 case, and if it were relevant to a case, would frequently opt not to distribute it until after the case was
9 decided, and then distributed it to the Board members. Now, in the more spontaneous world of email, a
10 distinguished attorney, who was not involved in the matter before the Board, chose to email certain
11 members of the Board, saying it's a bad idea if you adopt this opinion in this Proposed Order for the
12 following reasons.

13 **Chairperson Hylton:** So, Martha, in reading the minutes, it seems like Kevin did address quite a bit of
14 that. Is there something that was lacking here that he promised, particularly that he didn't answer in
15 regard to that? Because I thought there was extensive discussion here. And he thought, in his opinion,
16 that a Board member getting some unsolicited information should be able to tell if it's related, based on
17 the subject matter of the of the email, that it is related to a case. And if so, that that Board member is
18 bound by their obligation not to discuss cases or not to read it, really, because it pertains to something
19 that they need to deliberate. Or, if they were uncertain, they should forward that to the Executive
20 Director of the Loft Board and ask for direction, but not reading it. And (they would be) given some
21 instructions on what to do next.

22 It is clearly starting on page four of the last minutes, Mr. Schultz went into detail. I'm not sure what else
23 was missing in terms of guidance in a case like this, because as you pointed out, Mr. DeLaney, years
24 ago, when there was no email, letters came into the Loft Board, and they wouldn't have a way to
25 contact a Board member, so there was no other option but to send it to the Loft Board. And the Loft
26 Board Executive Director would make that determination, whether that material should be distributed

1 to others. Now, in the age of internet and whatever, all kinds of communications come to you in an
2 instant. And you as Board members would have to determine what to do with that information. You're
3 bound by ethics, of course, just like, jurors, right? You're told what you can or cannot pay attention to
4 when it comes to you.

5 And so I thought Kevin laid that out. We can't go out and prosecute people for bombarding us with
6 information. But in terms of how to handle that communication, I guess Ms. Cruz can clarify that in the
7 next meeting, if you wish. But in terms of how to deal with people that did the wrong thing, or maybe
8 they think they're doing the right thing, I don't know if that's the business of the Loft Board. But we can
9 certainly give you some guidance on how you would handle or should handle situations like....

10 **Mr. Hylton:** Chairperson?

11 **Chairperson Hylton:** Mr. Hylton, go ahead.

12 **Mr. Hylton:** If Mr. DeLaney is asking for clarification of ex parte communications with Board members, I
13 don't think that's an unreasonable...

14 **Chairperson Hylton:** Oh, I didn't say it was unreasonable. I'm asking if it was not given in these minutes,
15 or would you prefer fresh interpretation from Ms. Cruz? I'm saying it's clearly laid out from Kevin, what I
16 thought was instruction on how to do it, how to handle it. In my reading of the minutes. But let me let
17 just say, Ms. Cruz, do you want to just take this offline until next time and review what was said here
18 versus what your own research may come up with, and give some more guidance, some fresh guidance?

19 **Ms. Cruz:** Okay

20 **Mr. DeLaney:** Thank you. I would just note that there were some open questions left on page 5 of the
21 minutes. On page 5... I'm just making sure yes, it's....

22

23 **Ms. Cruz:** Okay

24 **Mr. DeLaney:** There's a commitment that... Mr. Schultz said, "Thank you, I'll answer what I can right
25 now. And then acknowledge which parts we're going to research to give you all better answers. I'll start

1 with the unsolicited communications piece and a couple fundamentals in the law I think you can rely
2 on.” And really, I think the question is also to set some guidelines for the public so that there is a line, at
3 least clear, so that what the consequences are if someone steps over it may not be to everyone's liking,
4 but at the moment, it's not clear to me if a letter is sent....If someone sends a letter to all the members
5 of the Loft Board, what do we do with it?

6 **Chairperson Hylton:** Right. Okay. And I think there was some discussion also about putting those
7 guidelines on our website for the public. So maybe those are great ideas. Yes. Thank you, Ms. Cruz and
8 Mr. DeLaney. Any other comments or questions on these minutes? Barring any corrections, or
9 questions considered, can I have a motion then to accept these minutes? Was that Mr. Barowitz? Yes.
10 And do we have a second?

11 **Mr. Hylton:** Second

12 **Chairperson Hylton:** Sorry, Mr. Roche, next time. All right. Thank you. Ms. Rivera, please poll the Board
13 members.

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

15 **Mr. Barowitz:** I can't hear you, but yes.

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

17 **Mr. Roche:** 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. Oddo?

2 **Ms. Oddo:** Yes

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

4 **Chairperson Hylton:** Yes

5 **Ms. Rivera:** Seven in favor; two absent

6 **Chairperson Hylton:** Thank you, Ms. Rivera. Next on our agenda is a report from our new Executive
7 Director. Ms. Cruz?

8 **Mr. Clarke:** You're on mute, Ms. Cruz.

9 **Ms. Cruz:** There you go. Thank you. Good afternoon, Board members and members of the public. It's a
10 privilege and honor to be here today. Since your last Board meeting on November 18th, the courts have
11 issued four notable and important court decisions involving IMD spaces. We provided those decisions to
12 the Board members last week, and I will explain those decisions briefly now.

13 First is *16 Cypress Avenue, LLC versus the Loft Board*. It's a Supreme Court decision dated February 14th
14 of 2022. The owner's Article 78 petition challenges Loft Board Order number 4995 in a protected
15 occupancy case and Order number 5053 for an owner's reconsideration case.

16 In Order number 4995, the Loft Board granted the protected occupant application despite a prior sales
17 record filing for the unit. The owner argued that the application should be denied because the owner
18 purchased Loft Law rights pursuant to MDL 286(12) from a prior tenant. The Loft Board found that the
19 sales filing did not constitute a valid sale for three reasons. The tenant who allegedly sold his rights
20 testified that he signed the agreement to receive his security deposit back. At the time, he did not
21 understand why he received a ten-dollar payment in addition to the security deposit. The agreement did
22 not cite to the Loft Law nor did it cite to MDL 286(12). The Loft Board sales record form was not signed
23 by the tenant at the time of the sale. The tenant signed the sales record form months after the alleged
24 sale occurred.

1 In Order number 5053. The Loft Board denied the reconsideration application and the owner filed the
2 Article 78. The court's decision in the Article 78 denied the owner's petition. The court found the Loft
3 Board had a rational basis for its decision to reject the sales filing and grant the protected occupant
4 application.

5 The second case is *Matter of Callen*. It's a Court of Appeals decision that was issued on February 15th of
6 2022. In Loft Board Order 4080, the Loft Board rejected a proposed settlement because the parties
7 agreed that the coverage application would be withdrawn, and the tenant would be permitted to
8 continue their residential use of their spaces in the building. Without a Certificate of Occupancy, the
9 residential use by the tenants would be illegal. The Loft Board rejected the settlement as against public
10 policy. In their decision, the Court of Appeals found that the Board's determination to reject the
11 proposed settlement and remand the matter for further proceedings was not irrational in this case. The
12 staff is preparing the cases for remand to OATH.

13 The third decision is *Matter of Hughes*. It's an Appellate Division First Department case, and that
14 decision is dated March 3rd of 2022. On November 30th of 2017, the Loft Board issued Order Number
15 4714, granting coverage to the first-floor unit pursuant to MDL 281(5), but denying the protected
16 occupancy claim of Frank Hughes. The Loft Board found that Mr. Hughes was not a residential occupant
17 of the unit and did not use the unit as his primary residence. Mr. Hughes filed an application seeking
18 reconsideration of the Order. In Order number 4020, the Loft Board denied the reconsideration
19 application. In January 2019, Mr. Hughes filed an Article 78 proceeding, challenging the Loft Board's
20 Orders and the denial of the protected occupancy claim. In the decision, the Appellate Division found
21 that the Loft Board did not unfairly apply the primary residence requirement, which was added to
22 Article 7-C long before this case. It was added in 1992.

23 The fourth case is *Aurora Associates LLC versus the Locadeli and Green Tech Strategies LLC*. It's a Court
24 of Appeals decision, dated February 15th of 2022. This case involves the interplay between the
25 protection under the ETPA and the Loft Law after a sale of rights pursuant to MDL 286(12). The owner of
26 the building commenced a holdover proceeding to recover possession of the unit for which a sale of
27 rights had previously been filed with the Loft Board. The Housing Court dismissed the owner's petition

1 for possession. The Appellate Division First Department held, among other things, that the eviction
2 proceeding was properly dismissed because the unit was subject to regulation under the ETPA. The
3 Court of Appeals reversed the finding, finding that the IMD unit was exempt from rent regulation due to
4 a sale of Loft Law rights. The court found that the IMD unit is not subject to rent regulation under the
5 ETPA after a sale of rights, if the sole basis for rent regulation was the Loft Law.

6 That's my report.

7 **Chairperson Hylton:** Thank you, Ms. Cruz. Do we have any questions for Ms. Cruz regarding her report?
8 Mr. DeLaney, yes.

9 **Mr. DeLaney:** I have a couple of questions and a comment. The comment is really directed to the
10 audience. I would highly recommend, if one has the time and inclination to read roughly 40 pages, the
11 *Matter of Aurora Associates versus Locatelli*, easily found by Googling Aurora Associates. It's really a
12 fascinating history of the Loft Law. And you know that when the Court of Appeals, the highest court in
13 the state, starts an opinion (with), "This case requires us to revisit what we've previously described as a
14 patchwork of rent control legislation," quotes, "that is grown into an impenetrable thicket of rules and
15 regulations," quoting a prior decision, you know, it's a good read. So, I would encourage anyone who has
16 the time to read the decision and particularly the dissenting opinion, which is very interesting, and
17 which I may find myself moved to quote from later in the meeting.

18 Now to a couple of questions. Ms. Cruz, one of the things that has been a strong point of some
19 Executive Directors and a weaker attribute for some others is working with the staff to prepare
20 statistics. And in his brief tenure, Mr. Schultz was quite helpful, but I wonder if you -- and in the private
21 session, I'm not going into the details -- but at one point, it was pointed out -- and we all recognize that
22 staff resources are limited -- I wonder if you had a chance to give some thought to the issue of preparing
23 statistics on some sort of basis.

24 **Ms. Cruz:** Yes. Statistics are challenging for the staff, but when I was here, before, I always provided
25 statistics; I worked on them; I will continue to do that; and I will do my best to try to create systems here
26 that will provide us with the opportunity to do it in a more efficient way, given that the technology here

1 has improved quite a bit. So, I'm hopeful that we will be able to figure out a way that we will be able to
2 provide meaningful statistics about buildings, buildings in our jurisdiction, where they are in the process,
3 and about case management.

4 **Mr. DeLaney:** Great, that would be very helpful. The other concern that I've heard expressed on a fairly
5 regular basis recently by tenants is with regard to matters of enforcement. I wonder if you have any
6 comment on that. My concern stems in part -- because, as you know, we had an attorney who had put
7 forth an enforcement roadmap and action plan shortly before she left the agency, but that was back in I
8 think, 2016, if I remember correctly.

9 **Chairperson Hylton:** 2018 maybe? 2017, 18....

10 **Ms. Cruz:** I have actually already started a conversation with our enforcement attorney here to dust off
11 that enforcement plan and build on it. Discussions have already begun, and we will continue those
12 discussions. I'm hopeful that I will be able to report in the next coming months about what enforcement
13 actions we have done and what enforcement actions we are planning to bring.

14 **Mr. DeLaney:** Thank you.

15 **Chairperson Hylton:** Not to mention, of course, COVID threw a monkey wrench into a lot of our plans...
16 But yes, you're right, Mr. DeLaney. Enforcement is an important part of what we plan on doing. Okay,
17 any other questions or comments for Ms. Cruz? Any questions, Board members? All right, good. Let's
18 move on to cases. Thank you, Ms. Cruz.

19 There are six cases on our Summary Calendar, and we usually vote on these in block. However, there's
20 one case, case number 3, Gerald Gay Bennett, Jr., at 9 White Street in Brooklyn, PO-0163, which will be
21 voted on separately from the other five. So as I read, we're going to do two votes on the Summary
22 cases, all right? And that's on the request of Board members. Okay.

23

Case #1:	MZBJ Holdings, LLC	250 Moore Street, Brooklyn	LS-0279
Case #2:	Antoni Ghosh	43-49 Bleecker Street, Manhattan	PO-0071, TR-1361

Give me a minute, because I need to make some correction to that Proposed Order. So, I'll just let that be. Okay, on the Antoni Gosh, the Board met earlier in the quasi-judicial session, and we are removing the last sentence on the Proposed Order that says, "The Loft Board neither accepts nor rejects the remaining terms of the stipulation." So that sentence will be stricken from the final Order.

Case #3:	Gerald Gay Bennett, Jr.	9 White Street, Brooklyn	PO-0163
Case #4:	Donald M. Lunetta	281 North 7 th Street, Brooklyn	TA-0289
Case #5:	American Package Company Inc.	226-240 Franklin Street, Brooklyn	R-0389
Case #6:	James Gubelmann	442 Broadway, Manhattan	TR-1373, TR-1374

1 Are there any comments on these cases? Board members, no comments. Then do I have a motion to
2 accept these cases?

3 **Ms. Oddo:** I'll make a motion.

4 **Chairperson Hylton:** Ms. Oddo. Is there a second? Mr. Hylton has seconded. Ms. Rivera, could you
5 please poll the Board members?

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

7 **Mr. Barowitz:** Yes

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

9 **Chairperson Hylton:** Mr. Roche? Just keep going.

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

11 **Mr. Hylton:** Yes

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

13 **Mr. DeLaney:** Yes

14 **Ms. Rivera:** Ms. Roslund?

1 **Ms. Roslund:** Yes

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

3 **Ms. Oddo:** Yes

4 **Chairperson Hylton:** Ms. Oddo is yes.

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

6 **Chairperson Hylton:** Yes. Let's go back to Mr. Roche.

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

8 **Mr. Roche:** Yes

9 **Ms. Rivera:** Seven in favor; two absent

10 **Chairperson Hylton:** Seven in favor, two absent, just in case anybody didn't hear. The motion has
11 passed. The next case on the Summary calendar, which was asked to be voted on separately, is

Case #3: Gerald Gay Bennett, Jr. 9 White Street, Brooklyn PO-0163

12

13 Do we have a motion to accept this case? Mr. Hylton. Ms. Oddo has seconded. Do we have any
14 comments?

15 **Mr. DeLaney:** Yes, I asked that this case be taken up separately. The Board has what I've sometimes
16 referred to as weasel wording. So that in this case, which involves a situation where the protected
17 occupancy of an individual applicant is, in essence, granted because the owner agreed to put the
18 applicant as the protected occupant. And there's a stipulation of settlement -- the case went to OATH,
19 but it got settled prior to a decision being made, which is why it's on the Summary calendar -- but the
20 stipulation, to my view, is so egregious that one of the provisions -- provision number 9 of the stip: "The
21 applicant officially waives any claims or right of involvement to the Narrative Statement process and
22 agrees to cooperate with the owner and owner's architect, so long as the square feet of his unit does
23 not diminish." Having somebody waive their right to the Narrative Statement conference in exchange

1 for protected occupancy status, to me, seems inappropriate. This is also a large building, many, many
2 units -- sixty or so, at 9 White Street.

3 So try this one on for size. "The parties further agree that the following is the legal base rent under the
4 Loft Law..." -- the legal base rent under the Loft Law -- "... for the premises: \$3,500 a month. Applicant
5 agrees to pay this amount in addition to applicable increases that are provided by law throughout his
6 prospective occupancy at the premises once his unit receives a Certificate of Occupancy for residential
7 purposes from the Department of Buildings." Number 6: "In the interim, between the signature of the
8 parties on this agreement and the issuance of the Certificate of Occupancy, it is hereby mutually agreed
9 that the applicant shall pay a monthly rent in the amount of \$1,500."

10 So that means \$2,000 a month less from the legal base rent -- as if landlord and tenant could agree on
11 what the legal base rent under the Loft Law is. In addition to being kind of incomprehensible, boy, if I
12 had that kind of stipulation going, I would sure drag my feet on legalization. It seems like kind of not
13 such a great thing. And for us to just neither accept nor reject, as I've raised before, I just find it
14 incomprehensible. I plan to vote no.

15 **Chairperson Hylton:** Thank you, Mr. DeLaney. Do any other Board members want to comment on this
16 case? No comments. Can we poll the Board members please?

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

18 **Mr. Barowitz:** Yes

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

20 **Mr. Roche:** Yes

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

22 **Mr. Hylton:** Yes

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

24 **Mr. DeLaney:** No

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

2 **Ms. Roslund:** No

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

4 **Ms. Oddo:** Yes

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

6 **Chairperson Hylton:** Yes

7 **Ms. Rivera:** Five in favor; two against; two absent

8 **Chairperson Hylton:** Thank you, Ms. Rivera, that motion is passed. Thank you. There are two cases on
9 our Master Calendar, beginning with

Case #7: Walter Kim and Leslie Ann Feldman-Kim 33 Union Square West, PO-0051, TA-0240
Manhattan

10 Ms. Lee will present this case to us.

11 **Ms. Lee:** Thank you Chairperson Hylton. In this case, the tenants of Unit 4R filed a coverage claim for
12 their unit under MDL section 281(1), protected occupancy claims for themselves, and a rent-dispute
13 claim. Trial was held over several days and post-trial briefs were submitted. After the record closed, the
14 Administrative Law Judge recommended denial of the tenants' coverage claim because the tenants
15 failed to establish that Unit 4R was residentially occupied during the relevant Window Period. The
16 Administrative Law Judge also recommended dismissal of the tenants' protected occupancy and rent-
17 dispute claims because the tenants failed to establish that Unit 4R was covered under the Loft Law. This
18 Proposed Order accepts the Administrative Law Judge's recommendations.

19 Although coverage under MDL section 281(1) is not precluded by the fact that the building received a
20 residential Certificate of Occupancy in 1997, the tenants failed to establish residential occupancy of Unit
21 4R from April 1st, 1980, through December 1st, 1981, which is the relevant Window Period here.

22 Although conflicting testimony was presented at trial, the former occupants of Unit 4R, who the tenants

1 alleged resided in the unit during the relevant Window Period, consistently and credibly testified that
2 they, in fact, did not live in Unit 4R. Instead, they used Unit 4R for commercial purposes, specifically to
3 operate a general contracting business. The former occupants testified that Unit 4R was not suitable for
4 residential occupancy; that the unit lacked residential fixtures; and that they lived in a different
5 apartment building during the relevant Window Period.

6 The tenants provided insufficient evidence to persuasively rebut the credible testimony of the former
7 occupants. In addition, this Proposed Order finds that because a residential Certificate of Occupancy
8 was issued for the building, including Unit 4R, prior to the effective date of the 2019 amendments to the
9 Loft Law, Unit 4R is not eligible for coverage under MDL section 281(6). In sum, this Proposed Order
10 denies the tenants' coverage claim. It also dismisses the tenants' protected occupancy and rent-dispute
11 claims because Unit 4R does not qualify for coverage under the Loft Law.

12 **Chairperson Hylton:** Thank you, Ms. Lee. Is there a motion to accept this case? I see Ms. Roslund's
13 hand. Is there a second? Mr. Barowitz. Thank you. We have a motion. Are there any comments that
14 anyone wants to make on this case? Absent comments from the Board members, Ms. Rivera, could you
15 please poll the Board members?

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

17 **Mr. Barowitz:** Yes

18 **Chairperson Hylton:** Wait. Mr. Hylton, did you make a comment?

19 **Mr. Hylton:** No.

20 **Chairperson Hylton:** Ok. Go ahead.

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

22 **Mr. Roche:** Yes

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

1 **Mr. Hylton:** Yes

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

3 **Mr. DeLaney:** No

4 **Ms. Rivera:** Ms. Roslund?

5 **Ms. Roslund:** Yes

6 **Ms. Rivera:** Ms. Oddo?

7 **Ms. Oddo:** Yes

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

9 **Chairperson Hylton:** Yes

10 **Ms. Rivera:** Six in favor; one against; two absent

11 That's six in favor, one against, and two absent. Thank you, Ms. Rivera. The motion is passed. The next
12 and final case on the Master Calendar is

Case #8: Frank Hughes 401 Wythe Avenue, Brooklyn PO-0105

13 Mr. Clarke will be presenting this case.

14 **Mr. Clarke:** Thank you, Chairperson Hylton and Board members. On November 30th, 2017, the Loft
15 Board issued Order Number 4714, finding the first-floor unit in the building was covered pursuant to
16 MDL section 281(5), but denying the protected occupancy claim of Frank Hughes under 29 RCNY section
17 2-09(b). On November 15th, 2018, the Loft Board issued Order Number 4820, denying tenant's
18 reconsideration application. In January 2019, tenant filed an Article 78 petition, seeking judicial review
19 of the Order and the Reconsideration Order. Effective June 25th, 2019, the New York State Legislature
20 amended Article 7-C of the MDL to include a new section (6) in the MDL section 281. On July 29th,
21 2019, tenant filed an application seeking protected occupancy based on the 2019 amendments to
22 Article 7-C. On August 22, 2019, owner filed an answer. On January 29th, 2021, the ALJ issued a Report

1 and Recommendation that tenant’s application be denied because the 2019 amendments to the Loft
2 Law did not create a new opportunity for tenant to claim protected occupancy after tenant’s protected
3 occupancy claim was denied in the Order and the Reconsideration Order. On June 23rd, 2021, the
4 Supreme Court denied tenant’s Article 78 petition to annul the Order and the Reconsideration Order,
5 and on March 3rd, 2022, the Appellate Division, First Department unanimously affirmed.

6 Pursuant to the Order, the unit is covered under MDL section 281(5). The only question before the
7 Board is whether the tenant is entitled to protected occupancy after the Board previously denied
8 tenant’s protected occupancy claim. Tenant first argues that the 2019 amendments to the Loft Law
9 created a new Window Period for protected occupancy status for units covered under MDL 281(5). The
10 2019 amendments to MDL 281(5) involve changes to the criteria for coverage. However, the Loft Board
11 granted coverage to the building and the unit in 2017, long before the 2019 amendments. Since the
12 2019 amendments do not form the basis for coverage of the unit, the 2019 amendments do not affect
13 the analysis for tenant’s protected occupancy claim in the Order. The 2019 amendments also create a
14 new Window Period for coverage in MDL 281(6), and therefore, a new protected occupancy claim for
15 tenants seeking protection in units covered under MDL 281(6). However, this unit is not covered under
16 281(6); it is covered under 281(5). The new Window Period for coverage under 281(6) does not apply to
17 protected occupancy claims for units covered under MDL 281(5).

18 Next, tenant argues that after the Loft Board issued the Order in November 2017, denying tenants
19 protected occupancy claim, the owner continued to collect rent until March 2018. Tenant argued that
20 the owner’s continued acceptance of rent after the Order constitutes implied consent to his tenancy
21 pursuant to 29 RCNY section 2-09(b)(3)(iii)(i). However, section 2-09(b)(3)(iii)(i) is part of the analysis for
22 a protected occupancy claim when the individual seeking protected occupancy status began occupancy
23 after the effective date of the relevant section of MDL 281. Here, tenant’s occupancy began in 2007,
24 before the effective date of MDL 281(5), and therefore, 2-09(b)(3)(iii)(i) does not apply. For the reasons
25 stated above the Proposed Order before you today denies tenant’s application.

26 **Chairperson Hylton:** Thank you, Mr. Clarke. Appreciate that analysis. Do we have a motion to accept
27 this case?

1 **Mr. Hylton:** So move.

2 **Chairperson Hylton:** Mr. Hylton. Do I have a second?

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

4 **Chairperson Hylton:** Ms. Roslund. Comments are welcome, right now, from Board members.

5 Mr. DeLaney?

6 **Mr. DeLaney:** As I explained to my colleagues earlier, I plan to vote no on this case. And I think the
7 Board could arrive at a different conclusion and find that the applicant in this case is covered. This case
8 has been through a lot of twists and turns, granted, and it's not disputed by the applicant that there was
9 a period of time before the building was found to be an Interim Multiple Dwelling, and before the
10 Window Period in question, when the applicant lived with his girlfriend and did not, for a period of a
11 couple of years, use this loft as his primary residence -- during a period when the unit, when the
12 building, was not covered by the Loft Law. Coverage was determined significantly after that point.

13 The argument advanced in the current Proposed Order, that you can't have a unit that's covered under
14 281(5) and the protected occupant covered under 281(6), strikes me as an interpretation, but not an
15 interpretation that I can really find anywhere clearly, explicitly supported in the Loft Board's rules. And
16 again, this gets into what I think the Court of Appeals called the thicket of rent rules and the like, but
17 up until a period after 2010, when the law was expanded and coverage under 281(5) was first opened
18 up, the situation was such that the staff made the decision without consulting the Board. There were no
19 hearings, and there's nothing in writing to bifurcate coverage and protected occupancy.

20 Prior to that time -- and I think it's around 2014, I did not have time to research the specific date -- up
21 until that time, a coverage application included demonstrating that the individuals who are making the
22 application lived there during the Window Period; and it was simple and straightforward. It was split
23 apart, apparently, by the staff -- and fortunately Martha was here at that point in time, Ms. Cruz, so
24 she's aware of all this -- was split apart for other reasons. So, I don't see any reason why one can't be the
25 protected occupant under this bifurcated system under 281(6) in a unit that's covered under 281(5).

1 And the whole concept of protected occupancy as a separate condition really isn't spelled out in our
2 rules. There were never any hearings, there was never any public comment. It was just done by the
3 staff. I think the conclusion in this case, rather the Proposed Order in this case, is wrong and brings
4 about the wrong result. Therefore, I plan to vote no.

5 **Chairperson Hylton:** Thank you, Mr. DeLaney. Any other comments? Any other comments? No
6 comments? Very good. Ms. Rivera, could you please poll the Board members?

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

8 **Mr. Barowitz:** No

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

10 **Mr. Roche:** Yes

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

12 **Mr. Hylton:** Yes

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

14 **Mr. DeLaney:** No

15 **Ms. Rivera:** Ms. Roslund?

16 **Ms. Roslund:** Yes

17 **Ms. Rivera:** Ms. Oddo?

18 **Ms. Oddo:** Yes

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

20 **Chairperson Hylton:** Yes

21 **Ms. Rivera:** Five in favor; two against; two absent

1

2 **Chairperson Hylton:** The motion is passed. Five in favor; two absent; two against. Thank you. Board
3 members, I know this is a very challenging case, but I appreciate your deliberations. We now are going
4 to take a two-minute break so Board members can refresh, because we are going into the rulemaking
5 portion of our meeting, and we expect -- it's now three o'clock -- we expect a good hour and a half of a
6 meeting right after, just to give everybody a heads up. Board members, could you put yourselves on
7 mute? And you can take yourself back off mute. And we'll see you back in five minutes.

8 **Mr. Clarke:** And Chairperson Hylton, just to add, I know that we're going to go to break, but just for the
9 for the members of the public that want to follow along with the rulemaking, they can find our draft
10 rules on our website: www.nyc.gov/loftboard. It's under the meeting tabs. They can download a copy of
11 our rules that we're going to discuss today and follow along.

12 **Chairperson Hylton:** Or just read it from the computer correct? Download it, yes, I got you. Appreciate
13 that Mr. Clarke. Also, I am not stopping the recording of this session. So please mute yourselves.

14

15

After the break:

16 **Chairperson Hylton:** Board members, when you are ready to go, please show your faces.

17 **Mr. Roche:** I'm good, Mr. Chairman.

18 **Chairperson Hylton:** Thanks, Mr. Roche.

19 **Chairperson Hylton:** Ms. Cruz, are you...? Okay, yes, you are. Ms. Roslund? Mr. Hylton? Ms. Cruz, do I
20 have a quorum? Okay. Ms. Roslund's not here, but I think I have a quorum. And so the recording
21 continues for this meeting. Ms. Cruz, could you activate a backup recording? Okay, thank you. Mr.
22 Clarke, we are in your hands.

23 **Mr. Clarke:** Thank you, Chairperson. We are going to discuss the documents that I sent over. In going
24 over some of the documents that I sent over, there's one document in particular that I don't think we're
25 going to need today, unless you want a clean version to look at. What we're going to be looking at are

1 the final comments from the Law Department that were sent to us in November. The documents are
2 labeled Part 1 2020 RG 023 and Part 2. And then the other thing we're going to look at is the chart that
3 was sent out to everybody. That chart is labeled Loft Board Rulemaking Definitions, and I'm going to
4 explain that to everybody. Hopefully, everybody had a little bit of time to look at it prior to the meeting.
5 Okay, so where we left off...

6 **Chairperson Hylton:** Could you, Mr. Clarke, before we begin, just refresh the Board and the members
7 of the public, they're following -- you're going to explain what pages they're on?

8 **Mr. Clarke:** Yes. So as I'm going through the different sections that we're going to be discussing today,
9 I'm also going to be letting the members of the public know what page they can follow with the draft
10 rules that are on our website, if you download it, if you have a copy. I'll reference that page number for
11 the public as well. Okay, so just generally, we're coming to the end of rulemaking. I really think we can
12 get this done soon, but the Law Department had some comments.

13 The majority of the comments, the Law Department said were okay, so what we're going to be
14 discussing are only the comments from the Law Department that we didn't get an okay on. The majority
15 of those comments from the Law Department stems from the fact that we have defined terms twice:
16 once in the global definitions section and then also, again, in the body of the rules. The Law Department
17 has essentially said, you can't define a term twice unless it's a unique definition. So, this chart that we're
18 going to be working off of does a side-by-side comparison of where the specific term was defined in the
19 body of the rules and where it was defined in the global definitions.

20 So, what the Board has been tasked with --- and the Loft Board staff has already taken a look at these
21 terms and determined which terms we think should be removed. Again, as much as some of us might
22 want to have the term defined twice, the Law Department is not okay with that. So, turning to our
23 comparison chart, if you want to take a look. First of all, I just want to ask if this was straightforward and
24 clear for the Board members? Is there anything...We can skip to the bottom and just go to the other
25 comments, if this was straightforward for the Board members. But is there anything...If this was not
26 straightforward, are there any specific comments for any of these terms in the chart that the Board
27 members would like to discuss? Is this something that we can move past, if they agree with the

1 comments that are made in this chart and the changes that were made? I just want to throw that out
2 there, first and foremost.

3 **Mr. DeLaney:** Are you referring to the chart that you prepared?

4 **Mr. Clarke:** Yes, the chart that I prepared.

5 **Mr. DeLaney:** Right, and ah...

6 **Mr. Clarke:** So, what we basically did in the chart that I prepared, again, the terms were defined twice.
7 Once in the global definition and once in the body of the rules, and we just removed one of them.

8 **Mr. DeLaney:** Right, I'm going to be completely frank and say calling this a chart...It's a nineteen-page
9 Excel spreadsheet, that I received at about 6:30 pm on Monday night. And I have not had a chance to
10 go through it.

11 **Mr. Clarke:** Okay. All right.

12 **Mr. DeLaney:** But on the other hand, what I would say is, number one, having read the minutes from
13 both of the November meetings, I know we covered a lot of things in great detail. I'm also aware that at
14 this point, these rules have been under discussion in part since 2016, when Helaine Balsam took over
15 the Executive Directorship, and which are in part necessitated by the 2019 amendments to the Loft Law.
16 It's my understanding that we're really kind of hurting in terms of not having these rules in place. So, I'm
17 in favor of whatever we can do, whether that means additional meetings, or anything else, to expedite
18 the completion of this process for this round.

19 It's also clear reading the minutes that we intend to come back to do some more work on section two.
20 But a lot of what, at the moment, would help the Board function more effectively is to get these
21 adopted so that, in particular, section one of the rules is more up-to-date. So maybe you could give us
22 an overview of what needs to be done; how quickly we can get this to a final form that can be put
23 before the public; a hearing can be held; and you can get these things adopted.

1 **Chairperson Hylton:** Thank you, Mr. DeLaney. Before Mr. Clarke answers, thank you for bringing that up
2 there about extra meetings because I think I have some budget approvals to have some extra meetings
3 for rulemaking. And so I think, Martha, we haven't had a chance to discuss yet, but I think we need to sit
4 down and throw some dates out with Board members, so that we can do exactly what Mr. DeLaney just
5 mentioned. It's very important that we move forward with rules. So yeah, so we will be doing some
6 extra meetings, Mr. DeLaney.

7 **Mr. DeLaney:** I mean, we've gone back and forth with the Law Department. In November, there were all
8 kinds of places about, frankly, reasonably, not momentous issues, where the Law Department wants it
9 this way, but we think it should be that way. And I'm just afraid that if we aim for perfection here, we're
10 not going to get these adopted till 2025.

11 **Chairperson Hylton:** Yeah, optimistically. Yes. I agree.

12 **Mr. Clarke:** I just wanted to address what we do have left on the table is everything that's on this
13 chart/Excel spreadsheet. The majority of it, it looks a little bit intimidating, because a lot of them are
14 terms. But with the Law Department, for everything that's on the chart/Excel spreadsheet, the Law
15 Department is basically saying, Loft Board, you need to choose one place where you want to define
16 these terms. It can't be in both. And after that, there are comments underneath the chart. There may
17 be....there are eleven comments left from the Law Department. What happens is, once we go through
18 this, what we're going to do is make the changes and send them back to the Law Department. Hopefully,
19 we'll get an okay after that. There's one comment that we believe OATH should be involved with, in the
20 conversation, and other than that, once the Law Department approves, if there's no additional
21 comments that the Law Department has for us, then we can clean it up and prepare it to be voted on.
22 So that's where we are.

23 **Chairperson Hylton:** So this chart has staff's recommendation, correct? That's cleared counsel in terms
24 of where we believe that we should --- For example, you make a note here, because the language is the
25 same, the Law Department recommends that it not be repeated. And where is it saying that we're going
26 to adopt this?

1 **Mr. Clarke:** So, it basically says on the right side of the of the table, of the chart spreadsheet, it says, it'll
2 say an update. We deleted this particular term from the global definitions, or we left it in the global
3 definitions. So yes, you're correct, Chairperson.

4 **Chairperson Hylton:** So that becomes your recommendation to the Board?

5 **Mr. Clarke:** Yes. Correct.

6 **Chairperson Hylton:** All right. So just to go back to your initial directions here, you're saying that there...
7 how many pages here that we've pretty much gone through legally and decided to... and you've made
8 recommendations here. If anyone has any questions regarding those we can.... If we don't have any
9 questions, we can move on to the more deliberative stuff, right?

10 **Mr. Clarke:** Yes, correct. I think the more deliberative stuff is towards the end of the document with the
11 remaining Law comments.

12 **Chairperson Hylton:** If I get Mr. DeLaney's thing right, you're saying, Mr. DeLaney, you're willing to
13 forego staff's acceptance of whatever Law Department was recommending here in terms of moving the
14 definitions one place, just to move things forward?

15 **Mr. DeLaney:** That would seem...no. You know, some of these are so kind of...If this is your full-time
16 job, and I realize that that is the case for Mr. Clarke, in essence, and you and Mr. Argov have done a
17 great job on creating these charts. But you know, whether to capitalize something or whether to have
18 the definition in two places, and definitions a tiny bit different in one than the other -- it seems to me
19 that we're just so totally in the weeds, we're never going to get out of this. And if the Law Department,
20 and OATH, and the Board staff have to have another couple of months of dialogue --- There comes a
21 point when I think we should move forward with these rules and resolve to clean things up either from
22 input that we get at the public hearing, or when we do another round of work on section two.

23 **Chairperson Hylton:** Agreed. I think I just saw recently...

24

1 **Mr. DeLaney:** We're now working with a draft that has the Law Department's comments penciled on it;
2 and then track changes; now that's in track changes and it's penciled on it. We can't go over it with the
3 public because it's work product, and we've all been advised it's confidential, but on a certain level, one
4 would think that on some of this, we should trust the staff and move forward as much as possible.

5 **Chairperson Hylton:** Thank you. Okay. Any other comments regarding these definitions, that otherwise
6 we'll just accept? I believe Mr. DeLaney is correct. This is too much in the weeds in terms of definitions,
7 and we have legal staff who are doing this and consulting with the Law Department, and we're not going
8 to get anywhere unless we get past the Law Department. And so it's been extensively reviewed, and we
9 could probably trust them here with their decision on where the definitions go and what the definitions
10 say. Then we can go on, Mr. Clarke, to the more deliberative stuff. So where are we then?

11 **Ms. Roslund:** I have a question for Mr. Clarke. It appears that the majority of the definitions are being
12 eliminated from the global definition section and left in the specific sections. Which gives me a little
13 pause as I'm just scrolling through everything. Can you give a brief overview as to -- for both the Board
14 members and the public? Generally speaking, are the majority of definitions in the specific sections or
15 are the majority of definitions in the global definitions? And what was your overarching thought process
16 to remove them from the global definitions for the most part?

17 **Mr. Clarke:** Sure. I would say that the majority of the definitions in our rules are by far in the global
18 definitions. The reason why we would say that it should not be in the global definitions is, for instance,
19 if it's a term that only appears specifically in the body of the rules. For instance, the harassment
20 definition. It appears specifically in the body of the rules, and then underneath that, there are examples
21 of harassment and other language about harassment that's not just the definition but goes on to
22 expound on the term. We thought that it was better to keep everything together rather than separate it
23 and put it at the beginning of the rules and the global definitions. Just to keep everything together.
24 Also, another factor that we thought about was if we had to define a term in the global definitions, we
25 wanted to make sure that there were not unintended consequences in other sections of the rules that
26 we're not currently amending. See, when you define it in the global definitions, it's going to affect all of
27 the rules. So, if we thought that it was a term that we shouldn't include in the global definitions, because

1 it might have unintended consequences in other portions of the rules that we're not currently
2 amending, we decided to just leave it where it was. And those were pretty much the factors that we
3 used to determine whether or not to leave it in the global definitions or leave it in the body of the rules.

4 **Ms. Roslund:** Thank you.

5 **Chairperson Hylton:** Go ahead, Mr. Clarke.

6 **Mr. Clarke:** Okay. I want to thank the Board members for trusting the staff. We've been looking at this,
7 and we've been going cross-eyed looking at these rules. So, with respect to these terms, we will make
8 these corrections and send them back to the Law Department. They will be very happy that we've only
9 chosen to define these terms once in our rules. So, we can move on to the end.

10 Underneath the chart, again, are some more comments from the Law Department. It's very similar to
11 what the staff has done with determining where these terms should be. We looked at the comments
12 from the Law Department, and we made some determinations, saying we agree with the Law
13 Department, or we don't agree with the Law Department, and we gave our reasons why. Again, I
14 appreciate that the Board members trust us in our determinations. We can go over them together, or
15 you can continue to trust us with this smaller portion of comments that are at the bottom of the of the
16 sheet, and we can make the corrections and present them to the Law Department and then hopefully
17 wrap this up so we can comment on the rules generally. But if the Board members want to discuss these
18 remaining comments, I do think we have enough time to do that. It's up to the Board members.

19 **Mr. Roche:** Mr. Chairman?

20 **Chairperson Hylton:** Sir?

21 **Mr. Roche:** I just want to go on record as saying I have the utmost faith in our Loft Board attorneys and
22 staff, and I think for the sake of moving some of this forward, we need to leave some of these smaller
23 details to their judgment, as our legal counsel, and keep this thing moving forward.

24

1 **Chairperson Hylton:** Thank you, Mr. Roche. By the way, did we lose Mr. DeLaney? Is he on? I don't see
2 Mr. DeLaney.

3 **Mr. DeLaney:** I'm here.

4 **Chairperson Hylton:** Okay. I'm just not seeing you. Okay. All right. I hear you then. Go ahead.

5 **Ms. Cruz:** Mr. Hylton, did you lose your audio?

6 **Mr. Hylton:** I did. I got it back. Thank you.

7 **Ms. Cruz:** Okay. No problem. Okay, we're good.

8 **Mr. DeLaney:** Yeah, that's been happening. I've had my audio cut out a couple times. But for example,
9 the first of these comments: "At the November 8th Board meeting, Board members decided the
10 language for section" whatever "should read 'Anyone residing within or commercially utilizing any unit
11 the building, if different from the Prime Lessees and Sublessees.' Law crossed out 'Anyone' and replaced
12 it with 'Any Person.' Law then questioned, 'are we talking about person as defined above? Also, should
13 person always be capitalized?' Person is defined in the global definitions as an individual, partnership,
14 corporation, or other legal entity, and any individual or entity acting in a fiduciary representative
15 capacity. I think it's okay to change 'Anyone' to 'Any Person'..." I don't care.

16 **Chairperson Hylton:** But we have to present that to you, Mr. DeLaney.

17 **Mr. Clarke:** Right. We have to give you the opportunity...

18 **Mr. DeLaney:** But when I get them at six o'clock on a Monday, and I'm expected to digest all this by
19 Thursday afternoon, that's magical thinking.

20 **Chairperson Hylton:** We're doing our very best, Mr. DeLaney, to get to you as quickly as possible.

21 **Mr. Clarke:** And also, to add Mr. Chairperson, to get it to you in a way that that's the easiest for you to
22 digest, rather than just looking at all these Law comments and trying to figure it out. We try to get it into
23 a form where it's easier for the Board members to digest.

1 **Chairperson Hylton:** But I get your point that you don't care about this. Is there anyone else who
2 doesn't care so we could move on? I mean, if that's the case, then this is an easy one.

3 **Ms. Oddo:** I received these also very late, a little bit later than everyone else just because of an email
4 snafu, so I haven't had a chance to digest it. But from what I'm reading, I understand that this is very -- I
5 kind of have to trust the Law Department on this, because I feel like I can understand why so many
6 things are being done. It's to reduce liability in certain places or even just the redefinition of anyone,
7 any person. It's because it's more of a legal term. I haven't had a chance to really go through this, but
8 unless I was carefully combing through and trying to understand it --- If I were a lawyer, I don't think I
9 would have any change in them and also rely on the Law Department here.

10 **Chairperson Hylton:** Thank you. So, Mr. Clarke, could you go on to the next comment?

11 **Mr. Clarke:** Okay, so the next comment is on page 19. If the public has the draft document, it's also on
12 page 19. For this comment, the Law Department wants the service language to conform to the service
13 language that the Board previously approved in section 1-21(c) on page 17. So on this page, the Law
14 Department is looking at the *Service of the Answer*; when service and filing of answers. We previously
15 fleshed out language for service on page 17, under *Service of the Application*. The Law Department's
16 comment on page 19 is saying that the language that you used on page 17 should match the language
17 on page 19; and we agreed. That's basically what that comment is saying. So, what we're going to do is
18 make the service language under *Filing the Application* match the service language for *Service of the*
19 *Answer*. Any comments or questions about that?

20 **Mr. Barowitz:** I don't have any comments or questions about it, but I want to relate a very short thing.
21 When I was teaching at one time with a whole bunch of Asian students, national Chinese, and they
22 wrote human beings. And I said to them, well, why don't you just write human or being, one or the
23 other? And they said, no, no, no, Professor, human being. And that seems to be what we're doing here.
24 Why don't we just get over this, and let it go? I trust the Loft Board to make the final decisions on this in
25 terms of whatever. I mean, this is just nitpicky.

26

1 **Mr. Clarke:** Thank you, Mr. Barowitz. Is there a consensus on that with the Board members? Or do you
2 want us to continue? You trust us to make these changes. We make everything conform. We saw the
3 Law Department's comments; we looked at them; we analyzed them; we determined that the majority
4 of them were actually correct. There might be smaller instances where we disagreed with the Law
5 Department, and we have reasons why. But we're the Board's attorneys; we work very hard; and we're
6 trying to get these rules passed. The reason why we're actually nitpicking at this phase is because we
7 don't want to do anything that the Board members haven't already seen. That's the only reason. We
8 appreciate this -- the confidence that the Board members have in us, and by all means, we can make
9 these changes, and then present them to the Law Department, and hopefully, wrap this up. That's not a
10 problem.

11 **Chairperson Hylton:** That's what I'm hearing here. Absent anyone else speaking up, I think we're saying
12 that these proposed changes that you've articulated here on paper, the members of the Board are
13 agreeing to let the staff make these changes, so we can go to Law and adopt as it is on the paper, as we
14 presented it here, right? Anyone else?

15 **Ms. Roslund:** Mr. Clarke, can you quickly highlight some of the issues that you had where you disagreed
16 with the Law Department?

17 **Mr. Clarke:** Sure. I can give you an example.

18 **Mr. DeLaney:** Can we do page 23? That seems to be one where OATH gets to weigh in.

19 **Mr. Clarke:** Yes, let's look at page 23. There's a lot of comment on this one, and I'm going to point you in
20 the right direction, don't worry. For the public, it's also page 23. And on page 23, under section 1-27(c),
21 that section starts with, "All hearings will be conducted in accordance with the procedures stated in
22 these rules." Going on, "Formal rules of evidence do not apply to such hearings, except rules of
23 privilege recognized by law. At the hearing, the parties may be represented by counsel or by a duly
24 authorized representative." And that is language that the Board members, I'm sure you remember, we
25 took that language specifically from OATH's rules and incorporated it into our rules. Now, the Law
26 Department said that we had to add this parenthetical after it saying, "provided such duly ordered

1 authorized representative, neither provides legal advice or an opinion of law nor holds himself or herself
2 out as a lawyer without being admitted to the bar in the state of New York.” So, OATH was involved
3 with this because OATH agrees with the Board members that we don't need to add this parenthetical.
4 The Law Department is pushing back and saying, you do, because we don't want the unauthorized
5 practice of law happening. And this is just in my notes, in my comments, I basically say that this is,
6 literally, a discussion that we have to get OATH on the phone, and we have to get the Law Department
7 on the phone and let them hash it out. Because this language that the Board adopted is in OATH’s rules.

8 **Chairperson Hylton:** This is part of OATH’s rules, right? In other words, we are, literally, adding to their
9 rules, because when it goes to OATH, they’re going to follow their rules, right? That’s kind of what
10 you're saying?

11 **Mr. Clarke:** Correct. That's an example of...

12 **Chairperson Hylton:** Let me ask you this, Mr. Clarke.

13 **Mr. Clarke:** Yes

14 **Chairperson Hylton:** What does it matter? I mean, if it stays in here, and it goes to OATH, and they
15 follow their own rules, what would it matter?

16 **Mr. Clarke:** Honestly, I think the fight is more between OATH and Law Department. Because, if the Law
17 Department is saying we should add it in our rules, then it's going to make OATH look kind of bad that
18 they don't have it in their rules. And OATH is saying, we don't need it in our rules; we don't want it in our
19 rules; and it shouldn't be in our rules. And there's an argument that they're both having back and forth. I
20 think, for the Loft Board's purposes, I don't think we really care one way or the other that much. From
21 my understanding, and from the conversations that we've had with the Board members, it's not really
22 adding or taking away that much. But I will say that this parenthetical, it kind of limits any type of
23 representation at OATH. I'm not sure if the Board members want to have any limits on the
24 representation...

25 **Chairperson Hylton:** But they're going to OATH, and OATH, allows that, correct?

1 **Mr. Clarke:** Yes. Correct. And it's part of OATH's rules. And we just adopted OATH's rules, but the Law
2 Department is flagging it.

3 **Chairperson Hylton:** Okay, so let's move on. We do disagree, so let's push to get OATH on our side.
4 Maybe two against one...

5 **Mr. DeLaney:** But wait a second, with all due respect, I think your first question, Renaldo, was the
6 correct one. What does it matter, right? We did a comparison of our rules and OATH's rules. We came
7 upon this and said, oh, that's not a bad idea. Suppose English is not the tenant's second language.
8 Suppose the tenant is hard of hearing and needs somebody to help listen and shout in his ear. That's
9 what this was intended to do. And if the Law Department wants to put in parenthetical language that
10 says provided the authorized representative doesn't provide legal advice, this could take two months.
11 Set up a phone call... There are new cases out there that are waiting to get decided, awaiting rules that
12 we've been trying to adopt since 2018, 2019 Loft Law cleanup bill. And it's holding up our process. I just
13 don't... If it makes OATH look bad, it won't be the first time.

14 **Chairperson Hylton:** And that's what I meant by what does it matter? Because it's going to go to OATH
15 and OATH is going to follow their rules.

16 **Mr. DeLaney:** Right

17 **Mr. Clarke:** I agree with the sentiment, and if the Board members are fine, and it seems like we
18 appreciate that they trust the staff, these corrections can be made right away. Not corrections, but
19 these adjustments can be made right away, and we can present them to the Law Department and say
20 we're ready. We made all the changes that you asked us to make. If we didn't change it, here's the
21 reason why. I wholeheartedly believe that in instances where we're saying we don't want to change
22 something, we're actually correct. And we can move on from there. The staff is just as eager to get these
23 rules passed as the Board members.

24 **Chairperson Hylton:** Yes, and it's holding up very important, more substantive stuff that we need to
25 get these rules passed. So yeah.

26

1 **Mr. Clarke:** To be honest with you, the majority of the comments are very similar to the two that we
2 just discussed.

3 **Chairperson Hylton:** Is there another example, as Ms. Roslund was asking, where we disagree?

4 **Mr. Clarke:** Sure. Let's look on page 51. And for the public following along, this is on page 50. I'll wait
5 for everybody to get on the right page. If we're all here, for the Board members, it's 51. For members of
6 the public, it's page 50, but the members of the public are not going to see all the markups. But there
7 are two places where it's labeled Narrative Statement, where the Law Department has circled the word
8 provide. So, we agreed with the Law Department that the first instance of provide is correct. But Law
9 Department is saying, do you mean serve instead of provide? And the sentence reads, "Except as
10 otherwise provided in (this) paragraph (2) the Owner or Responsible Party of an IMD must provide all
11 Occupants with a Narrative Statement upon the approved Loft Board form." So the Law Department is
12 saying, is it provide or serve? The Law Department says this should be served; and we're saying, you
13 know what, you're right. It's not provide. The Owner needs to serve the Narrative Statement on the
14 Occupants of the building.

15 And then further on down the page, the sentence reads, " If the Occupant provides the Owner or
16 Responsible Party with a current and valid email address, the Owner or Responsible Party must also
17 supply the Occupant with an electronic copy of the plans referred to in the Narratives Statement." So
18 here, the Law Department is saying, if the occupant serves the owner or responsible party with a
19 current or valid email address. Staff said no, that's not correct. The occupant doesn't serve the owner
20 with an email address. The occupant is going to provide the owner with an email address. So that's an
21 instance where we're telling the Law Department, no, it should be providing that service.

22 **Chairperson Hylton:** Right, and that's very clear to me.

23 **Ms. Roslund:** Agreed.

24 **Chairperson Hylton:** There's no requirement to serve somebody your email address. Just provide it.

25 **Mr. Barowitz:** Absolutely.

1 **Chairperson Hylton:** Right. Thank you.

2 **Mr. Clarke:** You're welcome.

3 **Mr. Clarke:** All right. So, I will point out some corrections that we made on the chart. We do have
4 Executive Director Martha Cruz, aka Eagle Eyes, did point out some parts at the bottom of the
5 comments. You can see the last two, it says we need to confirm this date. Executive Director Cruz was
6 able to determine that the dates that I had questions about as I was doing this review, she was able to
7 confirm the correct date. So, we do have that correct date, and it's the date that we need to put in is
8 related to the effective...

9 **Chairperson Hylton:** Page 167?

10 **Mr. Clarke:** Yes

11 **Chairperson Hylton:** On our chart. Which pages for the public?

12 **Mr. Clarke:** For the public, it's 165. The Board members would have to click on part two of the Law
13 Department comments and go to page 167.

14 **Chairperson Hylton:** I'm sorry, continue. What did you say that date was?

15 **Mr. Clarke:** On page 167, the Law Department was wondering about a section that says, "insert date."
16 And where it says, "insert date," that date is going to be the effective date of the rule.

17 **Chairperson Hylton:** So it would be pretty much passed. We won't be able to insert this date until the
18 thirty-day publication.

19 **Mr. Clarke:** Yes. That's correct. And then, there was another section where it says, "insert date," which
20 is going to be the effective date of the rules, but then it says, sixty days after that date. So take, for
21 example, if the effective date was March 17th, today, St. Patrick's Day, sixty days after that would be
22 around May 17th. So we would, literally, have to put May 17th in the rules.

23 **Chairperson Hylton:** I'm not seeing that, where you're talking though. Where's that insert date?

1 **Mr. Clarke:** That one is actually on page 159. Let's take a look at 159. And for the public, it's 156.
2 There it says, "{insert date}, sixty (60) days after the effective date of this amended rule." So that's the
3 example I was just saying. We would have to put in, where it says insert date, it would have to be May
4 17th.

5 **Chairperson Hylton:** So, insert date. There's a bracket around insert date on this. And then it says, "sixty
6 days after the effective date of the amended rule." But what's in the bracket, insert date? So, is it going
7 to have, May 17th, sixty days after the effective date, this rule?

8 **Mr. Clarke:** It's going to read exactly as you said.

9 **Chairperson Hylton:** Okay

10 **Mr. Clarke:** Because the effective date would be March 17th.

11 **Chairperson Hylton:** Oh, I see. Okay. I gotcha.

12 **Mr. Clarke:** Those are the types of comments that Executive Director Cruz was able to confirm, and
13 we're ready to make these changes and send them back to the Law Department.

14 **Chairperson Hylton:** I like it. So Board members, are your hearts clear and minds clear? Hearts and
15 minds on what Mr. Clarke's presenting? Mr. Clarke, did you leave anything out that you need to cover?

16 **Mr. Clarke:** I don't believe so. I think the only thing that I would say is that once we do make these
17 changes and send them back to a Law Department, obviously, if we get any comments back, we let the
18 Board members know immediately and summarize what those comments are. But if the Law
19 Department says great job, then we would present it back to the Board members so that we can take
20 the next step with voting on these.

21 **Chairperson Hylton:** Okay. So that raises a question for our Board members. Remember I told you we
22 would like to have some extra sessions for meetings concerning rules? I would love, if we get any other
23 comments back, I don't want to tie up another meeting doing rules also, if it's very clear. And we can
24 probably just have a separate meeting just to cover any loose ends on rules. I would forgo April, but can

1 we go ahead and schedule something just in case we need it in May? Ms. Cruz would work with you on
2 a date. So that will give us time to publish this date, just in case, and it will be an optional meeting, a
3 tentative meeting, set just in case we need it to wrap up rules, right? Or if the Law Department says
4 ready, yes, everything is good, we could have that meeting where we would discuss changes or
5 whatever needs to go and then vote on the rules. Would that be acceptable? For May, not April?
6 Everybody's giving a thumbs up. That's good. All right.

7 So, Ms. Cruz, could you work on polling the Board members for a good date, separate and apart from
8 the main meeting, that we could possibly have for an actual rules meeting if needed? If it's just a good-
9 to-go, rules are done, we could do it at the April or May regular meeting. But if there's any issues that
10 we could meet with... And this is also providing that the Law Department does come back to us quickly,
11 and seeing that we are pretty much going along with most of their recommendations anyway... All right?
12 It's four o'clock.

13 **Mr. DeLaney:** I'm just looking for a little more clarity around... I think we're all in agreement that, at this
14 point, the substantive provisions of these rule changes, including administrative stuff in section one
15 allowing electronic service, which currently we can't do, and significant changes to section two; we
16 made changes in the Narrative Statement process; we took up the topic of sale of rights filings -- we're
17 not going to allow them to be filed without the consideration involved -- those are all substantive things.
18 If we say provide when serve would be better or the other way around, if something goes wrong, we can
19 always clean that up when we take our next pass at the rules.

20 But it seems like my recollection of previous scrutiny by the Law Department did not involve... this is like
21 a tennis game. I feel like we're in the eighth set here, and we're talking about May? I just don't...If
22 everything goes smoothly, we say hey, Law Department, we agree; we're good on all this stuff, serve
23 versus provide. What's the timetable here? Sooner or later, my understanding is we have to formally
24 vote this out for public comment; we have to hold a public hearing; there's a period of public comment;
25 then it comes back to us; we reflect on what we heard at the hearing and the other written comments
26 we get; maybe we make some changes with the rules; and then we adopt them. And then it's still a
27 period of time before they go into effect. So, what do we expect that timetable to be?

1 **Mr. Clarke:** I think a lot of that depends on how quickly the Law Department gets back to us. As far as
2 the Loft Board staff is concerned, we're going to get working on making these corrections and sending
3 them over to the Law Department as quickly as possible. I'm talking next week. Once we do that and
4 send it over to the Law Department, it will just be a matter of time, waiting for them to get back to us.

5 **Mr. Barowitz:** Okay, Renaldo?

6 **Chairperson Hylton:** Sir?

7 **Mr. Barowitz:** Could I take just one minute to update you on what is going on with SoHo and NoHo?

8 **Chairperson Hylton:** Yes, I will allow Mr. Barowitz. I just want to close out. Are we all satisfied? Are we
9 pretty much complete with the...? Mr. DeLaney, I know, you've had some open questions about
10 timelines, but let's work on getting that to you. Ms. Cruz, find out where, if things go right, quickly with
11 the Law Department, let's just share that in an email to Board members in terms of timeline.

12 Okay. Are there any other questions on rules? Are we satisfied now? Mr. Clarke, great presentation. I
13 appreciate it. And so we're going to move on. Thank you very much. Mr. Barowitz?

14 **Mr. Barowitz:** There was a Zoom meeting the other day. The SoHo-NoHo Coalition is run by a man by
15 the name of Amit Solomon, and the lawyer is Jack Lester. They are suing the city, if that's the right word,
16 and feel that it's going to take at least two years until the various lawsuits will come into effect.
17 Essentially, what they're concerned about is this hundred-dollar-per-square-foot penalty, which I won't
18 get into. The other thing that I realized is that neither Amit Solomon nor Jack Lester, the lawyer, has any
19 idea of what the Loft Law is, what it does, and who it protects. And the big question that has come up
20 over and over again, which they can't seem to answer, is that if we have legalized 917 original buildings,
21 -- exactly how many in SoHo-NoHo, I don't really know -- but I would think probably the majority of
22 them. And whether or not the legalization will exempt those people that are living there, that do not
23 have artists certification, they have no answer. They can't even come close to trying to describe or
24 answer that question. Are they illegal because the law says they're illegal? Are they still vulnerable,
25 those people that are there without artist certification? That's just an open question, which they can't
26 seem to answer. And I don't know what the answer is. And I don't know whether there is any way we

1 could make ourselves known to this coalition, so they can acknowledge the understanding of the legality
2 of those buildings that are in SoHo and NoHo.

3 **Chairperson Hylton:** Are you are you asking if they can reach out to the Loft Board? Or if we should
4 reach out to them?

5 **Mr. Barowitz:** They're not going to reach out to the Loft Board. I'm curious whether we have any
6 jurisdiction to reach out to them to say, look, I don't know if we can get the number of buildings in SoHo
7 and NoHo. These buildings are under the Loft Law jurisdiction. They're essentially legal. Whoever is
8 there, be it an artist or not an artist. How does this conform to the vulnerability of those people that are
9 living in SoHo and NoHo without artist certification?

10 **Chairperson Hylton:** Well, you know that the buildings that are under Loft Board's jurisdiction is public
11 information on the Department of Buildings website.

12 **Mr. Barowitz:** That's right. But this coalition has no idea about it.

13 **Chairperson Hylton:** Okay. Maybe you can discuss with Ms. Cruz after offline. I hear you. But maybe we
14 can direct them to a website that is out there. And certainly, if a building's covered and folks in those
15 buildings are protected or covered, protected under the Loft Law, of course, that makes it legal. But
16 yeah, as far as the data goes, we can probably provide them with a list of those buildings.

17 **Mr. Barowitz:** Martha, I know that you're really burdened just coming on here. When you have a
18 moment or two, perhaps we can get together and talk about this very briefly.

19 **Ms. Cruz:** Absolutely. Absolutely. I will. I will send you an email.

20 **Chairperson Hylton:** Thank you.

21 **Mr. Barowitz:** Oh. By the way Irma, would you...I don't know if anyone has enough sign in sheets, but I
22 need one more.

23 **Chairperson Hylton:** She heard you.

1 **Mr. Barowitz:** Okay.

2 **Chairperson Hylton:** Okay. Before I go to the closeout of this meeting, any other Board member want
3 to express anything, say anything?

4 **Mr. DeLaney:** I'd still like to get a little clearer picture of what we think the timetable might be and what
5 we can do to push, to move things forward. I saw concern expressed in the comments that it'd be better
6 not to have the hearing in the summer when people might be away. And I would hope we could get...
7 How can we move things along? We're going to do another round of rules. So, if we mess up and we get
8 provide where it should be served, or anyone where it should be any person, we're going to have
9 another chance to fix it. It's not looking like we're going to have to live with it for forever.

10 **Chairperson Hylton:** Right, okay. The bottom line is, we're going to try to do this as quickly as possible,
11 Mr. DeLaney. So yeah, I hear everybody. Everyone is not going to be happy in terms of timing, and
12 hopefully the Board is, and the loft community is. And we're going to get this done as quickly as
13 possible. That's been on my heart for a long time, and I've expressed that to the Board. We're just way
14 overdue in getting these rules out.

15 **Ms. Roslund:** I'd like to make, sorry, a quick response to Mr. Barowitz. We talked about this some
16 months ago. At the one hearing for SoHo-NoHo, the city did present some statistics about Loft Law
17 units, versus joint living work quarters, versus residential units. And I have a picture of the slide that has
18 those numbers -- what the percentage and how many. So joint living work quarters is 1636 units. I will
19 forward that to you. I'll forward it to everybody. It's a little blurry, so perhaps the staff could get this
20 same information from, I think it was from DCP.

21 **Chairperson Hylton:** Okay, see what you've got, and we'll try to get the official one or a clearer one. All
22 right. I appreciate that. Any other? I'm going to go now: 1, 2, 3. Okay, great. So, this concludes our
23 March 17th, 2022 public meeting. And by the way, Happy St. Patrick's Day. Our next public meeting is
24 scheduled to be held on April 28th, 2022. The governor's extension of the Coronavirus emergency
25 expires on April 15th, 2022. At this time, we do not know if future meetings will be held in person or
26 virtually. Board members should be prepared for possible in-person appearance. And I say that strongly.

1 Be very prepared for the next meeting to be an in-person appearance. We made this pledge that we will
2 continue this virtual viewing, regardless of whether the in-person appearances are continued or not. So,
3 Board members should be prepared for possible in-person appearance. Information will be updated on
4 the Loft Board's website and also in email updates throughout the Loft Board's announcements Listserv.
5 Board members, we would like to have your attendance sheets mailed in today, and I thank everyone
6 for their patience. We'll see you next month. Happy St. Patrick's Day. Thank you very much.