

DRAFT
MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting Held at
22 Reade Street, Main Floor
Spector Hall

February 12, 2015

The meeting began at 2:10 p.m. The attendees were Chief Spadafora, Fire Department Representative; Gina Bolden-Rivera, Public Member; Chuck Delaney, Tenants' Representative; Mark Foggin, Manufacturing Representative; Daniel Schachter, Public Member; LeAnn Shelton, Public Member and Chairperson Alexandra Fisher.

INTRODUCTION

Chairperson Fisher welcomed those present to the February 12, 2015 public meeting of the New York City Loft Board, and congratulated Chief Spadafora on his recent promotion as the New York City Fire Department's Chief of Fire Prevention.

VOTE ON JANUARY 15, 2015 MINUTES

Motion: Mr. Foggin moved to accept the January 15, 2015 meeting minutes. Ms. Bolden-Rivera seconded the motion.

Members Concurring: Chief Spadafora, Chairperson Fisher, Mr. Delaney, Ms. Bolden-Rivera, Ms. Shelton (5)

Members Abstaining: Mr. Foggin; Mr. Schachter (2)

Members Absent: Mr. Barowitz (1)

REPORT OF EXECUTIVE DIRECTOR

Ms. Alexander reported that the Loft Board has collected one million four hundred fifty five thousand four hundred and forty nine dollars (\$1,455,449.00) in IMD building registration renewals. **Ms. Alexander** stated that the Loft Board remains understaffed and that, with the support of Chairperson Fisher, she will be submitting a request for more administrative personnel as well as an additional Project Manager.

Regarding the statistical overview distributed in the Board Members' meeting materials, **Mr. Delaney** asked whether the Loft Board staff could provide a summary report regarding administrative determinations issued by the Loft Board. He also asked whether there was a general trend regarding whether the Loft Board grants extension applications. **Ms. Alexander** responded that the decision to grant or reject an extension application is made on a case-by-case basis and is fact specific. **Mr. Delaney** asked why there are cases pending from 2010 and 2011. **Ms. Alexander** and **Ms. Cruz** responded that, in many instances, the cases are coverage applications that were consolidated with related cases at OATH, or whose outcomes are contingent upon the some form of action required in a settlement, such as registration of the building.

DISCUSSION OF SUNSET PROVISIONS

Mr. Foggin reported that he consulted with constituents from the manufacturing industry, and that their main concerns are: 1) keeping the statute of limitations in place; 2) maintaining Industrial Business Zones (IBZs), except those in which residential use is currently permitted under the statute (e.g. Williamsburg, Greenpoint, etc.); and 3) prevention of future residential conversions of manufacturing buildings.

Ms. Alexander clarified that the statute of limitations is not among the statutory amendments subject to repeal. **Ms. Alexander** asked whether individuals in the manufacturing industry are interested in the

incompatible use restriction. **Mr. Foggin** responded that he does not believe the incompatible use restriction is a major concern of his constituency.

Ms. Alexander asked **Mr. Foggin** whether there had been a recent study regarding residential use in IBZs. **Mr. Foggin** responded that there has been no recent study. There was a discussion regarding what uses can co-exist in manufacturing and residential buildings.

Chief Spadafora noted that the Board Members had extensively reviewed the various Class H hazardous use groups during the drafting of the Loft Board's incompatible use rule, § 2-08. **Ms. Alexander** noted that such use groups are located in the appendix to the Loft Board's rule, and gave a brief overview on how the Loft Board analyzes a particular use under the rule.

Ms. Alexander clarified that, among the 2010 chapter amendments subject to repeal are: 1) the requirement that the incompatible use in question be present on the effective date of the law as well as on the date the coverage application is filed; 2) the provision allowing the Loft Board to exempt certain artist uses contained within the IMD units, and also exempt certain uses in cases of new IMD units registered under MDL § 281(5) in buildings already registered under MDL §§ 281(1) or (4); 3) the minimum 400 square foot unit eligibility requirement; 4) certain compliance deadlines; and 5) milestone percentage increases.

Mr. Delaney referred back to **Mr. Foggin's** comment regarding the statute of limitations, and asked for confirmation that the statute is considered beneficial to the manufacturing industry. **Mr. Foggin** responded affirmatively. **Mr. Delaney** recommended that **Mr. Foggin** view the video from the January 15, 2015 Loft Board meeting, in which **Ms. Alexander** spoke clearly to the issue. **Mr. Delaney** reiterated his position that the "real" statute of limitations is the window period itself. **Mr. Foggin** agreed that there may be confusion between the statute of limitations and the window period, and stated that he would clarify the point with his constituents.

Mr. Delaney stated his understanding that the incompatible use restriction was created to serve three goals: 1) to preserve manufacturing use; 2) to ensure fire safety standards are met; and 3) for the health of the residential tenants. **Mr. Delaney** stated that, as the Tenants Representative, his position is that the incompatible use restriction is overly broad, especially in light of the indication that the manufacturing industry does not consider the restriction instrumental to the preservation of manufacturing uses.

Mr. Foggin asserted that one problem is the lack of data regarding cases where Loft Law coverage has been barred based on incompatible use. **Ms. Alexander** responded that Loft Law coverage has never been denied for that reason. **Mr. Delaney** stated that the prevention of coverage by the incompatible use restriction occurs more often where tenants do not apply for coverage in the first instance, considering coverage applications to be futile based on existing uses in their buildings, as well as where tenants withdraw their applications once certain restricted uses are revealed in the course of a fact finding at OATH.

Mr. Delaney inquired as to whether the creation of new IBZs would affect Loft Law coverage of existing IMD buildings. **Ms. Alexander** responded that she would look into the issue, but that it is not likely that existing IMD buildings would be affected by subsequent zoning changes.

Mr. Delaney noted that the City Counsel's report entitled "Engines of Opportunity" gives a comprehensive overview of NYC's zoning history and outlines certain hazardous uses, which did not include artist loft spaces. He and **Mr. Foggin** had a brief discussion on certain entertainment uses, such as nightclubs, as having more deleterious effects on manufacturing jobs than residential loft spaces.

Ms. Shelton asked about the origin of the different minimum square footage requirements for coverage of IMD units. **Ms. Alexander** responded she can only surmise as to the origins of such requirements, since the Legislature worked more closely with the Department of Buildings and the Law Department, as opposed to the Loft Board, in the drafting of the chapter amendments.

Ms. Bolden-Rivera opined that eligibility requirements should be consistent with the Department of Buildings' requirements for legalizing residential use.

Mr. Delaney stated that the chapter amendments, along with the statute of limitations, force residents to go “underground” and remain in their units without Loft Law protection. **Ms. Alexander** stated that it is important to be aware of the location of such residences and to legalize them, as their continued occupancy does not advance the purpose of the Loft Law.

Mr. Schachter noted the recent approval of a single “micro unit”, having a square footage of 325, represents an exception to legalization standards, and stated that the minimum square footage required for a legal living space is 400.

Mr. Delaney asserted that the Loft Board should produce a concise statement endorsing legislative changes that would promote the Loft Board’s mission. **Ms. Alexander** referred the Board members to her memorandum that was distributed in January, which she created as a proposal for Board member review and feedback. **Ms. Alexander** agreed to re-send the memorandum to the board members. The members’ positions on each provision may then be relayed to Commissioner.

Returning to the incompatible use issue, **Mr. Delaney** stated his position that if such use was present on the effective date of the law, but no longer existed upon application for coverage, the restriction merely functions as a “trip wire” that prevents coverage needlessly. **Mr. Foggin** noted that the issue becomes one of preserving manufacturing use, which may otherwise be excluded from a building. **Ms. Alexander** clarified that the practical effect of the incompatible use restriction is actually the reverse: the restriction does not force out manufacturing use. Rather, the manufacturing activity, which may be constitute an incompatible use, functions to bar Loft Law coverage for the residential units in the building. She stated further that manufacturing use suffers most often as a result of gentrification and changes in the real estate rental market.

Finally, **Ms. Alexander** noted that the Loft Board’s challenge of creating the incompatible use rule lay in the fact that it serves as a zoning restriction within a statute that is otherwise exempt from zoning regulations.

Based on time restrictions, **Chairperson Fisher** recommended the Board move on to a discussion and vote on the case calendar.

DISCUSSION AND VOTE ON RECONSIDERATION/APPEAL CALENDAR CASE

Tom Cayler, et al.	517-525 West 45 Street	AD-0070
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Motion: Ms. Shelton moved to accept the proposed order. Mr. Schachter seconded the motion.

Members Concurring: Chief Spadafora, Chairperson Fisher, Mr. Delaney, Ms. Bolden-Rivera, Mr. Foggin, Mr. Schachter, Ms. Shelton (7)

Members Absent: Mr. Barowitz (1)

DISCUSSION AND VOTE ON SUMMARY CALENDAR CASES

Aric Zagon	517-525 West 45 Street	TR-0789
Patrick Meagher	119 West 25 Street	TR-1025
Tenants of 219 and 221 Bowery	219-221 Bowery	TR-1106
Ron Rivellini	17 Leonard Street	TR-1141

Motion: Mr. Foggin moved to accept the proposed orders. Mr. Delaney seconded the motion.

Members Concurring: Chief Spadafora, Chairperson Fisher, Mr. Delaney, Ms. Bolden-Rivera, Mr. Foggin, Mr. Schachter, Ms. Shelton (7)

Members Absent: Mr. Barowitz (1)

DISCUSSION AND VOTE ON MASTER CALENDAR CASE

45 Broadway NY LLC	45 Broadway, Brooklyn	FO-0705
Thames St. Lofts LLC and Thames Holding LLC	13-15 Thames Street, Brooklyn	FO-0706
Peter F. Matera	187 Duane Street	FO-0711

Motion: Ms. Bolden-Rivera moved to accept the proposed orders. Mr. Foggin seconded the motion.

Members Concurring: Chief Spadafora, Chairperson Fisher, Mr. Delaney, Ms. Bolden-Rivera, Mr. Foggin, Mr. Schachter, Ms. Shelton (7)

Members Absent: Mr. Barowitz (1)

DISCUSSION AND VOTE ON MASTER CALENDAR CASE

Grigori Levit, Michael Delledera and Matthew Feick	111 North 10 th Street, Brooklyn	TR-1073
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Motion: Ms. Shelton moved to accept the proposed order. Chief Spadafora seconded the motion.

Members Concurring: Chief Spadafora, Chairperson Fisher, Ms. Bolden-Rivera, Mr. Foggin, Mr. Schachter, Ms. Shelton (6)

Members Dissenting: Mr. Delaney (1)

Members Absent: Mr. Barowitz (1)

DISCUSSION AND VOTE ON MASTER CALENDAR CASE

Tenants of 135 Plymouth Street et al.	135-139 Plymouth Street, Brooklyn	TR-1078 TR-1079, TR-1080, TR-1081, TR-1082, TR-1083, TR-1084, TR-1085, TR-1086, TR-1088, TR-1094, TR-1177, TR-1203, TR-1235, TR-1236, TR-1242, TR-1251, TR-1259
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Motion: Ms. Shelton moved to accept the proposed orders. Mr. Foggin seconded the motion.

Members Concurring: Chief Spadafora, Chairperson Fisher, Mr. Delaney, Ms. Bolden-Rivera, Mr. Foggin, Mr. Schachter, Ms. Shelton (7)

Members Absent: Mr. Barowitz (1)

DISCUSSION AND VOTE ON MASTER CALENDAR CASE

Valdir Cruz	242 West 14 th Street	TR-1168
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Mot

ion: Mr. Foggin moved to accept the proposed order. Ms. Bolden-Rivera seconded the motion.

Members Concurring: Chief Spadafora, Chairperson Fisher, Mr. Delaney, Ms. Bolden-Rivera, Mr. Foggin, Mr. Schachter, Ms. Shelton (7)

Members Absent: Mr. Barowitz (1)

DISCUSSION AND VOTE ON REMOVAL CALENDAR CASE

260 Moore Street LLC	260 Moore Street, Brooklyn	LE-0639
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Motion: Mr. Delaney moved to accept the proposed order. Chief Spadafora seconded the motion.

Members Concurring: Chief Spadafora, Chairperson Fisher, Mr. Delaney, Ms. Bolden-Rivera, Mr. Foggin, Mr. Schachter, Ms. Shelton (7)

Members Absent: Mr. Barowitz (1)

Chairperson Fisher concluded the February 12, 2015 Loft Board public meeting at 4:03 pm and thanked everyone for attending. The Loft Board will hold its next public meeting at Spector Hall, 22 Reade Street, on March 19, 2015 at 2 p.m.