

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

JOINT COMMITTEES ON PARKS AND RECREATION, GOVERNMENTAL
OPERATIONS AND TRANSPORTATION

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HELD AT: Council Chambers
City Hall

B E F O R E:

HELEN D. FOSTER, JOHN C. LIU,
HELEN SEARS
Chairperson

COUNCIL MEMBERS:

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Erik Martin Dilan
Simcha Felder
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A P P E A R A N C E S (CONTINUED)

Fiona Watt

Assistant Commissioner for Forestry, Horticulture and
Natural Resources

NYC Parks and Recreation

2 CHAIRPERSON FOSTER: Good

3 afternoon. I'm Council member Helen Diane Foster,
4 chair of the Parks and Recreation Committee. This
5 is joint hearing with the Parks and Recreation
6 Committee, the Transportation Committee, and
7 Governmental Operations, with our newly appointed
8 Chair Helen Sears, congratulations. We are having
9 a hearing on the importance of trees, which we all
10 know in the Million Tree Project. But more
11 importantly, the relationship to trees, of trees
12 to sidewalks and streets and who's liable because
13 many of our offices have been getting calls with
14 people who would be interested in having trees as
15 long as they're not responsible for whatever
16 damage the trees may do to the street, and on and
17 on. So, we can have those conversations. We've
18 been joined by John Liu who's the Chair of
19 Transportation; Helen Sears, who's the Chair of
20 Governmental Operations; Council member Letitia
21 James, from Brooklyn; and Council member Simcha
22 Felder from Brooklyn, also. I will turn it over
23 to my colleagues, if they have any opening
24 statement, and then we will hear from Fiona Watt.

25 CHAIRPERSON SEARS: Thank you very

much, Madam Chair. First, I really want to thank Simcha Felder, who has chaired this Committee for some time, and I also serve on it, and I want to thank you very much. And I wish you much success on your chairing the Sanitation Committee. Good afternoon, welcome to this hearing of the Committee of Governmental Operations, Transportation and Parks and Recreation. I'm joined by my colleagues today, although they've all been introduced, so we'll move on. I would like to acknowledge the staff from the committee that prepared today's hearing. Matt Gottwold, Council to the Committee, and Josh Gerber, the policy analyst to the Committee. Today the committee will conduct an oversight hearing to examine the Department of Parks and Recreation's program aimed at repairing sidewalks damaged by street trees. There are approximately 592,103 street trees planed throughout the five boroughs, with many more on the way. These trees play an integral role in enhancing the quality of life for city residents; however, the natural growth of a curbside tree can damage its surrounding sidewalk, forcing property owners to make costly sidewalk

repairs and exposing the city to tort liability.

Although property owners are generally responsible for installing, repairing and maintaining

sidewalks adjoining their properties, Parks has

assumed partial responsibility for repairing

sidewalks damaged by the growth of city owned

trees adjoining one, two and three family homes,

through its Trees and Sidewalks Program. Besides

conducting a general oversight hearing on this

program, which will be discussed in further detail

by the other chairs here today in their opening

remarks, there is one additional concern I would

like to mention. That is the possibility that the

expansion of this program may expose the City to

additional tort liability for injuries caused by

broken sidewalks. This question is of particular

importance to our committee, which has oversight

of the law, over the Law Department. Though the

Law Department will not be testifying at today's

hearing, to address this concern, I will be

following up with them on the issue to make

certain that any concerns are addressed, and I

will share my findings with the committees here

today. Finally, let me also say that I'm

delighted that all three of these committees are here, holding this hearing on an issue that is of such importance to the quality of life in all of our districts. Thank you Madam Chair.

CHAIRPERSON LIU: Thank you, and welcome to this afternoon's City Council's Hearing. My name's John Liu, I have the privilege of chairing the Transportation Committee, and the added bonus of co-chairing the, this hearing with the two Helens of our Council. A lot's been already said about this hearing today. In addition to the laudable goal of getting more trees planted in our City, and in addition to paying attention to the tort liabilities faced by our City, and we're looking for the numbers to tell us whether the liabilities have been increasing over the years; but there are also concerns from homeowners' points of views. Where people are getting summonses for broken sidewalks, for trees that they have no control over, and that they may never have even requested in the first place. This is not to say that this is not to devalue the, the trees in any way, but at some point we need to make sure that what we're doing

as a city is also fair to the people. And that, in this case, the homeowners of the City are not being unfairly ticketed for a situation that is far beyond their control, and that even if they tried to do something about it, they would be penalized for the, by the city, for trying to take some action with regard to, with regard to the roots of a tree, or how they deal with the growing tree itself. There's also the question of what the city does in some cases where it will, the city will go ahead and repair the sidewalk, and then send the bill to home--to the homeowner. The bill of which is often several times the cost of what the homeowner would have incurred if they had just done it themselves. So there are a number of issues here, I think we all have realized a tremendous value of trees and having more trees and achieving the goal of Mayor Bloomberg's Plan NYC 2030 of planting a million more trees. But we also have to understand at all levels how that impacts people from the city taxpayers in terms of the tort liabilities, and also the city's homeowners, in terms of how they are able to and are curtailed from being able to maintain their

2 sidewalks, and the costs that we then impose on
3 those homeowners. So, with that, I guess we'll
4 turn it back over to Chairperson Foster. Oh, I
5 guess I'll take the privilege of introducing the
6 members of the Council who are here with us today,
7 including Council member Larry Seabrook of The
8 Bronx, Council member Letitia James of Brooklyn,
9 Council member Miguel Martinez of Manhattan,
10 Council member Simcha Felder of Brooklyn, who is a
11 person who brought this issue to the fore, and all
12 of the staff and legislative counsels who worked
13 on this committee. So, thanks very much, Madam
14 Chairperson Foster.

15 CHAIRPERSON FOSTER: Thank you.
16 We're ready for your testimony.

17 FIONA WATT: Good afternoon, Chairs
18 Foster, Liu, Sears and committee members. I also
19 want to congratulate Chair Sears for her new
20 appointment. And, and congratulate Chairman
21 Felder for, for his new appointment, but I, I
22 trust that this won't dilute your support, your
23 wonderful support of our Trees and Sidewalks
24 Program at all. Thank you again for your support.
25 [off mic] This, this month marks the fourth

anniversary of our Trees and Sidewalks Program.

So it's very auspicious that I am here testifying

today. My name is Fiona Watt, I'm the Assistant

Commissioner for Forestry, Horticulture and

Natural Resources at the Department of Parks and

Recreation. On behalf of Mayor Bloomberg, First

Deputy Mayor Harris, and Commissioner Benepe,

thank you for allowing me the opportunity to

testify before you about our Trees and Sidewalks

Program. Trees are crucial to city life, we've

heard you all remark upon that. They contribute

to cleaner air and water, they cool the

atmosphere, reduce energy use and carbon

production, and provide homes for wildlife. They

also define the character of a community, connect

people to nature, and add tangible value to

property. Our Million Trees NYC Program builds on

this recognition of benefits to create a cleaner,

greener and more sustainable city. The program

aims to increase our tree canopy by 20 percent, as

well as to train and educate New Yorkers about the

value and importance of trees and nature, in the

urban environment. Working with our partner, the

New York Restoration Project, and an advisory

board comprised of more than 60 other leading environmental organizations, we are on track to plant over 220,000 street trees, reforest 2,000 acres of parkland, and create 800 new green streets by the year 2017. So far in the initiative, we have planted 173,229 trees. And while we have long known intuitively that trees are valuable, the emerging research in the field of urban forestry has allowed us to put a dollar value on the contributions that trees make to our city. The U.S. Forest Service, using a computer modeling program called Stratum, analyzed the City's street tree population and calculated that each of our 592,130 trees, and growing, that line our streets provide almost \$122 million in environmental benefits and property value. In air quality alone, street trees remove 272 tons of particulate matter each year, which is a service valued at \$5.3 million annually. But in addition to the environmental benefits, trees are increasingly recognized for their contributions to human health and wellbeing. Research has shown that people's ability to pay attention and perform cognitive tasks improves after taking a walk in a

park, versus walking on city streets, supporting a theory that cities are mentally taxing and immersion in nature has restorative effects on the brain. A recent study in the Lancet, the United Kingdom medical journal, found that small parks can protect people from strokes and heart disease by simply cutting stress and promoting exercise. The presence of green spaces encourage people to be more active, help reduced blood pressure and stress levels, and even promoted faster healing after surgery. Other studies have documented speedier recoveries for hospital patients with access to greenery, and an enhancement of health benefits when exercise is combined with nature. Large trees confer many more benefits than small trees. This is because large trees have more leaf and canopy mass, and thus can filter more pollutants in the air, give more shade, and protect houses from extreme temperatures more comprehensively. The larger the tree, however, the more potential for conflict with adjacent city infrastructure, especially sidewalks. Although trees evolved to grow in forests, for over 100 years and possibly far longer they have been

recognized as valuable assets in the urban environment. In 1899, a New York judge wrote that "Shade trees on the sides of streets serve a useful public purpose, consistent with the object for which streets are made, because they add to the beauty of the scene, and the trees furnish shade for pedestrians during the heat of summer."

We really haven't learned much more in 100 years, we can just assign numbers to them. Yet as trees grow, their trunks expand. At the same time roots seek oxygen, water and soil, nutrients to sustain growth. In addition, tree roots grow near the surface of the soil, mostly within the top 18 inches. And as they push out looking for sustenance, sidewalks often get in the way. In order to assist city homeowners in the repair of sidewalk, cracked and raised by tree roots, and to further encourage the healthy and vigorous growth of our trees, Parks established the Trees and Sidewalks Pilot Program in March 2005 to benefit homeowners by repairing sidewalks that have been damaged by curbside trees. Repairs to the sidewalks are done at no cost, for one, two and three family homes. This is in the tax class one

area. Trees and Sidewalks complements the Department of Transportation's much larger sidewalk repair program by focusing exclusively on sites with damage caused by tree roots. We work closely with DOT to coordinate both agencies' efforts, and appreciate their ongoing technical support and guidance. The goal of Trees and Sidewalks, therefore, is to help sidewalks and trees coexist peacefully. Our program increases the durability and function--functionality and of sidewalks around trees in the right of way, while at the same time enhancing the health of the tree. Residents of eligible properties need only call 311 to participate. So far, we have received nearly 22,000, 23, 22,300 requests, of which we have inspected 21,726. Over 4,491 sites have been repaired since 2005. Now I turn to the evaluation process. Once we receive a sidewalk complaint involving trees from 311, a Parks Department Forester evaluates the site. Now in our fourth year of the program, we receive an average of 60 new requests each week, and we inspect each request within 30 days. Inspectors quantify the damage to the sidewalk at each site by rating the

site according to a number of criteria. These criteria include vertical lift, number of damaged flagstones, the volume of pedestrian usage, the passable sidewalk width, and of course the condition of the tree. Sites are scored on a scale from one to 100, with the highest scoring sites going to the most damaged areas. All sites that score above 60 are considered for repair based on available funding. To date, 12,572 site inspection requests, which is about 58 percent of the total request for the program, have received scores of 60 points or higher. We use a variety of alternative design and construction techniques to repair sidewalks around trees. By far the most common technique is also the most simple: the removal of concrete sidewalk from the area around the tree. There you see a before and after picture. I have several others later in the presentation to show you. So at most sites, our primary activity is to increase the size of the tree pit around the tree, often expanding a three foot by three foot pit to a more ample five by ten foot growing area. Other techniques involve ramping, where we gradually raise the grade of the

sidewalk to bridge large roots while assuring a smooth, even surface. Strengthening a sidewalk, where we enforce sidewalks with steel mesh or steel rebar, to help prevent cracking. Making sidewalks more flexible, where we stitch sidewalk flags together with steel rebar sleeved in plastic. If one of the flag lifts, the steel rebar slips from the sleeve, causing a gentle slope between the joined flags rather than having them break apart, causing a trip hazard. Curving, where we angle the sidewalk around tree roots, that's what you see in the picture here. And reducing condensation under the sidewalk; to do this we install a layer of course gravel to help reduce the buildup of condensation, which in turn reduces moisture seeking roots from that area. All excavations and concrete removal within the area of the tree is performed with extreme care. We employ best of class tree protection methods, including hand and pneumatic excavation, exposed root protection and minimizing the soil exposure time. In the four years of this program, we have virtually eliminated a once common practice called root shaving or root cutting, which would

2 invariably lead to negative impacts on the
3 structural stability and the health of the tree.

4 So far we have repaired 4,491 sidewalk sides
5 around trees. Here's a map of sites fixed to
6 date, and some photographs of what these repairs
7 look like. [pause] Okay. To date, the program
8 has received \$14.9 million in funding. Of this,
9 \$10.1 million has come from Mayor Bloomberg
10 specifically for this program. We've also
11 received \$2 million from the City Department of
12 Transportation; \$1.4 million from the borough
13 presidents of Staten Island, Queens and The Bronx;
14 \$1.2 million from city council members; and
15 \$200,000 from the State Assembly. Overall, we
16 have spent 80 percent, or \$12 million of the
17 funds. Our fiscal year 2009 budget is \$2.95
18 million, and our contracts are set to begin
19 construction this April. Our fiscal year 2009
20 budget breakdown is \$2.1 million from Mayor
21 Bloomberg; \$500,000 from Council member Felder, in
22 Brooklyn, thank you; \$250,000 from Council member
23 Oddo in Staten Island; and \$100,000 from New York
24 State in multimodal funds. Our construction costs
25 have fallen over the course of the program, as

well. As contractors used to more sidewalk repair methods have become accustomed to our specifications and have realized that these jobs can be accomplished efficiently and effectively despite the geographic range they encompass. Our average site price, for example, has fallen from over \$2,300 in fiscal year 2006 to an estimated 800, \$1,800 for the upcoming fiscal year 2009 contracts. So, I'd just like to say that Trees and Sidewalks is a unique and innovative program that makes our city a better place to live. At each one of these sites, the tree is healthier, the sidewalk is smoother and stronger, and the homeowner is happier. These cumulative fixes have saved hundreds of trees from potential root damage and decay. A vibrant tree cleans more pollution from the air and makes the community healthier. A smooth, strong sidewalk no longer poses a trip hazard for pedestrians. And the combination of healthy trees and good sidewalks makes New York City a more sustainable urban environment. We look forward to the Council's involvement and support for this project in future fiscal years, and hope that your constituents take advantage of

2 the program. Thank you, and I'm happy to answer
3 any questions the committee may have.

4 CHAIRPERSON LIU: Thank you very
5 much. We've been joined also by Council member
6 Vincent Ignizio of Staten Island, Council member
7 Inez Dickens of Manhattan, Council member Alan
8 Gerson of Manhattan, Council member Peter Vallone,
9 Jr., of Queens, and Council member Dominic Recchia
10 of Brooklyn. Thanks very much, Commissioner Watt,
11 for the run down on the street trees and sidewalks
12 program. We have a number of questions from
13 Council member Dalin. Just hit you with a couple
14 of questions and come back later on. I guess the,
15 the focus, one of the reason--Well, the two main
16 reasons, my understanding is, of why we've
17 convened this hearing, would be, number one,
18 concerns about the, the city's liabilities going
19 up. And unfortunately, that's not something that
20 you'll be able to directly address. We, we had
21 invited the Law Department to come to give us an
22 update, and unfortunately the Law Department
23 declined, even though they have not hesitate to
24 appear before council committees in the past, when
25 it was on agenda items that they were pushing;

2 specifically with regard to tort reform. So, I
3 think that's a, an embarrassment to the Law
4 Department. This, the other reason that we bring
5 this up, is that we do get complaints from
6 homeowners. And the complaints from homeowners
7 obviously have to do with the costs that they
8 incur for a program that was, for, for a benefit
9 that the city provides to all the people, but in
10 many cases it, the cost falls squarely on
11 individual homeowners. I think, and this has, to
12 be fair to all of you here, this has been a
13 problem that way predates the Bloomberg
14 Administration. So I think it's a great thing
15 that in 2005, Mayor Bloomberg began this
16 initiative of helping homeowners cope with their
17 broken sidewalks, and trying to get out there to
18 help people. So, I think that is a very good
19 thing, and I, I should not forget to say that.
20 The--What, what concerns me here, and, and I don't
21 blame you for this, but according to your
22 testimony, we have, we have tens of thousands of
23 requests for inspections, almost 22,000
24 inspections actually being conducted. And then
25 you testify that 60, 60 percent of these, or about

12,000 of these sites, these inspection sites, actually require some kind of action. And yet, only about 4,500 of these sites have been repaired. That leaves, that leaves about 8,000 sites that according to our own inspection process require repair. And yet have not gone, and yet have not been repaired. And, and I think you, you say very clearly here, because everything that scores above 60 is considered for repair based on available funding. So, that, that is the very heart of why we're holding this hearing. Do we need to fund this better? And if, and would funding this program better actually cut down on the tort liabilities that our city taxpayers face? Is there, is there any coordination between Parks Department and the Law Department with respect to that question? I'll rephrase the que--I'll repeat the question is--

FIONA WATT: - -

CHAIRPERSON LIU: If, if there was better funding for this program, would taxpayers actually save money from the reduced numbers of lawsuits and settlements that the City has to pay for, that City taxpayers have to pay for?

2 FIONA WATT: Can I answer?

3 CHAIRPERSON LIU: Yes, please.

4 FIONA WATT: Okay. I think the Law
5 Department is comfortable with our approach
6 because after we inspect a site, we prioritize the
7 sites. This is why we have a rating system. And
8 we are addressing the worst sites first. So, in
9 terms of the universe of sites that score over 60,
10 we're, we have prioritized those sites and
11 addressed in order the worst ones first, so that
12 we, we are strategically reducing exposure.
13 Although, those, that's not statistics that, that
14 I, that we collect, and so I can't speak to that
15 today. But we are, as a matter of policy and
16 strategy, doing what makes sense, which is doing
17 the first, the worst sites first.

18 CHAIRPERSON LIU: Okay. And I
19 think that makes sense to prioritize the sites
20 that require repair. And to take care of the
21 highest risk sites first. I think that's what
22 you're saying, take care of the highest risk sites
23 first, so that we're maximally cutting down on any
24 liability the city may face. But, but I guess my
25 question still is, is there some kind of budget

2 analysis that has been done in terms of what, what
3 kinds of numbers the, the claims and the
4 settlements are being required of taxpayers to
5 pay. And how much additional funding would it
6 take, say, to have a plan to get rid of the, to
7 take care of the remaining 8,000 unresolved cases
8 that, by the city's own estimation require repair?

9 FIONA WATT: For the first part of
10 your question, those are statistics kept by the
11 Law Department, so we can refer that, that
12 question to them, and they can get back to you.
13 On our first slide, we do, we have quantified at
14 today's prices what it would take to address the
15 remaining sites. At a glance.

16 CHAIRPERSON LIU: I mean, I did see
17 those--

18 FIONA WATT: And to fix all the
19 remaining sites, we're looking at second to bottom
20 bullet, \$34 million; but just to fix the high
21 scoring sites, under \$15 million. But that's at
22 today's price, contract prices.

23 CHAIRPERSON LIU: Sure. So about
24 \$34 million to fix all of the remaining sites.
25 And obviously there will be more, I mean, trees

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2 are continuing to grow, so every year there'll be
3 additional sites that need to be inspected and
4 repaired. But right now, to clear the docket, it
5 would be \$34 million.

6 FIONA WATT: But, as I said, we
7 prioritize the sites and many of the sites that
8 score under 60 don't even appear particularly
9 damaged to the naked eye. So, that would be
10 making a great assumption to assume that every
11 single call that's been inspected that's gotten a
12 score actually warrants a repair of this nature.

13 CHAIRPERSON LIU: I see. So, I
14 guess the \$34 million is not just the sites--
15 excuse me. The \$34 million is not, is the cost to
16 fix all the remaining inspected sites, not just
17 the sites that scored over 60.

18 FIONA WATT: Correct. Just the
19 sites that scored over 60 is the \$14.7 million.
20 The bullet right above.

21 CHAIRPERSON LIU: Okay, got it.
22 So, so about, so less than \$15 million to, to
23 repair the, I guess it's about 8,000 sites that,
24 by the City's own estimation, require repair.

25 FIONA WATT: Would warrant

inclusion under this program.

CHAIRPERSON LIU: Would warrant--

Okay. Now, unfortunately, we don't have numbers on the other side of the equation that the Law Department would readily have. And that, that I think would be available through public records. But my recollection from having worked with the Law Department about six years ago on what they call tort reform, and shifting much of the liability for sidewalk repair to property owners rather than the City assuming that liability. And that was of course exempting one, two and three family homeowners. The, the sidewalk tort liability being faced by the City was in the range of \$500 million annually. If, if someone were to ask me what my best estimate would be of City sidewalk liability due to trees breaking up sidewalks, I would say that that liability ranges in the \$50 to \$100 million range, annually.

Please take that back to Mr. Cardozo and have him refute that. But I think that's pretty close.

\$50 to \$100 million a year of sidewalk tort liability from trees damaging sidewalks. It seems to me that in this time of current, in this time

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2 of dire fiscal straits, in this time of very
3 difficult times for City's taxpayers, that as much
4 as it may be difficult for the Mayor to allocate
5 \$15 million to replace the remaining sites, that
6 by the City's own estimations require repair, that
7 that allocation should be made immediately, so
8 that we can save millions more for the City's
9 taxpayers, because that liability would then in
10 fact not come to fruition. Do you--But I, I guess
11 you probably can't comment on that because you
12 don't have the other side of the equation from the
13 Law Department.

14 FIONA WATT: Well, it is true, I'm
15 a forester not a barrister. So I--

16 CHAIRPERSON LIU: [laughs]

17 FIONA WATT: --can't comment on--

18 CHAIRPERSON LIU: That's a good
19 one.

20 FIONA WATT: --the Law Department.

21 CHAIRPERSON LIU: Alright. Well,
22 well, I will let you off the hook on that. But
23 that, I would subject, I would submit to my fellow
24 chairs and council members, that, that is, that
25 would be my estimate, based on testimony, 'cause

2 the transportation did work closely with the Law
3 Department on the so-called tort reform
4 legislation a few years ago. And that the
5 liability for, specifically for what we're talking
6 about here, would be in the \$50 to \$100 million
7 range annually. And we could save City taxpayers
8 that by pushing for the \$15 million that would be
9 needed to replace, to repair the tree sites that
10 by the City's own estimation do require repair,
11 i.e., the ones that score above 60. The other set
12 of questions I have for you, Ms. Watt,
13 Commissioner Watt, is, is the funding for this
14 program. It would almost suggest from your
15 testimony that none of the funding actually comes
16 from the Parks Department. It--Does any of the
17 funding come from the Parks Department.

18 FIONA WATT: We have, I believe the
19 number was \$10.1 million in mayoral funding,
20 directly for this program.

21 CHAIRPERSON LIU: Oh, I see.

22 FIONA WATT: To the Parks
23 Department, yes.

24 CHAIRPERSON LIU: I see, so, so
25 that's--

2 FIONA WATT: I have a chart on it.

3 CHAIRPERSON LIU: --\$10.1 million
4 from the mayor.

5 FIONA WATT: From the mayor.

6 CHAIRPERSON LIU: I would've
7 thought that it was part of a budget that was
8 negotiated with the City Council. But apparently
9 that money is from the mayor.

10 FIONA WATT: Absolutely. \$10.1
11 million from the mayor over the program history,
12 of the \$14.9 total funding. So the green bars are
13 from the mayor, for each year. And then we also
14 have additional mayoral funding from another
15 agency, the Department of Transportation, \$2
16 million of our budget over the years has come
17 directly from DOT.

18 CHAIRPERSON LIU: Right. Alright,
19 I just wanted to clarify that, that, that the
20 Parks Department, our understanding is that that
21 money's from the mayor, and not from the City
22 budget that's been approved by the City Council.
23 I'll turn--Oh, we have, I guess questions from my
24 co-chairs. Council member Foster.

25 CHAIRPERSON FOSTER: Yeah, good,

thank you. A couple of questions. First, thank you for being the only agency that showed up. And many of the questions you probably won't be able to answer, but at least you can relay the message. I want to work backwards from a minute, for a minute, with our new tree planting thrust, what are we doing preventative, to, to try to address the issue with the trees once they mature, so that we're not, you know, playing catch up in terms of the repairs?

FIONA WATT: We have always planted trees in the right of way, as many as we could, every given year, that's been a longstanding practice of the City. And, and with those plantings, have come conflicts between trees and sidewalks. That said, and there will always be conflicts, because trees, frankly, are not biologically crated to grow in hardscape surrounded by cement. But we all acknowledge as a society that we would like to try to marry the two. So, that said, there are certain things we can do, and, and the most obvious one is to give the tree more space to grow. And absolutely, you can see as you walk around this city, areas where

there are trees with tiny little openings; and then there are areas with trees with much larger openings, or tree pits. So, what we are doing in our tree plantings now, where we really are focusing on planting more trees, but also planting them with the current best practices, is giving them more room to grow, planting them in larger tree pits. That costs more, by the way, but it absolutely postpones the time at which there will be a conflict between the tree and the, and the, and the hardscape around it. So, we will be and are planting trees in large tree pits, five by ten, say, as opposed to five by five. And that, and that prevents, and sets, sets off the time that there will be a conflict between the tree and the sidewalk.

CHAIRPERSON FOSTER: Are there certain trees that are better planted because they're, you know, maybe their roots don't grow and don't need as much space or, or are just friendlier to being in a sidewalk?

FIONA WATT: In some cases, there are some subtle differences. The most obvious one is the case of the Norway maple, which was a tree

that's planted, that was planted in, over the past 40-50 years, everywhere around the city, and they have what's called encircling roots. They often have roots that create wild patterns around the base of the tree, and we don't plant that species anymore, both for its growth habit, and because it's an Asian longhorn beetle host, and it was over planted in the '40s and '50s and '60s in any case. So, that's the most obvious example of a species that has a root growth pattern. That is anathema really to health sidewalks. But for the most case, you know, any tree, if it's growing in too small a space, is, is eventually going to create a conflict for that sidewalk.

CHAIRPERSON FOSTER: The standard of 60, how did you come up with the, the number 60, and what, what does that entail. Like what's under 60 that doesn't characterize a priority? And what are the situations that would be over 60 that are a priority?

FIONA WATT: It's, it's not, we assign number based on a variety of criteria. We have a score, a scorecard, essentially, which, is it, I'm not sure if it's in your packet, but we'd

be happy to share it with you. And so for each of five categories, we actually assign a number based on the level of damage. So, for the example of the location of the site, it gets a score of 16 to 20 if it's in a very high pedestrian traffic area; a score of eleven to 15 if it's in a moderate area with moderate traffic; and a score of six to ten if it's an area of low traffic; and if it's at a dead end street or a cul-de-sac, it gets a score of one to five. And that's just one of the criteria. But you build up anywhere from one to 100, based on assigning a number for all of these different categories. So, our feeling is that sites that score 60 or higher score in the higher range of each of these criteria.

CHAIRPERSON FOSTER: So in a picture like this, that would be, what would that have rated, if you know?

FIONA WATT: I'll have to get back to you on that exact site, but that's a high scoring site.

CHAIRPERSON FOSTER: And what's the timeframe to make those type of repairs?

FIONA WATT: We look, each

2 construction season, we look at the universe of
3 high scoring sites, and their priority rankings,
4 and assign them to contracts based on what we know
5 at the time that we're preparing the contracts.

6 CHAIRPERSON FOSTER: And if you see
7 something like this, that has gone out of the
8 construction period, or you haven't allocated, do
9 you wait for the next year or do you say, "This is
10 clearly a priority, opens the City up for, you
11 know, great liability, we'll go in and do it now."

12 FIONA WATT: Unlike tree planting,
13 which is limited to eight to ten weeks in the
14 spring, and, and the same time period in the fall,
15 we, this is a year round program with the
16 exception of the two or three winter months when
17 you simply can't pour concrete. So, we're really
18 continuous ten months of the year, except for that
19 time when nobody could do anything related to
20 concrete.

21 CHAIRPERSON FOSTER: Okay, so there
22 are no, there are no blackout periods where just
23 fixing other than obviously, when you can't pour
24 cement and coal, but you can do this year round.

25 FIONA WATT: Right, right.

CHAIRPERSON FOSTER: I just have a few more questions, and then I'll turn it over, 'cause I know we have more questions, colleagues that have questions. Like a area, my area in The Bronx, where we don't have a lot of trees, this is never our issue. Our sidewalks are wider, because we don't have any trees. So, we have more room for tree pits. What, as we, as we start looking at construction and development in the city, is the Parks Department working with, you know, City Planning and everyone else, in terms of making sure--Like this is clearly an older neighborhood, because the, the pathway for the sidewalks, sidewalk is so narrow, compared where someone's front yard starts. Have we made those type of requests known in terms of when we're going for development and approving things, to make sure there's enough room on the street for sidewalk and tree to coexist?

FIONA WATT: The answer is yes, and I, two parts to that answer. One, the recent change to the City Department, the city zoning regulations, actually requires that, along with your permit to, for a new construction or a

significant alteration, in certain areas of the city, you actually have to create ribbon sidewalks. You have to list the concrete and create a long, linear area for tree growth and vegetation. So, that absolutely is a zoning regulation, that actually reflects and creates wonderful growing space for trees, and reduces the potential conflict with the sidewalk. And the other answer to that question is we are doing our best to eliminate your description of neighborhoods in The Bronx by focusing our tree planting on many of the areas of The Bronx. I think shortly you will see a large transformation of many of those neighborhoods.

CHAIRPERSON FOSTER: Oh, no, we're already seeing it, and it's just, you know, we lost so many trees with, with the new Yankee Stadium, that we definitely need our trees back. Lastly, how closely does the Parks Department work with DOT in addressing the issue, but also having some contact with homeowners, where--'cause I, I know that there, a lot of homeowners, not in The Bronx, I've heard it from other colleagues, that no way shape or form do they want a tree in front

of their house, because of this liability issue. And kind of like throwing up their hands and the City or DOT saying, "It's your responsibility now." How well does the Parks Department and DOT communicate with each other, and then with homeowners, as to how we can entice them to have trees and let them know that we will, meaning the City, will in fact be responsible for the type of maintenance that needs to happen, so we don't have that situation.

FIONA WATT: We work very closely with the Department of Transportation. In fact, they helped us shape this entire program, in terms of putting together our specifications, not being engineers ourselves. And I would also just caution that responsibility doesn't equal liability. So, the areas that we're focusing on are one-two-three family residential areas, and there is not liability for the sidewalks in those areas. There is responsibility. But we have a program that addresses the sidewalk damage caused by, by our assets, and the Department of Transportation, you know, has a program that fixes sidewalks as well. And they do give homeowners

the option of fixing it themselves. But if they do then go fix it, then they will bill them for that portion of the repair that was not caused by city trees or other city infrastructure.

Department of Transportation doesn't charge the homeowners for the part of the repair that was caused by the trees.

CHAIRPERSON FOSTER: Exactly. I think then, and this would go to the Department of Transportation than you, there comes the question of when is it in fact a homeowner's responsibility and, you know, all those other issues that you can't answer. But that's all the questions I have for now, thank you.

CHAIRPERSON SEARS: Thank you very much. Good afternoon. And I have just a few questions, and then we'll turn them over to my colleagues. One is that, and it's removed from some of the other questions that have been asked, is that with the development, huge development that's taking place, one-two-and-three family homes, forget the high rises and forget the shopping centers. And I know that it's all done in the zoning issue. However, is there a linkage

2 to the Parks Department, 'cause I'm concerned
3 about the responsibility to the City, and looking
4 at how it is reduced. Is there a linkage to the
5 Parks Department that when these mega-homes go up,
6 and they're single family homes, that they can
7 have advice on one, when they're doing their
8 sidewalks; secondly, the kind of species of trees
9 that they would plant, so that they would avoid
10 some of the stuff we're looking at. Does that
11 happen now?

12 FIONA WATT: Yes. Every--

13 CHAIRPERSON SEARS: How does that
14 work?

15 FIONA WATT: --tree is planted is
16 permitted through our agency, and through my
17 division. So, we control and guide the species
18 that are planted on these streets. After all, we
19 don't want to see a species of tree--

20 CHAIRPERSON SEARS: No, but I'm
21 asking something else. Because that happens, and
22 it happens in my district, and sometimes people
23 plant trees and they don't even consult the Parks
24 Department, and they seem to flourish alright.
25 What I'm saying is when there is this development

taking place, and there are rules and regulations that they must abide by, by the zoning, is there a connection between the Parks Department, that when they are laying foundation and they're doing everything else for the sidewalk, and they wish to plant trees, and sometimes they don't, and cement doesn't absorb the water. Fact is, is that there's a hesitation because of the responsibilities and not raking leaves. Does the Buildings Department, can there be a linkage with the Parks Department, somehow in that computerized system that they have, that would be of advice to those who were filing these plans to do this development, of one-two-and-three family homes, to have the advice on just what they do, the kind of species that should be planted, because we want to encourage trees, and we need that. But at the same time, we want to reduce the liability to the city of what stuff like this does. And it seems that if some of that stuff could be caught in the beginning, when they're actually doing this development, would be a huge plus to the city, as well as to the homeowner.

FIONA WATT: There is. That's,

that's exactly what I was getting at. The Department of Buildings, through the new zoning regulations, that require tree planting in front of these new buildings, or even ones that are being significantly altered, have to come to us to get a permit. They have a tree checklist that comes from, with their paperwork, through the Department of Buildings, and it's very, very specific, it refers to us. It doesn't set out different standards, it sets out, "You must abide by the Parks Department permit requirements," and in addition you have to have proof that you have a permit before we'll sign off on your broad, broader, more general construction permit. So there's a very tight linkage, in fact we've been working with the Department of Buildings for several years now in preparation to those zoning changes, and the Department of City Planning.

CHAIRPERSON SEARS: So is the Parks Department able to keep up with the speed of the development that's happening, in terms of your consultation into this development?

FIONA WATT: Absolutely. And also-

-

2 CHAIRPERSON SEARS: 'Cause it's
3 just erupting all over.

4 FIONA WATT: I might point out that
5 the development permits have, have fallen,
6 obviously quite significantly, since the economic
7 downturn. So, yes, we're keeping up.

8 CHAIRPERSON SEARS: Good, I'm glad
9 to hear that. And tell me, do you take in any
10 other factors besides the damage to the street
11 when you look at this?

12 FIONA WATT: We actually do not
13 factor in the damage to the street.

14 CHAIRPERSON SEARS: Oh, okay.

15 FIONA WATT: In this program we
16 factor in the, the damage to the sidewalk flags
17 themselves--

18 CHAIRPERSON SEARS: The sidewalk,
19 right.

20 FIONA WATT: The number of flags,
21 the amount of passable area, we call it sidewalk
22 clearance. So, if it, if the damage is just
23 impacting a very small area and there's plenty of
24 other free place to walk, that wouldn't score as
25 high as others. The actual number of inches, the

2 vertical lift, of the site, of the damage, and the
3 number of flagstones, a site that has ten damaged
4 flagstones, would score more than a site that had
5 one damaged flagstone. And of course the
6 condition of the tree, this program is about
7 healthy trees and healthy sidewalks. So if it's a
8 dead tree it's not going to score as high as a
9 living tree that has many more years left in its
10 life.

11 CHAIRPERSON SEARS: Do you take
12 into consideration the effect of gates around the
13 base of the trunk of the trees? Or these plates
14 that are placed around them in some of these
15 commercial areas that I've seen. I've also seen
16 some in front of homes. Do they have any effect
17 on what we're talking about? So if you don't--

18 FIONA WATT: Those conditions can
19 have a deleterious effect of the health of the
20 trees.

21 CHAIRPERSON SEARS: Yeah, are they
22 considered in, when you consider the effects of
23 what you measure--

24 FIONA WATT: Not on this program,
25 but we have a program called Tree Rescue. This is

2 a sidewalks program, so if there's a, an
3 encircling grate, but the sidewalk is fine, that's
4 not going to take precedence in this program. We
5 have program called Tree Rescue, where we target
6 exactly those kinds of sites, where there's
7 strangling grates or guards, anything encircling
8 and threatening the viability of that tree.

9 CHAIRPERSON SEARS: Now in, in this
10 program, the one that you're talking about, it
11 would not be considered whether it would be
12 advisable to put a grate around the trunk of the
13 tree or not? Why wouldn't that not fit into the
14 development of this program?

15 FIONA WATT: You're asking--

16 CHAIRPERSON SEARS: Yeah.

17 FIONA WATT: --would we come back
18 and put grates around trees?

19 CHAIRPERSON SEARS: No, what I'm
20 asking is, if there is the possibility of doing
21 that, since you don't take a grate into
22 consideration. I understand what you're saying.
23 Is it deemed advisable to put such, you know,
24 encumbrances around the base of a tree, so that
25 people are advised to do it or not do it? Rather

2 than having to go to the second step, which is to
3 call upon the division that is dealing with the
4 damaged trees.

5 FIONA WATT: In some areas of the
6 city, it's absolutely advisable to have an extra,
7 added level of protection around the trunk of that
8 tree.

9 CHAIRPERSON SEARS: I'm getting all
10 this for money, that's why.

11 FIONA WATT: A tree grate--

12 CHAIRPERSON SEARS: It's all coming
13 back to the dollar and the tort responsibility, so
14 that's why I'm asking that. There are some things
15 that we could do that could prevent, right from
16 the beginning, rather than getting to a second or
17 a third level of what the department has. So what
18 I'm asking is that when, in this program, there
19 might be a consideration to advise or not advise,
20 with the temptation to cover the bases of these
21 trees. And they look very decorative. I'm not so
22 sure sometimes, and from what I've seen, that's
23 advisable to do that. So perhaps in this stage of
24 this program, that that might be a consideration
25 to look at.

2 FIONA WATT: We don't advise that.
3 Ever.

4 CHAIRPERSON SEARS: I know you
5 don't.

6 FIONA WATT: No.

7 CHAIRPERSON SEARS: I know.

8 FIONA WATT: And we wouldn't
9 through this program when we don't in general.

10 CHAIRPERSON SEARS: Okay. Alright,
11 thank you very much. I know we have some
12 questions from the, our colleagues.

13 CHAIRPERSON LIU: Thank you. We
14 have also been joined by Council member Eric Dilan
15 of Brooklyn, Council member Daniel Garodnick of
16 Manhattan, and Council member Diana Reyna of
17 Brooklyn and Queens. And we have questions from
18 Council member Felder.

19 COUNCIL MEMBER FELDER: Thank you.
20 Thank you to the chairs for this important
21 hearing, and I want to take this opportunity to
22 congratulate Council member Helen Sears who, who
23 shares the Government Operations Committee, and
24 will finally straighten things out on that
25 committee. The, I know the previous chair

personally, and it's about time that somebody did things right there. Having, who agreed to that? Okay. Having said that, I, I would like to preface my questions, Commissioner Watt, by saying that I think your program is wonderful, and the work that you, and the Department is doing, are doing, is wonderful. But I, it's incomprehensible that we're, we have three chairs, Chair Liu, Chair Sears and Chair Foster here, and there's a reason for that. The reason is that this issue really-- involves those three areas. And you have been sent, and no one else is here. I thought that perhaps there aren't enough chairs, so I'll leave one for the Law Department, and one for DOT. I, can I borrow one of yours? I'm sorry, Mike. You want to sit? In case they decide to show up. Is anyone here from the Law Department? Can you raise your hand if you're here from the Law Department? Is anyone here from DOT? Can you raise your hand? No. It's, it's incomprehensible, incomprehensible. You, if I dare say, they've sent you as a sacrificial lamb, 'cause this issue, everything you've said, including your testimony about the importance of

2 trees, is, is wonderful. There's noth--there's
3 absolutely everything you said here is wonderful.
4 But that's not what the hearing is about. The
5 hearing is not about the wonderful work you do.
6 The hearing is about the crisis that exists in the
7 City because you're not getting the funding you
8 need to get it done. And you're not getting the
9 cooperation that you need to get it done. Now can
10 you do me a favor, can you click on please, or
11 whoever's helping you, you had five or six
12 examples. Do it slowly, because I'm slow, okay?
13 This is score 83, this is a bad problem, right?
14 Can you do the next one, 82. What about the next
15 one? 70, not so terrible, go ahead. 88, go
16 ahead. 84, it's really bad, go ahead. 75, not
17 too many people walk down there, it's a dead end
18 street, maybe? 89, whatever, go ahead. 84.
19 Okay, back to the picture. Now, give me, give me
20 the, give me the 75, yeah, I love this one.
21 Alright? First of all, Commissioner Watt, can you
22 tell me how many lawsuits the City has had, not in
23 this fiscal period, in the last fiscal period, as
24 a result of tree issues, specifically? I don't
25 want a dollar amount, I don't want the department

2 to be subject to litigation, I just, I think it
3 must be public record as to how many lawsuits
4 existed, let's say last year, as a result of tree
5 issues.

6 FIONA WATT: We'll have the Law
7 Department get back to you, Council member.

8 COUNCIL MEMBER FELDER: You have no
9 idea how many lawsuits there are?

10 FIONA WATT: I personally do not.

11 COUNCIL MEMBER FELDER: Does anyone
12 on your staff have any idea?

13 FIONA WATT: Again, it's a Law
14 Department issue, and we'll have them get back to
15 you.

16 COUNCIL MEMBER FELDER: Alright, I
17 have a very simple request. Can one of your staff
18 members call somebody at the Law Department now?
19 I don't think it's a complicated thing, and let,
20 let you know, it's, it's a matter of record. This
21 is not something, this is not a Felder trick, or
22 something. I just, it's a fact, it's public
23 record. How many lawsuits are, the Department has
24 as a result of tree issues. Is that reasonable?
25 Can you get us that now? The hearing, Mr. Chairs,

2 do you think the hearing will last another 15
3 minutes or so, at lest?

4 FIONA WATT: Is that a reasonable
5 request? I don't, I don't know, I don't want to--

6 CHAIRPERSON FOSTER: I think it's,
7 if, it's a reasonable request, I don't think it's
8 a reasonable request of Commissioner Watts. And I
9 guess someone else can address it, because it's,
10 as you started--

11 COUNCIL MEMBER FELDER: Right.

12 CHAIRPERSON FOSTER: --the Parks
13 Department is the only one that showed, and it was
14 nice to hear about the trees, but this is a little
15 out of their, their box.

16 COUNCIL MEMBER FELDER: Okay. Is
17 there possibly anyone here that could get that
18 information before the end of the hearing? I
19 really appreciate, if you could get it to the
20 chair people, because, because I think that would
21 help a lot. I don't want to--We're not talking
22 about dollar amounts.

23 CHAIRPERSON LIU: Right, I mean,
24 Council member Felder, as a co-chair of this
25 hearing, I totally understand and I, I would agree

with all of your comments that it's, it's really too bad that the City, that the administration did not come up with someone who had that information. Because they full well knew that that was the thrust of this hearing, and now how great trees are. We all understand how great trees are. That, that is--

COUNCIL MEMBER FELDER: Yeah.

CHAIRPERSON LIU: So, I daresay that we will certainly not see that figure today, even though it is readily available at somebody's fingertips in the Law Department.

COUNCIL MEMBER FELDER: Okay.

CHAIRPERSON LIU: It is just not a number that they want to publicize, or to even make known publicly, which is why I have stated that I believe that that liability is, the dollar amount that the liability, maybe not the number of cases, which is what you asked about.

COUNCIL MEMBER FELDER: Yeah.

CHAIRPERSON LIU: But the dollar amount is in the in the range of \$50 to \$100 million on an annual basis.

COUNCIL MEMBER FELDER: Mhm.

Okay, I apologize, I apologize to the chairs, and I'm not apologizing to you, because I didn't do anything wrong. I warned you beforehand that my questioning wasn't--But if you want, I can apologize to you as well.

FIONA WATT: Or just call me a sacrificial tree, rather than a sacrificial lamb.

COUNCIL MEMBER FELDER: Okay, okay. I apologize to you as a sacrificial tree. Can, can I, can I go on further to say that we've been having a long discussion about the liability, which is true, but I, I don't think we've mentioned the cost in terms of human beings, that are literally crippled and disabled by the negligence of the City. And what I mean by that, even with you're doing a wonderful job, again, this is not an attack on your program. You are doing whatever you can with the money that's been allotted to you, and maybe even more than that, with what you have. But you can't place a price on this. Score number 75, absolutely true, for whatever the reason, maybe people don't walk there often, there's no way in the world that an older person walks down the street safely. There's no

way in the world. And when that person falls, and winds up, luck--if they're lucky, and young enough to get a hip replacement, something else like that, it doesn't matter whether they sue the City and make \$5 million, that person will never be the same again. And I have a neighbor on 47th Street, who as a result of a trip, I can't say like this, is wheelchair bound for the rest of his life. So the issue around making money, that's one issue. But the issue is, how in the world do we live with ourselves knowing that the City is unable to fund a wonderful program that can people? We're talking about people's lives and their wellbeing, not merely New Yorkers going to the bank with money. Yeah, there are people who fall down, and call, you know, a witness to make some money, but that's not what we're talking about. So, it, it's very disturbing, very, very disturbing. We have a bill that I'm working off together with my colleagues, which would compel your department to fix all of them within a certain amount of time. But right now, no matter what you're doing, you have testified publicly that it is impossible, even given your grading system, to be able to fix

all those that are above 60 within a reasonable time. Is that true? What I just said. Not the whole thing, not the whole thing.

FIONA WATT: On some sites, we are fixing within a reasonable amount of time because strategically we're going to the sites that are worst first. If it was a first come, first serve program, I think the numbers would bear out that there were sites that were of high, high damage that weren't getting fixed. But actually, it's a very flexible program that deals with prioritizing the sites, so that we do address. Now, let me just say that we are all assuming that the sidewalks that look visibly the most damaged and the most lifted, are the ones that are causing the most grief. But that is a, quite a large assumption on all of our parts. Some people might argue that a very obvious site that's very damaged is a red flag to people, and they will step over it, like the step up a staircase. So, let's all understand that, all drama aside, you know, we are, share the assumption that the, the most damaged sites are the ones to do first. That's why we're prioritizing the program. But, it still

2 is an assumption on our part.

3 COUNCIL MEMBER FELDER: Well, I--
4 Can you--

5 CHAIRPERSON LIU: Council member
6 Felder, I'm sorry, I have to interject myself
7 here, because since Commissioner Watt you
8 testified that you're a forester and not a
9 barrister, I don't know why you seem to be
10 injecting a legal opinion there. Because in fact
11 what you just testified to is a legal opinion, so
12 unless you're going to start testifying to legal
13 questions, I would refrain from that kind of
14 comparison. I mean, it is also possible that a
15 jury, which is the entity that awards, that makes
16 the awards, sees something obvious that should've
17 been fixed, and then decides to award a higher
18 compensation, as opposed to something that was,
19 that could've been more subtle. So, let's, if
20 you're going to characterize yourself in such a
21 way that you're going to limit your testimony,
22 then I think you should stick to your guns that
23 way.

24 FIONA WATT: My observation was
25 that, was that of a human being. It was

2 absolutely not meant to be a legal opinion. I
3 just pointed out that we're all making an
4 assumption about cause and effect.

5 CHAIRPERSON LIU: I think, I think
6 you should quit while you're ahead on that one. I
7 think you should quit while you're ahead on that
8 point. Council member Felder.

9 COUNCIL MEMBER FELDER: Two things,
10 and then I'm sorry, two things. It's just that
11 this, this issue was one that's been, you know,
12 we've been working on for a long time, so if you
13 can indulge me for a minute. First of all, your
14 comment about all drama aside, I assume you were
15 talking about me, and I want to thank you for your
16 compliment. Having said that, you almost
17 contradict yourself with your personal
18 observation. You first say that it may be more
19 important to fix those items in some way that are
20 less obvious, 'cause the ones that are very
21 obvious, people might not, might see and might not
22 fall on. But yet, you have understood for some
23 reason, and I don't disagree with you, that those
24 that are worse have to get fixed first. Right?

25 FIONA WATT: I, I said that we

2 share an assumption that a common sense approach
3 would be to fix the most visible sites first. And
4 that's what we're doing.

5 COUNCIL MEMBER FELDER: Right,
6 although, although in fact when it comes to
7 liabilities or people getting hurt, again, I want
8 to put that in this, in this conversation. We're
9 not only talking about money, we're talking about
10 people being disabled for the rest of their lives
11 as a result of negligence. So that means that we
12 have decided that the lower the score, in other
13 words the less, based on your grading system,
14 those are the ones that get fixed last. And I,
15 this, you mentioned this two or three times. I
16 want to point this out, I believe, let me ask a
17 question, do you believe that there are a X
18 percentage, whatever number there are, of trees
19 that are above 60, that are not being repaired
20 within six months?

21 FIONA WATT: Oh, absolutely.

22 COUNCIL MEMBER FELDER: Okay.

23 FIONA WATT: Absolutely.

24 COUNCIL MEMBER FELDER: So that
25 means that it's clear that there are people out

2 there, no matter whether, how bad they are, you
3 are trying to do your best with the money you
4 have. And if you had more money, you'd be able to
5 fix more of these quickly. Is that true?

6 FIONA WATT: We are addressing the
7 worst sites, the most damaged sites, first.

8 COUNCIL MEMBER FELDER: Right. And
9 again, so let me just ask the question, and
10 that'll be it. So if you had enough money, which
11 you don't, you'd be able to repair all of those
12 above sixty quickly. Is that true or not?

13 FIONA WATT: Our level of repair is
14 based on our funding, and if we, when we address
15 the worst sites first, then we would continue
16 fixing sites, as our funding alters.

17 COUNCIL MEMBER FELDER: On an,
18 okay. So, so, therefore, I would just say, is
19 that, that it's clear that the toll that this, the
20 lack of funding for your department, for your
21 excellent program, the lack of funding inherently
22 is causing people throughout the City, yes with
23 the drama, to get hurt and no one is accountable.
24 One last question: When you see a sidewalk like
25 this, if let's say they call you out for an

2 inspection, forget about a 75, can you give me an
3 89, please? An 89, please. Or 93. Is that the
4 highest one you have? Give me a miserable one,
5 please. Yeah, yeah, yeah, that one, excellent.
6 It's only 84. You go out and you do an inspection
7 on that site, I assume somebody looks at it and
8 given everything gave it an 84, which means it's a
9 bad site. What happens after you do the
10 inspection, does the crew leave? Does your crew
11 leave?

12 FIONA WATT: We leave an inspection
13 report, letting the homeowner know the score of
14 their site, which they can also get from calling
15 311.

16 COUNCIL MEMBER FELDER: Excellent.
17 But you leave it exactly the way it looks there,
18 right?

19 FIONA WATT: Yes, our inspector
20 goes to the next site.

21 COUNCIL MEMBER FELDER: Excellent,
22 that's what I wanted you to say. That's horrible.
23 What they should do is what you would expect any
24 contractor or homeowner to do, if it was their own
25 property. You'd put a yellow ribbon around it, or

2 you would cordon it off to make sure nobody walks
3 there, because you know that's dangerous. And if
4 that was the case, if you did that at every site
5 that was over 60, the city would have the money
6 for this. Because nobody in New York City's
7 administration wants a thousand, 3000, 5000 sites
8 with ribbons all around it. Thank you.

9 CHAIRPERSON LIU: Thank you,
10 Council member Felder. Questions from Council
11 member James.

12 COUNCIL MEMBER JAMES: How does the
13 handicapped access that block, get down that
14 block? Isn't that in violation of federal law or
15 some sort of law which, which demands that our
16 streets be accessible to the handicapped?

17 FIONA WATT: I think Chairman Liu
18 has advised me to stick to the forestry questions.
19 Which I will at this point. Thank you.

20 COUNCIL MEMBER JAMES: I'm, I'm
21 sort of, it appears that there's some overlap
22 between the Parks Department and Department of
23 Transportation. Is that true with respect to
24 tress in our city?

25 FIONA WATT: Well, we work closely

2 with the Department of Transportation, and we
3 plant and maintain trees within the right of way.

4 COUNCIL MEMBER JAMES: So, I'm
5 trying to understand the, the roles here. Parks
6 Department basically maintains and repairs, and
7 Transportation issues fines. Would that be fair
8 to say?

9 FIONA WATT: We don't maintain and
10 repair sidewalks by, by City charter, but this
11 program does around trees. We main--plant and
12 maintain the trees.

13 COUNCIL MEMBER JAMES: And DOT's
14 role is? How would you describe DOT's role?

15 FIONA WATT: DOT has jurisdiction
16 over the sidewalks.

17 COUNCIL MEMBER JAMES: So, who, who
18 is in the position to issue fines? Both agencies,
19 or it's just DOT?

20 FIONA WATT: DOT issues what are
21 called Notice of Violations.

22 COUNCIL MEMBER JAMES: Okay. Do
23 they also issue fines? Well, not fines, they
24 issue violations.

25 FIONA WATT: We can get back to you

2 on that. I'm not familiar.

3 COUNCIL MEMBER JAMES: They issue
4 violations, you're right.

5 FIONA WATT: I'm not familiar with
6 that.

7 COUNCIL MEMBER JAMES: They're not
8 fines, they issue violations, which are the
9 subject, which are the subject of fines. They
10 issue violations? Yes or no.

11 FIONA WATT: Their program, they
12 issue what's called NOV's, which I believe are
13 Notice of Violations.

14 COUNCIL MEMBER JAMES: And I
15 represent Brownstone, part of Brownstone Brooklyn,
16 and we have a significant number of big trees,
17 fabulous, beautiful, wonderful, majestic trees
18 that we cherish. In fact, just recently last
19 summer I believe, you contracted with some company
20 to do pruning in my district, and unfortunately I
21 and some of my constituents believed that they
22 went overboard. But nonetheless, it was because
23 so many people are protective of the trees in
24 downtown Brooklyn. So my question is, to you,
25 your program basically applies to residents with

2 two, two and three family homes?

3 FIONA WATT: Anyone in tax class
4 one, which is one, two and three, family homes
5 that are owner occupied.

6 COUNCIL MEMBER JAMES: That are
7 own--What, why not fours? Why did they not extend
8 the program to four?

9 FIONA WATT: I--We can get back to
10 you on that question, but that's relating to the
11 Department of City Planning.

12 COUNCIL MEMBER JAMES: Okay. And
13 my question, and this may be beyond your
14 jurisdiction, because it, it raises legal
15 questions. Is the, the recent decision said that
16 the City of New York is responsible, liable for,
17 liable for injuries related to trees under the
18 jurisdiction of the City, notwithstanding the 2003
19 law. So, my question is, if a recent Court of
20 Appeals has ruled that the city is responsible for
21 such liability, why do we continue to issue NOVs
22 to residents?

23 FIONA WATT: We'll have the Law
24 Department get back to you on, on the Department
25 of Transportation's response to that.

2 COUNCIL MEMBER JAMES: It seems to
3 be in conflict with the Court of Appeals'
4 decision. If the Court of Appeals has basically
5 ruled that the City is responsible for such
6 liability, irrespective of the 2003 law, why do we
7 continue to issue Notices of Violation to
8 residents?

9 FIONA WATT: My answer is the same.

10 COUNCIL MEMBER JAMES: Okay. I, I
11 just wanted to know, I--And--I, I can remember a
12 situation in my district--Okay, let me back up.
13 In downtown Brooklyn, there's a, well there was
14 before the economy collapsed, there was a, a lot
15 of real estate transactions. A number of people
16 were selling their brownstones because the value
17 of brownstones these days. And so a number of
18 residents, new residents, who moved into the
19 neighborhood, discovered that the tree in front of
20 their house was not a city owned tree, that in
21 fact it was put there by the private owner. And
22 therefore they were, they the new owner was
23 responsible for the tree. As far as you know,
24 when there is a, a, when a property is
25 transferred, is there any notice given to the new

2 owner that the tree in front of their property is
3 privately, was privately, is privately owned? And
4 that therefore may incur liability? Do you know
5 if that's part of this? If there's any notice
6 given to new owner?

7 FIONA WATT: Trees within the right
8 of way are the jurisdiction of the Parks
9 Department.

10 COUNCIL MEMBER JAMES: Tree within
11 the right of way are jurisdiction of the Parks
12 Department.

13 FIONA WATT: I, I can't comment on
14 private transaction between private citizens.

15 COUNCIL MEMBER JAMES: No, I know,
16 but you're, you're limited to city owned trees,
17 correct?

18 FIONA WATT: Right, which is within
19 the right of way.

20 COUNCIL MEMBER JAMES: But if, if
21 within the right of way, if there is a, a tree
22 that was placed there by a private owner, and
23 that, and that property is then transferred to
24 another private owner, and that private owner is
25 unaware that that tree was put there by the

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2 previous owner, is, who notifies that owner? Do

3 you know?

4 FIONA WATT: No. We'll, we'll have

5 the Law Department comment, if, if it's something

6 within their purview.

7 COUNCIL MEMBER JAMES: And as part

8 of your point system, going back to your point

9 system, do you take into consideration whether or

10 not the block is handicap accessible? Is that

11 part of your point system?

12 FIONA WATT: No.

13 COUNCIL MEMBER JAMES: It's not

14 part of your criteria at all?

15 FIONA WATT: Our, our criteria is

16 based on passability.

17 COUNCIL MEMBER JAMES: Passability,

18 did you say?

19 FIONA WATT: Right, whether,

20 whether anyone can, can get through or not, so--

21 COUNCIL MEMBER JAMES: Whether,

22 does not include individuals in wheelchairs?

23 FIONA WATT: Our rating system is

24 based on vertical lift. So the more vertical

25 lift, the, the higher it scores. But it's not

2 specifically targeted to zero lift, which I think
3 would be required for a wheelchair.

4 COUNCIL MEMBER JAMES: I'm sorry,
5 you're going to have to further explain that, I
6 don't understand that.

7 FIONA WATT: One of the criteria is
8 based on how high the sidewalk flags are raised.

9 COUNCIL MEMBER JAMES: So that
10 picture right there.

11 FIONA WATT: Right.

12 COUNCIL MEMBER JAMES: That was
13 rated a, what was, what was that rated. 84.

14 FIONA WATT: 84.

15 COUNCIL MEMBER JAMES: And that
16 was, was--did you take into consideration in your
17 rating system, whether or not that could, someone
18 in a wheelchair could pass that sidewalk?

19 FIONA WATT: What I'm saying is
20 indirectly we do, because two of the criteria, how
21 much additional passable room there is, in this
22 case there's no other passable sidewalk width. In
23 a twenty foot wide sidewalk, where you had one
24 flag that had that kind of vertical lift, but
25 three flags that were flat, that would score

2 lower. So, indirectly, we do, both how, what
3 clearance there is, and also how severe the
4 vertical lift is.

5 COUNCIL MEMBER JAMES: Now back to
6 the Court of Appeals' recent decision, do you know
7 whether or not the administration is reviewing
8 their policy in light of this Court of Appeals
9 decision?

10 FIONA WATT: We'll have the Law
11 Department get back to you on that.

12 COUNCIL MEMBER JAMES: Thank you.

13 CHAIRPERSON LIU: Thank you.
14 Questions?

15 CHAIRPERSON SEARS: Just a comment,
16 thank you. I think what Councilwoman James is
17 raising is something that I raised earlier with
18 you, as to what really, what are the criteria that
19 you use to come to the grading that you do. I
20 think what you've heard is that there, your
21 criteria should be increased. Even in this plan,
22 that you need to embrace a stronger criteria.
23 Because it seems that, as you look through and
24 things on, there may be some things that are in
25 violation, period, of almost everything. And yet

2 that's being ignored. And I don't think the Parks
3 Department wants to do that. So you should take
4 back of how you should expand your criteria, to do
5 this, 'cause I think that's an issue that's been
6 raised by several people, including myself. Thank
7 you. Thank you, Mr. Chair.

8 CHAIRPERSON LIU: Thank you.

9 Questions from Council member Dickens. Oh, or--

10 COUNCIL MEMBER DICKENS: Thank you.

11 CHAIRPERSON LIU: I'm sorry, let me
12 just mention that we have been joined by Council
13 member Lappin, Jessica Lappin of Manhattan, and
14 now Council member Darlene Mealy of Brooklyn.

15 COUNCIL MEMBER DICKENS: Thank you
16 so much, Chair, and thank you, Commissioner for
17 your testimony. I want to go back to your
18 testimony on page three, where you said all sites
19 that score above 60 are considered for repair,
20 based on available funding. If a site scores 84,
21 and there's no funding, and it's something like
22 that, what is done?

23 FIONA WATT: Since we are
24 prioritizing the worst sites first, that score
25 would depend on how many, how many sites scored

higher. So that site might become the top of the list, or if there are many sites that were worse, it would be ranked in order of prioritization.

COUNCIL MEMBER DICKENS: Because what I'm saying is, suppose it wasn't already on the list. And it was called in, the inspectors went, and you saw that, that one of the flagstones was lifted up almost totally. And in fact, if it continued, if that tree continued to grow, the flagstone could in, in effect, crumble, and become additional hazard. Because it's, it's almost, you know, raised, you know, almost totally raised. So, if it, if it were not already on your list, you get the call, you go in, you see it's something like this. It's not handicap accessible, but it is an extremely dangerous situation, not only for handicap but for all pedestrians. There is no pedestrian traffic that can go past it, they have to some kind of way circumvent it. The funding is because you said here, based on available funding, and my fear is what happens with a site such as this? Where a child could even crawl underneath that.

FIONA WATT: I think my answer is

2 that wherever it falls relative to the other
3 sites, it will get addressed, and will get fixed
4 through this program. If there are very few sites
5 that are worse than that, it will get fixed right
6 away. And if there are other worse sites, we're
7 going to address the worse sites first.

8 COUNCIL MEMBER DICKENS: Alright.

9 Now, this is for one-two-and-three families.
10 Multiple dwellings. Parks put in the, the trees,
11 and something like that occurs where the
12 flagstone, or more than one flagstone, has been
13 raised. What happens in a multiple dwelling? Do
14 they pay the full cost of, of doing something
15 about the tree? Do, does Parks dictate what
16 should be done about the tree? As well as the
17 sidewalk repair?

18 FIONA WATT: We have a program
19 where we give free sidewalk consultations for
20 property owners who are going to fix the sidewalks
21 themselves. And so we'll come out and give a free
22 consultation on how best to fix that sidewalk,
23 around the tree.

24 COUNCIL MEMBER DICKENS: Now, I'm
25 talking about multiple dwelling, not one-two-and-

2 threes.

3 FIONA WATT: And that's what I'm
4 talking about as well.

5 COUNCIL MEMBER DICKENS: Oh, mult--

6 FIONA WATT: To anybody, one, two,
7 three, multiple, no matter where it is, wherever
8 there's a tree on the sidewalk, we will give a
9 free consultation.

10 COUNCIL MEMBER DICKENS: Free
11 consultation, but the, the owner of the, owner of
12 the property, are of a multiple dwelling, would
13 they be responsible for repairing a situation like
14 this, where the tree has caused maybe one
15 flagstone or maybe two, to raise up or crumble?
16 That's one part of the question. Second part is,
17 for the tree, the, the tree itself, because in
18 this case, the root of the tree, something has to
19 be done about the tree. It's not just the, the
20 flagstone, it's the tree itself. Who is
21 responsible in both those cases that I just asked
22 about?

23 FIONA WATT: Responsibility and
24 liability are not the same, so, so I paused for a
25 second--

2 COUNCIL MEMBER DICKENS: Well, I'm,
3 I'm talking about--

4 FIONA WATT: --because I wanted to
5 make sure that I was answering your question.

6 COUNCIL MEMBER DICKENS: Well,
7 excuse me, but then let me, let me make it very
8 clear.

9 FIONA WATT: Right.

10 COUNCIL MEMBER DICKENS: I'm
11 talking about who is responsible for making the
12 repair to the sidewalk? And who is responsible
13 for making the repair of, to the tree? Cutting it
14 down or doing something, whatever has to be done.
15 And once, if it is the owner, then do you tell the
16 owner what has to be done to the tree? So that
17 you know that it's properly done.

18 FIONA WATT: Right. If the owner's
19 fixing the sidewalk, we absolutely, we give a
20 consultation and we advise them what to do. And,
21 and they need to follow our advice on that.

22 COUNCIL MEMBER DICKENS: Not if,
23 I'm going to go back to the same question. That
24 is, a situation such as this, in front of a
25 multiple dwelling, who then pays for the sidewalk

2 repair?

3 FIONA WATT: If the Department of
4 Transportation has targeted the sidewalk as
5 needing repair, they have a program where they fix
6 sidewalks and they bill the homeowners. They
7 don't bill the homeowners whether it's tax class
8 one or any other tax class. They don't bill the
9 homeowners for that portion of the repair that's
10 caused by the city tree.

11 COUNCIL MEMBER DICKENS: So
12 regardless of whether it's a one-two-or-three, or
13 a multiple dwelling, if a city owned tree causes
14 damage to a sidewalk, then you're saying that DOT
15 will not issue a violation to the owner, but
16 instead will come in and repair the sidewalk? I
17 just want to be clear I understand that.

18 FIONA WATT: They do issue a
19 violation, but they don't charge the homeowner for
20 the repair. For that part of the damage that's
21 caused by the city owned infrastructure.

22 COUNCIL MEMBER DICKENS: So then,
23 you're saying that they will prorate the, like in
24 the case of a, like that one flagstone, or two.
25 So you're saying that they would then say, "Well,

this, DOT will pay for one half of it and the, the owner's responsible for the other half? I'm trying to understand.

FIONA WATT: Correct. Correct.

COUNCIL MEMBER DICKENS: I don't think so. I beg to differ there. And, and they do issue a, a violation, it is not monetary, and the violation demands that you come in there and get bonding and repair it yourself. They only come in and make the repair if you fail to do so. But what the violation says, is that you've got to, you have the option, you, if you don't do it, then the, then DOT will do it. But what you're supposed to do, is to go in, and, and I'm, I know from firsthand because I'm a, I've been a recipient of one of them.

FIONA WATT: No, I agree with what you're saying, and it, it accords with what, what I just said.

COUNCIL MEMBER DICKENS: So, I just wanted to be clear, because I haven't found that DOT prorates anything. They come in and issue the violation, and regardless of it being the, the sidewalk being damaged by the tree, the owner is

2 responsible. And, and liable, whether you want to
3 talk about insurance or whether you want to talk
4 about pain, or whether you want to talk about
5 responding to the violation. The owner is, of the
6 property, and which this affronts or abuts, is
7 required to, to repair; whether they do it and
8 bill you, or whether you get a private contractor.

9 FIONA WATT: If you have a case
10 where a homeowner has been billed for that portion
11 caused by a tree, I would be happy to take that
12 site back to DOT.

13 COUNCIL MEMBER DICKENS: Alright,
14 that's, that's fair. And what do you think is
15 going to happen with DOT? [laughs]

16 FIONA WATT: Because that's against
17 their stated policy, and we'd be happy to work
18 with them to clear it up.

19 COUNCIL MEMBER DICKENS: Alright.
20 Thank you.

21 CHAIRPERSON SEARS: Worth a shot,
22 councilwoman.

23 COUNCIL MEMBER DICKENS: Thank you
24 very much.

25 CHAIRPERSON SEARS: Yeah.

2 COUNCIL MEMBER DICKENS: Just a
3 minute, just a minute, how do you know if it's a
4 city tree? You, you decide? And the reason I ask
5 that is because Council member James had asked
6 that question, and, and since there's no
7 notification as to whether when you buy a
8 building, whether the tree was put there by the
9 prior owner or not, how do you know whether, and
10 how do you know whether it's city owned? Since
11 you're unable to give that.

12 FIONA WATT: We, we know whether
13 it's city owned if its in the mapped right of way,
14 of, of the street bed, which in general extends
15 about 15 feet from the curb line, on either side
16 of the street. But there are cases of street
17 trees which appear to be in someone's front yard,
18 sometimes which actually are within the mapped
19 right of way, and sometimes you can't tell the
20 right of way without looking at the paper maps
21 themselves.

22 COUNCIL MEMBER DICKENS: Mmhm.
23 Now, what, what about in the case of new
24 development, and I'm sorry Chair, new development
25 that's going on. Frequently, the developers are

2 required to, one of two things, either leave
3 flagstones open so that the city can come in and,
4 and plant trees. Or, they also have to put the
5 trees in themselves. If the developer plants the
6 tree at the request of Parks, or DOT, or just part
7 of the development plan, who then owns those
8 trees? Is it still the ownership of the, of the
9 developer, or does the Parks?

10 FIONA WATT: It's the Parks
11 Department. Any of those trees growing in the
12 right of way are the jurisdiction of the Parks
13 Department.

14 COUNCIL MEMBER DICKENS: So then
15 the Parks would then contin--ongoing, would
16 maintain and prune on the ten year cycle, and fix
17 the flagstone if it, if, if that tree root should-
18 -

19 FIONA WATT: Right, the maintenance
20 of those trees is our responsibility.

21 COUNCIL MEMBER DICKENS: Alright,
22 thank you.

23 CHAIRPERSON SEARS: Thank you very
24 much. Our next question is from Councilman
25 Ignizio.

2 COUNCIL MEMBER IGNIZIO: Thank you
3 very much. And as the representative of the
4 largest Council district, probably the most
5 sidewalks and a district the size of one-and-a-
6 half times of Manhattan, this is a huge issue in
7 my borough, as you, as you know. And I've been
8 with the Council for 13 years and the program
9 changes very often. It, it--Liability and fear to
10 homeowners is always the issue. And some of my
11 colleagues may recognize and have an appreciation
12 for the fact when a building inspector shows up at
13 your house and gives you a violation, primarily
14 those people call up and say, "What do I do? I
15 want to get rid of this." Without regard for the
16 fact that, "Well, that's your responsibility."
17 But nonetheless, I think the City is complicit in
18 this fear, in that it's desire is to see people
19 fix it on their own, so as to not have to bear
20 that burden of liability in terms of paying for
21 that, that sidewalk that the City, and the City's
22 property, damaged. We need to look at the City in
23 this case as a private property owner, who has
24 infringed and damaged the property of someone
25 else. So my question is, was it looked at, or can

2 it be looked at, that we do this almost in
3 reverse, the, the conversation of the Department
4 of Transportation was that if you don't fix your
5 sidewalk, we're going to come in and we'll bill
6 you. Well, how about the reverse? If you receive
7 a 60 plus, the homeowner will fix it, and we will
8 receive a tax credit on, for city taxes, for
9 fixing the sidewalks, which ultimately saves the
10 city money, 'cause it limits their liability. Has
11 that ever been discussed?

12 FIONA WATT: Can you rephrase the
13 question, please.

14 COUNCIL MEMBER IGNIZIO: Sure.

15 FIONA WATT: I'm sorry.

16 COUNCIL MEMBER IGNIZIO: Or re--
17 Sure, absolutely. Basically, reverse the process,
18 that if a City inspector comes in and rates 60 or
19 above, which was your criterion for which, that
20 repairs should be done, that homeowner can then go
21 out and solicit, even under your criterias, up to
22 \$1,817, your average, a tax credit so they can
23 get, they can go out and hire somebody
24 immediately. And they could fix that liability to
25 the city, and they could look at difficult

situation in front of their house that they don't want their neighbors to trip because they don't want their neighbors to trip, not because of liability. They can fix it, they can pay for it, and ultimately the city can reimburse them via a tax credit, such that they won't have the liability any more. Was that processes ever looked at?

FIONA WATT: Not to my knowledge, but it's an interesting idea, and we'll take it under advisement. Thank you.

COUNCIL MEMBER IGNIZIO: Well, I appreciate you taking what I say under advisement, because I don't believe the program is that which is being said here. Anybody who's had the history dealing with City agencies, vis-à-vis sidewalks, will tell you that DOT will come out and they say, "Well, that flat is free, but these 17 that don't look that good either, and you should replace them." So now they're afraid of partaking in, partaking in a program whereby the City has damaged their own property. So, I think there's a lot more here than, than what is being discussed of this shiny city on the hill of replacing

sidewalks for free. You know, everybody's parents have been told "Be careful what you get for, for free." I can tell you in my district, there is a whole host of issues where sidewalks are coming up, and people are fearful of calling them. And what happens is people take the law into their own hands, and they break their own sidewalks, and they cut their own roots, and ultimately that damages that trees, but that's what is ongoing. So, I wanted to throw that recommendation on the table. I wanted to see if we can continue with the dialogue of perhaps letting the homeowner be a part and parcel of a program whereby they can be proactive in making their neighborhood look nice, and not say "Well, wait for the City," which in many cases takes years. Thank you very much, Madam Chairwomen, and to my Chairman who is no longer here.

CHAIRPERSON SEARS: Thank you very much. Councilwoman Reyna, you have a question.

COUNCIL MEMBER REYNA: Thank you Madam Chair. I wanted to just get some clarification, and as far as Council member Ignizio's suggestion, I'd sign up today if that

legislation was proposed. Because I think it does bring into account a partnership, as opposed to the burden of getting a violation and not knowing what to do with it. I have a case in my district of a homeowner who came to us frantically because they received a violation, didn't know what to do with it. We interjected by calling Parks Department, thank god Parks Department immediately dealt with it. But then we were told by Parks Department that we would have to make sure the homeowner went back to DOT to get DOT to reevaluate the correction of what the violation was. And it just, you know, had we not, as a City Council office, assisted this homeowner, they would be in violation and wouldn't know how to navigate two city agencies. What is the reason why it's incumbent upon the homeowner to go back and forth between city agencies, as opposed to here's a violation, presented back to DO--to the Parks Department, and then letting the Parks Department fix it and get into communication with the DOT agency, Department of Transportation agency, to do whatever it takes necessary in order to then dismiss the violation.

2 FIONA WATT: Okay. If you want to
3 give me the details of that specific site, I can
4 look, look into that and try to explain to you.
5 But in general, we're, the violation is not a
6 Parks Department violation, that's a DOT
7 violation. And--

8 COUNCIL MEMBER REYNA: Right, I, I
9 get--

10 FIONA WATT: It's simply nothing,
11 we don't have anything to do with those
12 violations.

13 COUNCIL MEMBER REYNA: Right, but
14 it's almost as if the left hand is not speaking to
15 the right, so that, you know, we called you, your
16 department, and your department went in
17 immediately, deal with the issue, but then it's
18 incumbent upon homeowner to contact DOT. When we
19 could just have Parks Department call into DOT to
20 say "This is violation number X, Y and Z, this
21 problem has been dealt with, please see to it that
22 this violation is dismissed." Problem has been
23 corrected. That doesn't happen.

24 FIONA WATT: We've helped people
25 out, but it's not our violation, and the homeowner

2 has, needs to deal directly with the DOT. But
3 again, I'll be, I'll be happy to look into the
4 specifics of this occurrence, and try to map out
5 the process and explain what happened in this
6 specific case.

7 COUNCIL MEMBER REYNA: But the
8 process is understood. The problem is that the
9 process doesn't make sense. And so the process
10 could be streamlined so that it's between agencies
11 settling the correction rather than on the
12 homeowner, who would probably have to take perhaps
13 a workday in order to settle this, or--You know,
14 weeks before it's looked into as far as scheduling
15 and appointments, to reassess whether or not the
16 problem has been corrected. I'm just referring to
17 the process that exists once the correction has
18 been made, is incumbent upon the homeowner as
19 opposed to interagency interaction.

20 FIONA WATT: Right, I think know
21 what you're getting at. Only a fraction of our
22 sites have violations on them. If, if our program
23 when to sites where there were violations, that
24 might make sense, but most of our sites don't have
25 violations on them. At all. So we're, we're

2 talking literally about a fraction of the cases
3 that we address, that actually have violations.
4 And certainly violations that were only caused by
5 tree roots.

6 COUNCIL MEMBER REYNA: So there's
7 only a fraction of the case that I'm referring to,
8 in regards to City owned trees, where there is a
9 violation.

10 FIONA WATT: Yes.

11 COUNCIL MEMBER REYNA: And that's
12 based on your scoring system.

13 FIONA WATT: No, violations have
14 nothing to do with our scoring system.

15 COUNCIL MEMBER REYNA: Okay. So,
16 separate and aside from the violation that DOT
17 issues, DOT is referring to 311 complaints, or a
18 combination of, I know you're not DOT, so it's
19 difficult for you to answer, but just spare me if
20 you can, answering as knowledgeable as you are, as
21 far as the violation process, is it a complaint
22 driven violation through 311? Or is it an
23 assessment in combination with a complaint driven
24 process?

25 FIONA WATT: I really like can't

2 answer that question. DOT has an enormous
3 sidewalk repair program, and it, I'm not terribly
4 familiar with it.

5 COUNCIL MEMBER REYNA: And I'm just
6 referring to, trying to get clarification on that
7 part, because we can't be quick to say, you know,
8 the Parks Department has only a fraction of these
9 cases, if we really don't know whether or not,
10 where there is a city owned tree, has every city
11 owned tree site been assessed by DOT, to issue
12 necessary violations, so that we're dealing with
13 those types of circumstances.

14 FIONA WATT: We'll take your
15 question back to the Department of Transportation.

16 COUNCIL MEMBER REYNA: Okay, thank
17 you very much.

18 CHAIRPERSON LIU: Thank you. We
19 have que--I'm sorry.

20 CHAIRPERSON SEARS: We have also
21 been joined, we announce at this time, Councilman
22 Oliver Koppell from The Bronx, thank you for
23 joining us.

24 CHAIRPERSON LIU: And we have
25 follow up questions from Council member Dickens.

2 COUNCIL MEMBER DICKENS: Thank you.

3 Commissioner, you know, I realize that you're
4 trying to answer a lot of questions that are not
5 really under your purview, that would've been
6 better been answered by DOT, and I appreciate your
7 attending here. But you, you just made a
8 statement that it is not the problem of Parks with
9 these violations with DOT, is that what I
10 understand I heard.

11 FIONA WATT: No, not at all.

12 COUNCIL MEMBER DICKENS: Oh.

13 FIONA WATT: I don't believe I used
14 that word.

15 COUNCIL MEMBER DICKENS: Well,
16 what, what was it, 'cause you did say it was not
17 our problem, when being questioned by Council
18 member Reyna. So, I just want--

19 FIONA WATT: No, I don't think I--

20 COUNCIL MEMBER DICKENS: Because
21 see, I do see it as a dual problem.

22 FIONA WATT: Absolutely.

23 COUNCIL MEMBER DICKENS: Yeah.

24 FIONA WATT: And this is a, this is
25 a City issue, but if I misspoke, what I meant to

2 say is, is our program is not tied to their
3 violation program in any way. We're specifically
4 looking at calls to 311 about sites where
5 sidewalks have been raised by tree roots.

6 COUNCIL MEMBER DICKENS: Alright,
7 because--

8 FIONA WATT: And it's just not,
9 it's not related or tied to their violation
10 program. In fact, most of our sites don't have
11 existing violations on them.

12 COUNCIL MEMBER DICKENS: Alright,
13 because I just, I was just concerned, when I, what
14 I heard you say.

15 FIONA WATT: No, right.

16 COUNCIL MEMBER DICKENS: That it
17 was not, because it is a dual problem. Alright,
18 thank you.

19 CHAIRPERSON LIU: Thank you,
20 Council member Dickens. I will just make a few
21 statements about, about some of the questions that
22 my colleagues had asked about before. Questions
23 pertaining to Notices of Violations, and fines and
24 summonses. It's clear that when, when the DOT
25 inspects, they do issue Notices of Violations, and

in many cases people do receive fines. But the, the problem that we would like to address is the fact that not only does the DOT issue a Notice of Violation, and more likely than not, a fine, to a homeowner that has this kind of situation, as seen on the screen, but that if the, if the homeowner actually tried to do something with that tree, without the Parks Department, the Parks Department could come out and give that homeowner a Notice of Violation and fine as well. So, it's a double whammy on the homeowner, unless we address this at the City level. And as I alluded to before, I think, again, this is not a problem or an issue that just came up recently, it's been a longstanding problem that through various pieces of proposed legislation, I and other members of the council have tried to address. I think it's a good thing that the mayor in 2005 recognized that--recognized that this was somewhat unfair, and, and that's partly the reason why we have this Trees and Sidewalks Repair Program. But to answer the questions, I mean, people in some cases do still get the double whammy from the City. They're not able to do anything about the city

owned tree because that's a Parks Department jurisdiction; and then they get a Notice of Violation from the DOT. So, we, we hope to be able to work with the administration and the various departments involved to, to address that inequity, from the, from the perspective of homeowners. And I will close by saying that it is incumbent upon the City to manage this issue better. That, that the Law Department has, over the years, boasted of its ability and desire to rein in the cost to taxpayers of lawsuits. Here is a perfect example. The Parks Department is ready, willing and able to do more, it just lacks the funds. It, you're not, unfortunately, for the Parks Department, they're not able to give itself a budget allocation. So this has to go to a higher level in the administration, and let's save taxpayers' money from lawsuits and settlements by fully funding this program.

[pause]

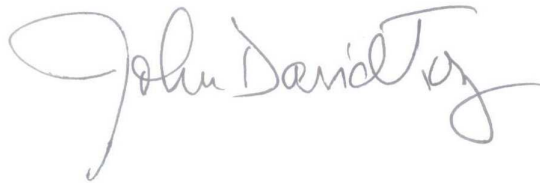
CHAIRPERSON SEARS: There being no further testimony, this meeting is now adjourned.

[gavel]

[background noise]

C E R T I F I C A T E

I, JOHN DAVID TONG certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "John David Tong". The signature is written in dark ink and is positioned above a horizontal line.

Signature _____

Date MARCH 20, 2009