

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting Held at
22 Reade Street, 1st Floor
Spector Hall

March 10, 2011

The meeting began at 3:05 p.m. The attendees were Elliott Barowitz, Public Member; Gina Bolden-Rivera, Public Member; LeAnn Shelton, Public Member; Chief Ronald Spadafora, Fire Department's Representative; Chuck DeLaney, Tenants' Representative, and Matthew Mayer, Owners' Representative and Chairperson Robert LiMandri.

INTRODUCTION

Chairperson Robert LiMandri introduced himself and welcomed those present to the March 10, 2011 public meeting of the New York City Loft Board.

VOTE ON FEBRUARY 17, 2011 MINUTES

Ms. Shelton requested that the February 17, 2011 minutes reflect her question of whether New York City Department of Environmental Protection ("DEP") has mapped the sites that have filed Risk Management Plans to better assess whether any are loft buildings.

Motion: Ms. Shelton moved to accept the February 17, 2011 minutes with the addition. Ms. Bolden-Rivera seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Mayer, Shelton, Chief Spadafora (7)

Adopted by the Loft Board on March 10, 2011.

PRESENTATION BY DOHMH

A representative of New York City Department of Health and Mental Hygiene ("DOHMH"), **Christopher D'Andrea**, the Deputy Director of Environmental and Occupational Disease Epidemiology in charge of environmental investigations, spoke to the Loft Board regarding toxicity levels in the context of the proposed "Use Group" rule. He stated that:

- DOHMH has not conducted studies regarding toxicity levels of manufacturing uses within residential buildings. There is no statistical data showing previous uses in loft buildings. In addition, long-term health impacts are subtle and very difficult to tie to a building, and are not reported to DOHMH.
- Complaints are received from residents living in the types of buildings anticipated by the Loft Law. **Mr. D'Andrea** said that after an inspector investigates a complaint and determines the cause, DOHMH recommends some type of corrective action.
- DEP typically handles situations where a building is impacted by an exterior source, DOHMH typically handles cases where a building is impacted by an interior source.

PRESENTATION BY DEP

Ms. Gerry Kelpin, Director of the Division of Air/Noise Permitting Enforcement & Policy at DEP returned to testify regarding the "A", "B", and "C" environmental ratings in the proposed "Use Group" rule context. She stated:

- DEP gets an application for an industrial process, looks at the substances listed and assigns the toxicity rating to each substance based on guidelines from the United States Environmental Protection Agency. DEP also looks at the equipment and control of the emissions process. The emission control either dilutes the emission or captures it.
- Once emissions are vented into the outside air, the emissions can still be brought back into the building above or below the commercial occupant, such as, by coming through the window. Emissions can also go through cracks in the floor or radiators.
- DEP inspectors typically respond to a complaint. DEP can require the facility to improve its emissions control source.
- Air permits are renewed every 3 years. A party can obtain permit information from DEP via the Freedom of Information Act. Expected turnaround for FOIL requests is typically between 10 to 30 days.

PRESENTATION BY DOB

James Colgate, the Assistant Commissioner for Technical Affairs and Code Development at the New York City Department of Buildings (“DOB”) spoke about high hazard occupancies as set forth in the Building Code.

- The Building Code classifies materials and when there are quantities that exceed certain limits. Accordingly, a small amount of a very high hazardous material may not be highly hazardous, but a large amount of it, will be. In addition, the temperature at which a material becomes combustible affects its hazardous rating.
- There are not very many H1 (explosives) occupancies in New York City. H2 deals with combustible gas; H3 requires a different level of fire protection. H4 is comprised of corrosives and highly toxic materials that are determined by testing to cause severe reactions and are hard to control. These are all things that need to be limited and properly segregated.
- There is no data on whether there are residential neighborhoods that are classified with High Hazard Group H occupancy.

DISCUSSION ON PROPOSED AMENDMENT TO “USE GROUP” PORTION OF § 2-08

Mr. Delaney stated that he does not support the proposed rule and is not persuaded that the environmental ratings for process equipment is an appropriate yardstick to measure inherent incompatibility with residential use because he does not think it measures the effects on the residents in a given unit. **Mr. Delaney** mentioned § 2-03 of the Loft Board’s rules, which has a standard in place for exempting buildings from coverage if they have an “adverse impact” on the health and safety of residential occupants in the building. He suggested that the Loft Board’s test for determining “unreasonably adverse impact on a non-residential conforming use occupant” would be a better standard to use than the DEP “A” and “B” permit ratings to assess Use Group. **Mr. Delaney** stated that the specific language added to the Loft Law that required the Loft Board to determine which uses in Use Groups 15 to 18 are “inherently incompatible” provided a very strict standard and while he could support the Risk Management Plan standard and DOB’s H1 to H4 classifications, the DEP toxicity ratings seemed overly broad and arbitrary.

VOTE ON PROPOSED AMENDMENT TO § 2-08(j)-(s)

Motion: Mr. Mayer moved to accept the rule in its current form. Ms. Shelton seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, Chairperson LiMandri, Mayer, Shelton, Chief Spadafora (6)

Members dissenting: DeLaney (1)

Adopted by the Loft Board on March 10, 2011.

VOTE ON PROPOSED AMENDMENT TO § 2-05

Motion: Mr. Barowitz moved to accept the rule in its current form. Mr. DeLaney seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Mayer, Shelton, Chief Spadafora (6)

Members absent: Mayer (1)

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VOTE ON PROPOSED AMENDMENT TO § 2-08(a)-(i)

Ms. Cruz confirmed that there were no substantive changes made to the proposed rule. In response to **Mr. DeLaney's** question, **Ms. Cruz** confirmed that the existing rule provides that any unit designated as residential on a final residential certificate of occupancy issued pursuant to MDL §301 prior to June 21, 2010 cannot be counted towards the minimum number of units qualifying for coverage.

Motion: Ms. Shelton moved to accept the rule in its current form. Mr. Barowitz seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Chief Spadafora (6)

Members absent: Mayer (1)

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Chairperson LiMandri concluded the March 10, 2011 Loft Board public meeting at 4:25 p.m. and thanked everyone for attending. The next public meeting will be held at Spector Hall, 22 Reade Street, on Thursday, March 17, 2011 at 2:00 p.m.