

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
JOINTLY WITH THE COMMITTEE ON GOVERNMENTAL  
RELATIONS

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September 29, 2016  
Start: 9:40 a.m.  
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HELD AT: Council Chambers - City Hall

B E F O R E:

VINCENT J. GENTILE  
Chairperson  
BEN KALLOS  
Co-Chairperson

COUNCIL MEMBERS:

Inez E. Dickens  
Daniel Dromm  
Costa G. Constantinides  
Chaim M. Deutsch  
Rory I. Lancman  
Helen K. Rosenthal  
David G. Greenfield  
Mark Levine  
Carlos Menchaca  
Antonio Reynoso  
Ritchie J. Torres  
Joseph C. Borelli

## COUNCIL MEMBERS:

The Speaker (Council  
Member Mark-Viverito)

Daniel R. Garodnick

James G. Van Bramer

Margaret S. Chin

Andrew Cohen

Elizabeth S. Crowley

Brad S. Lander

Steven Matteo

## A P P E A R A N C E S (CONTINUED)

Anthony E. Shorris  
First Deputy Mayor  
New York City Law Department

Zachary Carter  
Corporation Counsel  
New York City Law Department

Lisette Camilo  
Commissioner of Department of Citywide  
Administrative Services

Mr. Cushman  
Attorney  
New York City Law Department

Gale Brewer  
Manhattan Borough President

Daniel Squadron  
Senator  
New York State Senate

Susan Stetzer  
District Manager  
Manhattan Community Board 3

K. Webster  
Member  
Neighbors to Save Rivington House and  
President  
Sara Roosevelt Park Community Coalition

## A P P E A R A N C E S (CONTINUED)

Tessa Huxley  
Member  
Neighbors to Save Rivington House and  
President of Limited Equity Cooperative

Aurora Guzman  
Community Resident

John West  
NYC Resident

Alice Blank  
Architect,  
Member of Community Board 1

Kevin Tobar Pesantez  
Senior Housing Advocate  
University Settlement

Thomas Devaney  
Director of Planning and Land use  
The Municipal Art Society of New York

2 [gavel]

3 CHAIRPERSON GENTILE: We'll begin this  
4 hearing, a joint hearing between the Committees of  
5 Governmental Operations and Oversight and  
6 Investigations.

7 Good morning to all of you and to my  
8 colleagues; I wanna thank the Chair of the  
9 Governmental Operations, Ben Kallos and his Committee  
10 members as well as my Committee members who will be  
11 coming in as the day goes on that are present and  
12 will be present for conducting this hearing with us.  
13 And I wanna thank Council Member Chin and Manhattan  
14 Borough President Gale Brewer for introducing this  
15 legislation we have before us today. I want to also  
16 welcome our Speaker, Melissa Mark-Viverito for  
17 joining us today.

18 So I wanna thank legal counsel, Josh  
19 Hanshaft and Kelly Taylor for all your hard work and  
20 the representatives from the departments that are  
21 present here today to testify.

22 In addition, I think we all wanna thank  
23 the Comptroller's Office and Department of  
24 Investigation for their investigative work, informing  
25 the basis for this hearing today.

3 I am Council Member Vincent Gentile,  
4 Chair of the Committee of Oversight and  
5 Investigations. We are gathered here today jointly  
6 with Chair Kallos and the Committee of Governmental  
7 Operations this morning to clarify what obviously  
8 went wrong with the Rivington House deed restriction  
9 removal process and to explore whether this incident  
10 is isolated or endemic to administrative matters in  
11 the city. In addition, we will hear Proposed Int.  
12 1182 to ensure that the best interests of the City  
13 and its people are kept at the forefront whenever  
14 deed restrictions are proposed to be lifted.

15 Today we will question those at City Hall  
16 and at relevant City agencies involved in the  
17 Rivington deed restriction removals that caused this  
18 process to go awry and discuss overall whether City  
19 management has gone awry. Trying to assign lines of  
20 responsibility in the removal of the deed  
21 restrictions at 45 Rivington Street is a little like  
22 playing the game of whack-a-mole; just when you think  
23 you've hit that line of responsibility it shifts and  
24 seems to move someplace else. Nevertheless, it is  
25 our job here, as best we can, to assign and determine

3 those lines of responsibility in order to determine,  
4 as best we can, what went wrong and why.

5 From a bird's eye view of this process,  
6 it seems like when each entity is viewed  
7 individually, whether it's DCAS, MOCS, Law  
8 Department, First Deputy Mayor, or other deputy  
9 mayors, all in some way tell you what they did,  
10 almost with blinders on, that led to the lifting of  
11 both restrictions on Rivington. It is almost as if  
12 each of these entities were all passengers on the  
13 same bus that was headed straight for lifting the  
14 deed restrictions but ignoring the stop signs, but  
15 the questions we have boil down to this -- who was  
16 driving that bus. Those questions and their answers  
17 is what we hope to shed light on today.

18 Indeed I believe we will hear testimony  
19 also that will show that the City agencies attempted  
20 to sidestep the surrounding community near Rivington  
21 by camouflaging information in their publications  
22 about this process.

23 Let's be clear about what we're doing  
24 here today; there are much more moving parts involved  
25 in the Rivington case than we will hear today, such  
as the deception foisted upon the City by Joel Landau

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3 and the Allure Group in lobbying for the deed  
4 restriction removals. While all of that is  
5 interesting and is part of the overall picture of  
6 Rivington, our role as the City Council today is to  
7 focus on the City process, the municipal inner  
8 workings of government and uncover and help remediate  
9 the issue at hand as well as the shortcomings, if  
10 found, in the administrative management of the city  
11 overall. That's our role, so let's get to it.

12 And with that I am going to introduce  
13 Chairman Ben Kallos, Chair of the Committee on  
14 Governmental Operations, who will give his opening  
15 statement and also set some ground rules for the  
16 hearing. Chairman Kallos.

17 CO-CHAIRPERSON KALLOS: Good morning and  
18 welcome to this joint hearing of the Committee on  
19 Governmental Operations and Oversight Investigation.  
20 We are joined by Speaker Melissa Mark-Viverito today,  
21 who initially called for this hearing.

22 I am Council Member Ben Kallos, Chair of  
23 the Committee on Governmental Operations; you can  
24 tweet me @BenKallos; you can also tweet the Council  
25 @NYCCouncil and participate in the conversation  
around today's hearing.



3 What we're discussing today is what  
4 failures led to loss of the community health facility  
5 for HIV and AIDS patients in favor of luxury condos.  
6 The Department of Investigation and the Comptroller's  
7 Office completed investigations; there are ongoing  
8 investigations by the New York State Attorney General  
9 and the U.S. Attorney's Office. Since DOI's report  
10 contained redacted materials and the Comptroller's  
11 report made reference to but did not include  
12 supporting documentation, there's still much to learn  
13 about the decision-making process, or lack thereof,  
14 that led to this outcome, the role of outside  
15 influences and internal processes. This is an  
16 opportunity to provide those watching, listening and  
17 reading the transcripts of this hearing with a deeper  
18 level and unprecedented transparency and greater  
19 knowledge into the decision-making and the inner  
20 workings of City Hall.

21 The top focus of my time as Chair of the  
22 Committee on Governmental Operations have been  
23 effective management of the City; in two hearings the  
24 Committee has examined the data contained in the PMMR  
25 and MMR, the Mayor's Management Report, to evaluate  
agency performance; those watching the PMMR/MMR

3 hearings remember the concerns raised by this  
4 Committee that there were structural deficiencies in  
5 the MMR that may have pointed to larger systemic  
6 mismanagement of the City. After viewing all the  
7 reports, the e-mails; transcripts of the interviews,  
8 it appears those concerns were all granted and that  
9 at the heart of the Rivington issue was mismanagement  
10 that spanned across several agencies. Three agencies  
11 played a role in the deed restrictions process, as  
12 well as a notable involvement of City Hall, led by  
13 First Deputy Mayor Tony Shorris. The result was a  
14 community loss, a health facility, and the City  
15 received \$16 million for a property that sold for  
16 \$116 million, a loss to the City of New York of \$100  
17 million in addition to those beds. Something went  
18 very wrong here and we must address the issues of  
19 mismanagement, indecision, communications failure,  
20 outside influence, and what we can salvage from this  
21 mess to improve things moving forward.

22 I'd like to thank my Co-Chair for this  
23 hearing, Council Member Vinnie Gentile, who we've  
24 worked with closely in preparing for today's hearing,  
25 Speaker Melissa Mark-Viverito, as well as the staff  
who did tremendous amounts of work reviewing

3 thousands and thousands of documents in preparation  
4 for this hearing -- Rob Newman, Kelly Taylor, Brad  
5 Reid, Josh Hanshaft, as well as many others who put  
6 time and overtime.

7 I'd like to recognize members of the  
8 Committee on Governmental Operations who have joined  
9 us -- Joseph Borelli, Carlos Menchaca; Antonio  
10 Reynoso.

11 I'd also like to go over some ground  
12 rules for today. First Deputy Mayor Shorris, you may  
13 make a 10-minute opening statement on behalf of the  
14 Administration; no other opening statements will be  
15 taken from members of the Administration. In the  
16 interest of time, council members will have five  
17 minutes for questions and answers in the first round;  
18 followed by three minutes in the second round. We  
19 have First Deputy Mayor Tony Shorris here for roughly  
20 two and a half hours, so while he is on the panel  
21 questions will be limited to him only. Questions for  
22 members of the Administration with [sic] other  
23 members must wait until we excuse First Deputy Mayor  
24 Shorris and other members of the Administration are  
25 directed not to answer questions until we have

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3 finished the questioning of First Deputy Mayor  
4 Shorris.

5 And with that I'd like to turn it over to  
6 Speaker Melissa Mark-Viverito.

7 SPEAKER MARK-VIVERITO: Thank you to  
8 Chair Kallos, to Chair Gentile; to all my colleagues  
9 that are here; I really wanna thank you for joining  
10 us today and to members of the Administration, First  
11 Deputy Mayor and the other members of the  
12 Administration.

13 I'm gonna be very brief, 'cause I think  
14 both Chairs have really laid out what we are looking  
15 to get at here today, but this City Council has  
16 oversight responsibilities which we take very  
17 seriously; we've had many oversight hearings on a  
18 variety of issues, including homelessness, policing,  
19 Sandy recovery; today we continue that work on a  
20 particular important topic. This hearing gets to the  
21 root causes of why we hold hearings like this in the  
22 first place. It's critical that we understand and  
23 get to the bottom of what happened when this deed  
24 restriction was lifted. We also need to understand  
25 the process which took place for that to happen --  
What were the breakdowns? What flags should have

3 been raised? What should have been done differently?

4 These are some of the questions we'd like to get  
5 answers today from the Administration.

6 I will turn to the Chairs in a moment;  
7 first I want to thank the staff for all of their hard  
8 work in preparing for this hearing. As Chair Kallos  
9 indicated, we reviewed thousands of documents and  
10 logging thousands of them to create a detailed  
11 catalog of hundreds of events involving this event,  
12 so I really wanna thank the staff, all of whom have  
13 been named and thanked here as well, staff from the  
14 Council's Legislative Division, from the Land Use  
15 Division, from the General Counsel's Office, the IT  
16 Division, and the Speaker's Office all worked with  
17 the Chairs to help make this hearing possible. In  
18 all, more than two dozen staffers have been focused  
19 on this and have put in hundreds of hours of work, so  
20 I really wanna thank them and I wanna obviously join  
21 with the Chairs as they thank the staff. So again,  
22 we are taking this very seriously and we thank all of  
23 you for attending and I'll hand it right back to the  
24 Chairs.

25 CHAIRPERSON GENTILE: Thank you, Madam  
Speaker.

2 Just before we hear from the sponsor of  
3 our bill, I do wanna mention the members of my  
4 Committee that are here now -- Councilman Danny  
5 Dromm, from Queens and also from Queens, Councilman  
6 Costa Constantinides. We also have with us members  
7 of the Council who are not necessarily members of  
8 either Committee -- Dan Garodnick, Councilman Jimmy  
9 Van Bramer, Councilman Antonio Reynoso, Councilman  
10 Borelli, Councilwoman Elizabeth Crowley, and I think  
11 that's it, I think we got everybody.

12 CO-CHAIRPERSON KALLOS: We've also been  
13 joined by Governmental Operations Committee Member  
14 Mark Levine.

15 CHAIRPERSON GENTILE: Oh Mark Levine.  
16 Very good you saw that. Thank you. Okay. And now  
17 we'll hear a few words from our sponsor of our bill,  
18 one of the sponsors of the bill, Council Member  
19 Margaret Chin.

20 COUNCIL MEMBER CHIN: Good morning.  
21 Thank you, Chair.

22 Before I discuss my legislation to  
23 increase transparency regarding deed restrictions in  
24 the wake of the sale of Rivington House, I think a  
25 quick history lesson is in order.

3 In 1992, when Rivington House opened its  
4 doors to people living with HIV/AIDS, things were  
5 much different in our city; antiviral drugs that  
6 would extend people's lives for decades didn't exist  
7 yet; instead there was stigma, fear and  
8 misinformation about a deadly virus that had already  
9 claimed tens of thousands of lives in the United  
10 States. Consequently, healthcare providers at the  
11 time were hard-pressed to find a neighborhood to care  
12 and shelter those with the disease; that is until  
13 they found the Lower East Side. At a time when  
14 hardly any other neighborhood wanted them, the  
15 residents of the Lower East Side welcomed the people  
16 with HIV/AIDS at Rivington House with open arms;  
17 neighbors helped residents plant a garden; people  
18 would greet each other in the street by name;  
19 relationships formed that would last long after a  
20 resident moved or were cut short when a resident  
21 passed away. Rivington house was an integral part of  
22 the community which was made that much richer by the  
23 dignity and the courage of those struggling to  
24 survive at the height of the AIDS epidemic and for  
25 years after. The hope was that the Allure Group,  
after buying the facility in 2015 after the last

3 hospice resident of Rivington House moved out, would  
4 keep that sense of community alive as a nursing home  
5 for older adults; as we all know, that was not meant  
6 to be. No hearing will ever sway the loss of such a  
7 place as this. Although I will not give up the  
8 pursuit of Rivington House being returned to the  
9 community use, it is my hope that after this hearing  
10 we will have a better understanding about how City  
11 Hall could have let this happen and take steps to  
12 prevent this from ever happening again.

13 One of those steps would be to support  
14 Int. 1182, which I introduced with Manhattan Borough  
15 President Gale Brewer to increase transparency and  
16 accountability for properties with deed restrictions.  
17 This bill would create a searchable database of  
18 properties with deed restrictions imposed by the  
19 City, allowing community members and elected  
20 officials to identify and monitor properties in their  
21 neighborhoods with deed restrictions, like Rivington  
22 House in my district. The legislation will also  
23 require the City to hold public hearings when  
24 considering lifting any deed restriction protecting  
25 the public interest.



2 I want to thank Chair Kallos and Chair  
3 Gentile for holding this important hearing; I look  
4 forward to hearing from the Administration and from  
5 concerned members of the public, not only from my  
6 district, in the Lower East Side, but across the  
7 city. Thank you.

8 CHAIRPERSON GENTILE: Thank you, Council  
9 Member Chin. And at this point we will have our  
10 counsel swear in our witnesses and then, First Deputy  
11 Mayor Shorris, you can begin with your opening  
12 statement.

13 COMMITTEE COUNSEL: Will you please raise  
14 your right hand? [background comments] Do you affirm  
15 to tell the truth, the whole truth and nothing but  
16 the truth in your testimony before the Committee  
17 today and to respond honestly to council member  
18 questions? Thank you.

19 CHAIRPERSON GENTILE: You may begin.

20 FIRST DEPUTY MAYOR SHORRIS: Thank you.

21 First, I'd like to offer my thanks to the  
22 Speaker, to Chair Gentile, Chair Kallos, and all the  
23 members of the Council for this opportunity to  
24 testify before you. My name is Anthony Shorris; I am  
25 the First Deputy Mayor of the City of New York.

3 Joining me at the table are the Corporation Counsel  
4 for the City, Zachary Carter, and the Commissioner of  
5 the Department of Citywide Administrative Services,  
6 Lisette Camilo. I'm here today obviously to discuss  
7 the Rivington matter, specifically what transpired  
8 from my point of view.

9 Before going through my own perspective  
10 on what happened, I want to state from the outset  
11 that I recognize that what happened here was not the  
12 right outcome for the community, for the taxpayers,  
13 and nor was it consistent with the policy goals and  
14 values of the de Blasio Administration. As I've  
15 noted, the city lost nursing home beds we should have  
16 preserved, and perhaps other public benefit uses as  
17 well. Being effectively the chief operating officer  
18 of the Administration, this outcome is one for which  
19 I am ultimately accountable. All I can say is I am  
20 very disappointed in what happened.

21 When a failure to achieve the stated  
22 policy objectives of the Administration occurs in  
23 government -- indeed, in any of the large  
24 organizations I have managed -- my first goal has  
25 always been to try and rectify what happened as much  
as possible, and my second goal is to do everything I

3 can to prevent it from ever reoccurring. In terms of  
4 making an effort to rectify the mistake that occurred  
5 here, I believe we've made some progress. I am  
6 pleased to announce that we've worked and had recent  
7 conversations with Council Member Chin and Manhattan  
8 Borough President Brewer and have identified a site  
9 where we will build affordable senior housing and  
10 assisted living units that will replace the bulk of  
11 what was lost at Rivington House. Funding for the  
12 project will be the \$16 million that the City  
13 received as part of the lifting of the deed  
14 restrictions and which the Mayor committed would go  
15 back to the community to address the gap created.  
16 While further design work needs to be done, and a  
17 number of State and local approvals need to be put in  
18 place, including gland use actions, I believe this is  
19 an important step in rectifying part of what happened  
20 here.

21 But we clearly need to do more -- we need  
22 to ensure, as several members have raised, that this  
23 kind of thing cannot reoccur and based on the changes  
24 we're putting into place, based on the legislation  
25 the Council has proposed and that we will discuss  
further, I'm very confident today in saying this kind

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3 of failure in execution will not happen again. As I  
4 look back on the events of the past two and a half  
5 years related to Rivington, there are some clear  
6 lessons I've learned and which I wanna share with  
7 members of the Council. In the end, while nursing  
8 home beds on this site were lost, and perhaps revenue  
9 to the City as well, I hope all of us in the  
10 Administration will have learned enough to make the  
11 government stronger and smarter.

12 I'll start at the beginning of my own  
13 involvement with the matter, but first, just a couple  
14 of points of background I'd like to offer which I'm  
15 sure are familiar to the Committee members, but which  
16 may be helpful for the general public. Prior to the  
17 change of administration in 2014, the removal or  
18 modification of deed restrictions from properties  
19 originally purchased from the City was not a matter  
20 that typical received senior level attention at the  
21 City Hall or before. Since the early 1990s, the  
22 City's policy was to permit the lifting of any public  
23 benefit deed restriction from properties purchased  
24 from the City which had been held by the purchaser  
25 for 10 years or more where the original purpose of  
the restriction had been satisfied. The only

3 condition was the payment of a fee -- specifically,  
4 25% of the current appraised value of the property.

5 There was no requirement that an alternative public  
6 benefit use for the property need be considered.

7 That was the formal policy administered by the Asset  
8 Management Section of the Department of Citywide  
9 Administrative Services.

10 With the change of administration in  
11 January 2014, a high priority was placed on  
12 identifying real estate within the city for  
13 development as affordable or supportive housing or  
14 for other public benefit uses. However, in contrast  
15 to the formal protocol that governed the lifting of  
16 deed restrictions from formerly City-owned properties  
17 in exchange for a fee, there was no formal mechanism  
18 that ensured that alternative public benefit uses  
19 would be considered or mandated, and moreover, with  
20 respect to the specific use at issue with Rivington  
21 -- the continued operation as a nonprofit healthcare  
22 facility -- the City government has virtually no  
23 formal regulatory role when it comes to nursing homes  
24 -- every aspect of their regulation is handled by New  
25 York State, other than building and fire code.

3 Proposals to reduce the number of beds in  
4 any healthcare facility -- or close such a facility  
5 entirely -- require approval by the New York State  
6 Department of Health and the Public Health and  
7 Planning Council. As I'm sure many members of the  
8 Council are aware, the Rivington matter is currently  
9 under review, as noted, by the Office of the New York  
10 State Attorney General because questions have been  
11 raised as to the process for decertifying these beds  
12 and whether the operator was duplicitous with the  
13 State and the City when applying for permission to  
14 decertify. We await the results of that review and  
15 what course of action the City may have as a result.

16 I say all this not by way of excuse --  
17 much of what happened here is clearly the City's  
18 responsibility, ours and ours alone -- but by way of  
19 acknowledging that our governmental structure here is  
20 limited: the City has no agency focused on nursing  
21 homes, no staff units dedicated to these issues; no  
22 specific coverage of nursing home issues at City  
23 Hall.

24 The issue of Rivington came to my  
25 attention in mid 2014 when staff informed me that a  
nonprofit nursing home operator running an HIV

3 facility was suffering significant losses and was at  
4 risk of going bankrupt. Without knowing details of  
5 the situation, I new enough from my health care  
6 background not to be surprised, since as the council  
7 member mentioned, HIV care has improved enough over  
8 the years that in-patient beds and specialized  
9 housing were becoming less commonly used as care  
10 moved to more ambulatory and even home-based  
11 settings. We initially demurred from allowing any  
12 changes to the use of the site that summer.

13 In the fall of 2014, after the operator  
14 reported continued financial stress and the risk of  
15 bankruptcy continued to loom, we began to explore  
16 what options there might be for the nursing home  
17 located at Rivington Street. As I usually do, I  
18 asked the staff to look at a number of options for  
19 the facility, ranging from doing nothing, allowing  
20 VillageCare to sell the site for the highest prices,  
21 trying to turn it into an affordable or supportive  
22 housing site, or working to find another nursing home  
23 operator.

24 Again, it's worth pointing out that deed  
25 restrictions in any form generally did not rise to  
the level of City Hall review either before or after

3 that time until this issue arose -- and as noted,  
4 that's been my understanding was the case for many  
5 years. This one came to our attention only because  
6 of its scale, its potential impact on the community,  
7 and on the delivery of services for a vulnerable  
8 population -- not because it was a deed restriction  
9 per se.

10 My focus at the time was on the best use  
11 for the building -- what would best reflect the need  
12 for the community and the city -- not on the specific  
13 legal transaction that would facilitate that aim. I  
14 do not believe and did not believe that earning the  
15 most money for the City Treasury was the sole policy  
16 objective here, but rather that addressing the larger  
17 policy goals of the Administration should be our  
18 central objective. That has been the approach of  
19 this Administration generally and certainly here --  
20 and as I noted earlier, this differs from the  
21 guidelines and practices that had been in place for  
22 decades.

23 It was also reported to me at the time  
24 that there was a clear community preference for a  
25 kind of nursing home use at the site and we wanted to  
ensure that was a consideration in our thinking as



3 well, and around that time we also hear from the  
4 union representing the workers there that they were  
5 concerned about the workers' jobs -- something that  
6 came as no surprise given their traditional role.

7 My own sense, after looking over all the  
8 options, was that a nursing home type use remained  
9 the best one for the building, given the city's needs  
10 for such beds, the community's preference for such a  
11 use and the benefit of preserving many decently-  
12 paying jobs. I was informed at the time that an  
13 existing deed restriction on the site limited its use  
14 to a nonprofit healthcare, nursing home-like use.  
15 Despite my general preference for nonprofit health  
16 care operators, I did agree that we should remove  
17 that restriction if necessary and allow a for-profit  
18 nursing home operator since that would open up the  
19 potential for other nursing homes to maintain the  
20 site as an active nursing home. So that was the  
21 outcome I wanted: a continued nursing home-like use  
22 for the site.

23 I believe the Mayor has since made clear  
24 that would also have been the outcome he would have  
25 preferred, though I didn't discuss the matter with  
him at the time since I thought the policy outcome

3 here was pretty obvious and our job was simply to  
4 make it happen. That was not the outcome we got, and  
5 that is one of the failures in the process that needs  
6 to be corrected.

7 Once we decided that was the preferred  
8 use for the site, and I believed this decision was  
9 passed along to the agency, I moved on to other  
10 matters and did not address the Rivington issue again  
11 until it became a public matter in late February of  
12 this year. As far as I was concerned, the matter was  
13 settled: we wanted a continued nursing home use, even  
14 if by a for-profit nursing home operator, such a use  
15 would require some legal action regarding the  
16 property, and that was the end of the matter.

17 As I noted, whether the operator that  
18 took over from VillageCare was forthcoming in his  
19 plans for the site or was instead manipulating the  
20 process for his own advantage is the subject of  
21 continuing investigation. All I can say is the City  
22 certainly had no reason at the time to expect  
23 duplicitous behavior.

24 There has been some discussion of  
25 correspondence I received on this matter in the  
months after, so let me address that as directly as I

3 can. When I started as First Deputy Mayor in January  
4 2014, I asked that agency heads send us brief weekly  
5 reports. These reports [bell] -- usually as  
6 attachments to e-mail -- [interpose]

7 CHAIRPERSON GENTILE: If you can wrap up.

8 [background comments]

9 FIRST DEPUTY MAYOR SHORRIS: Sorry?

10 CHAIRPERSON GENTILE: If you can wrap up,  
11 because your time has expired, but you can wrap up.

12 FIRST DEPUTY MAYOR SHORRIS: I would just  
13 love to finish the statement if I could.

14 These reports usually came as attachments  
15 to e-mails, about 40 agencies a week. The reports  
16 were not designed to be vehicles to raise important  
17 or urgent issues -- for those matters, agency heads  
18 would simply call me, send me e-mails or report on  
19 them in weekly meetings. Instead, they were designed  
20 to give me and my staff a general idea of other  
21 activities the agencies had undertaken in the prior  
22 week or month. While I initially tried to read every  
23 one of these reports every week, over the course of  
24 time it became clear it would be a better use of my  
25 time to regularly review a sampling of the reports.

3 I don't recall whether I read the  
4 specific DCAS weekly reports where there was some  
5 mention of this matter, but having reviewed them more  
6 recently, it was clear to me that nothing in them  
7 would have flagged the issue for me concerning the  
8 future of Rivington House. The language in the very  
9 brief mentions of the matter -- reporting that deed  
10 restrictions were being removed and the owner  
11 expected a nursing use to continue -- would only have  
12 reinforced my understanding that the matter was  
13 progressing as planned. These reports arrived eight  
14 to twelve months after my last engagement with the  
15 issue.

16 At no time did anyone write, call, meet  
17 or discuss with me the notion that the actions being  
18 taken by the agency would allow the property to be  
19 converted to luxury housing. And as I'm sure is  
20 clear, any such report would certainly have gotten my  
21 attention, as it would've been directly contrary to  
22 what I wanted to have happened. Instead, reading  
23 such language in an attachment to a weekly e-mail  
24 would merely have confirmed what I would expect that  
25 would've happened -- a change to the deed restriction  
to enable a nursing home use.

3 I did not discuss Rivington again until  
4 February 2016, when the new Commissioner, Lisette  
5 Camilo, reported to me that the site had been sold to  
6 a luxury housing developer for in excess of \$100  
7 million. Knowing this was exactly what I did not  
8 want to happen, I directed Lisette to immediately  
9 contact the Department of Investigation, and given  
10 how concerned I was and just to make sure, I  
11 personally called the Commissioner of Investigation  
12 and expressed my belief that this matter demanded a  
13 full review. I spent the next few days trying to  
14 understand what transpired and then informed the  
15 Mayor as news accounts were beginning to run -- the  
16 first time he had any awareness to this issue.

17 We immediately froze all actions on deed  
18 restrictions and began drafting the first executive  
19 order on deed restrictions, designed to create more  
20 transparency and a better process, one the Mayor  
21 signed shortly after being briefed. From there on,  
22 the rest of the story is quite public.

23 I have fully cooperated with all of the  
24 reviews being undertaken on the matter, including  
25 sitting for many hours for the interviews of the  
Department of Investigation and the City Comptroller.

3 As I mentioned at the outset of my comments, when a  
4 failure has occurred in the administration of  
5 government, it's my job to find out ways to rectify  
6 it where possible and prevent its reoccurrence. We  
7 have taken what actions we can to rectify the matter.  
8 We've committed all \$16 million that the City gained  
9 to be reinvested in the community to create beds that  
10 would support those in need.

11 We have identified a potential site that  
12 would allow for the creation of housing and assisted  
13 living for seniors that would replace the bulk of the  
14 beds lost at Rivington House.

15 But given our goals of ensuring this  
16 cannot reoccur, let me share what lessons I've  
17 learned from this, and with the hope that it might  
18 prove helpful to the Council as you deliberate  
19 further on the matter.

20 First, this obscure process of amending  
21 or removing deed restrictions on DCAS properties, one  
22 that had been going on for many years with little  
23 engagement from City Hall or the public, needs to be  
24 come much more transparent since that's the best  
25 protection against error or worse. That's the reason  
we drafted rules some weeks ago which have now

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3 entered the formal public review process and that  
4 will ensure no seemingly nondescript action like this  
5 can go unnoticed.

6 CO-CHAIRPERSON KALLOS: Excuse me, First  
7 Deputy Mayor...

8 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

9 CO-CHAIRPERSON KALLOS: I think where  
10 you're going is a lesson... a lot of that's already  
11 public information; if there is any specific item  
12 you'd like to add, and wrap up in the next minute.

13 FIRST DEPUTY MAYOR SHORRIS: Well then  
14 let me conclude where I began. What happened here  
15 was clearly the wrong outcome for the Administration,  
16 the community and the City, and when the process of  
17 government does not deliver the results we want,  
18 results the community, the City and the Mayor want; I  
19 am accountable for that, and I accept we must do  
20 better.

21 At least two exhaustive reviews of the  
22 matter have been completed, including hundreds of  
23 hours of interviews and a review of tens of thousands  
24 of pages of documents. If any untoward behavior  
25 occurred by anyone, it should of course be pursued  
vigorously and I have every confidence it will.

3 But even if this is what it appears to be  
4 -- the deceitful manipulation of City and State  
5 procedures by a for-profit-seeking entity taking  
6 advantage of gaps in our processes -- it is our  
7 responsibility to act; it is our job and mine, in  
8 particular, in the Administration, to understand what  
9 went wrong, to rectify it and ensure it cannot  
10 reoccur. Through the changes we are putting in  
11 place, I am confident this cannot happen again; that  
12 is my commitment to this Council as it has been to my  
13 Mayor. I look forward to your thoughts and questions  
14 [bell] and I thank you for your patience.

15 CHAIRPERSON GENTILE: Thank you,  
16 Mr. Deputy Mayor.

17 CO-CHAIRPERSON KALLOS: Just want to  
18 acknowledge we've been joined by Council Member David  
19 Greenfield, a member of the Governmental Operations  
20 Committee.

21 CHAIRPERSON GENTILE: We will...  
22 [background comment]... yeah... We will begin questioning  
23 with our Speaker. [background comment] You want me  
24 to go first? [background comment] Oh, okay. Great.

25 What we'll do is... [background comments]  
We'll... Councilman Kallos and I, as the two Chairs,



3 will discuss some snippets of the -- there's so much  
4 here; we're gonna take back and forth some snippets  
5 of the questioning and then the Speaker will --  
6 whenever she wants to -- will get the chance to  
7 question you and then we'll open it up to the other  
8 members, and as you can see, we have a lot of  
9 members, so we ask you, First Deputy Mayor, to be  
10 succinct in your answers and if necessary, we'll have  
11 to try to tell you to be succinct, because we have a  
12 lot of questions and certainly a lot of members who  
13 have questions.

14 So let me just begin by asking you that  
15 -- you said in your opening that at no time did  
16 anyone write, call, meet, or discuss with you the  
17 notion of conversion to luxury housing. When you say  
18 no one wrote to you; isn't an e-mail, more than one  
19 e-mail, to your City account not a writing to you?

20 FIRST DEPUTY MAYOR SHORRIS: The e-mails  
21 that you're referring to, Council Member, that came  
22 attached -- the weekly reports that I referred to in  
23 there -- did make reference to the removal of deed  
24 restrictions... [interpose]

25 CHAIRPERSON GENTILE: And luxury housing.

2 FIRST DEPUTY MAYOR SHORRIS: It's not my  
3 recollection they referred to luxury housing; they  
4 did cite that they would be lifting the deed  
5 restrictions, both on health care and on nonprofit  
6 use; they did come eight -- whatever, seven, eight  
7 months, a year after my last interaction on the  
8 matter. While I don't recall specifically reading  
9 those e-mails, as I mentioned in my testimony, my  
10 belief is, had I looked at them even at the time, and  
11 as I mentioned, I generally only looked at samples of  
12 the weekly reports, that would not have flagged for  
13 me the notion explicitly that it would have become  
14 luxury housing or any other use. In fact the first  
15 of those e-mails specifically notes the expectation  
16 that it would continue as a nursing home, and so had  
17 I read that, again, eight months after my last  
18 conversation about it, I probably would've said to  
19 myself, that's a nursing home; that's what we wanted.

20 CHAIRPERSON GENTILE: So it would not  
21 have -- even had you read it, it wouldn't have raised  
22 any red flags to you?

23 FIRST DEPUTY MAYOR SHORRIS: Again, it's  
24 a little bit uncertain in my mind what my reaction  
25 would have been, but reading them now, that first

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3 e-mail -- I believe in May or so, six to eight months  
4 after our last conversation on it -- made reference  
5 to the use of the property as a nursing home; that  
6 would only have confirmed, and whether I would have  
7 had the insight to recognize one, two different deed  
8 restrictions at the time, the process here was a  
9 flawed process and the reason we... [interpose]

10 CHAIRPERSON GENTILE: Okay.

11 FIRST DEPUTY MAYOR SHORRIS: can't rely  
12 on it is that it yields results like this.

13 CHAIRPERSON GENTILE: This issue on the  
14 memos and what you read; what you didn't will come up  
15 over and over again... [interpose]

16 FIRST DEPUTY MAYOR SHORRIS: Sure.

17 CHAIRPERSON GENTILE: and there will be  
18 other members that will go to it, so I'll leave it at  
19 that point and we'll come back to it over and over  
20 again.

21 Let me just ask you; what made you get  
22 involved with this matter? You said it wasn't...  
23 you've said in your interviews that it wasn't a top-  
24 tier issue; what made you get involved in this  
25 matter?

2 FIRST DEPUTY MAYOR SHORRIS: Deed  
3 restrictions themselves, not an issue of our focus;  
4 as I mentioned, those are not matters that generally  
5 came to City Hall, so it wasn't the deed restriction  
6 issue that was subject of our focus; it was the loss  
7 of a facility, the risk of the loss of the facility  
8 and the bankruptcy of a nonprofit institution that,  
9 from my understanding, provided good services and  
10 would've also meant the loss of an important  
11 community facility as well as some jobs.

12 CHAIRPERSON GENTILE: And you said the  
13 loss of jobs; right...? [crosstalk]

14 FIRST DEPUTY MAYOR SHORRIS: As well,  
15 also a factor... [crosstalk]

16 CHAIRPERSON GENTILE: Okay. So let's  
17 focus on the loss of jobs for a minute...

18 FIRST DEPUTY MAYOR SHORRIS: Sure.

19 CHAIRPERSON GENTILE: and those jobs were  
20 represented by Local 1199 and you over the years have  
21 had a good relationship, a close relationship with  
22 Local 1199; am I correct about that, right?

23 FIRST DEPUTY MAYOR SHORRIS: I consulted  
24 for a time with the Taft-Hartley Fund that is  
25 hospital run and 1199 jointly run fund; that was my

2 relationship with the union; I [inaudible]...

3 [crosstalk]

4 CHAIRPERSON GENTILE: And when you were  
5 at Healthfirst you actually dealt with them quite  
6 often, correct?

7 FIRST DEPUTY MAYOR SHORRIS: At  
8 Healthfirst, that's where we began our relationship...

9 [interpose]

10 CHAIRPERSON GENTILE: Okay. Okay.

11 FIRST DEPUTY MAYOR SHORRIS: at  
12 Healthfirst. Yes.

13 CHAIRPERSON GENTILE: So at some point  
14 did you learn of their intense lobbying for  
15 VillageCare to be saved?

16 FIRST DEPUTY MAYOR SHORRIS: I was not  
17 aware of intense lobbying; I did have a meeting with  
18 them where they expressed their concern about the  
19 loss of jobs -- that was not a surprise to me the  
20 loss of 300 jobs would be something they would be  
21 focused on... [crosstalk]

22 CHAIRPERSON GENTILE: Well if you look at  
23 your... if you review the e-mails from your chief of  
24 staff, there were repeated e-mails in which he refers

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2 to the 1199 pension issue, particularly, but you  
3 aren't aware of those?

4 FIRST DEPUTY MAYOR SHORRIS: Not of the  
5 pension issue per se; it's probably related

6 **[inaudible]** jobs... [crosstalk]

7 CHAIRPERSON GENTILE: When did you first  
8 learn that VillageCare had a pension liability issue  
9 with 1199?

10 FIRST DEPUTY MAYOR SHORRIS: I don't  
11 recall focusing on their pension liability issue; I  
12 did on the loss of jobs.

13 CHAIRPERSON GENTILE: You never came to  
14 know about the pension liability issue?

15 FIRST DEPUTY MAYOR SHORRIS: I've read in  
16 retrospect that that was raised, but it wasn't the  
17 focus of my attention.

18 CHAIRPERSON GENTILE: Did you know the  
19 amount of the debt to VillageCare?

20 FIRST DEPUTY MAYOR SHORRIS: I do not.

21 CHAIRPERSON GENTILE: Did not? But you  
22 know today of what it cost... [crosstalk]

23 FIRST DEPUTY MAYOR SHORRIS: Actually, I  
24 do not.

25

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3 CHAIRPERSON GENTILE: Do you know --  
4 whether then or now -- whether 1199 was seeking  
5 anything from VillageCare or the City other than to  
6 fulfill its monetary obligation?

7 FIRST DEPUTY MAYOR SHORRIS: My  
8 recollection of my conversations with them was a  
9 concern about the loss of the facility and then loss  
10 of the jobs that would ensue.

11 CHAIRPERSON GENTILE: That you  
12 understand?

13 FIRST DEPUTY MAYOR SHORRIS: That is my  
14 recollection of my conversations.

15 CHAIRPERSON GENTILE: Okay. And again,  
16 did you discuss this with your chief of staff, who  
17 repeatedly, repeatedly mentioned 1199 as an issue in  
18 the e-mails that he was sending?

19 FIRST DEPUTY MAYOR SHORRIS: I am sure I  
20 did; I discussed lots of matters with my chief of  
21 staff at the time; I don't remember those specific  
22 conversations, but I do recall my conversation on the  
23 matter of the loss of jobs and that was a factor in  
24 our thinking about the future of the site.

25 CHAIRPERSON GENTILE: Were you concerned  
about jobs generally or specifically 1199 jobs?

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2 FIRST DEPUTY MAYOR SHORRIS: No, I'm  
3 always concerned about the loss of jobs in any  
4 facility that would employ people with good benefits  
5 and decent jobs for folks; that's part of our agenda  
6 is increasing the number of those opportunities.

7 CHAIRPERSON GENTILE: Well in a chart  
8 that was produced by HRA, listing the options, the  
9 site use options -- and I think you testified in your  
10 interviews with the Comptroller that you at some  
11 point reviewed it -- it talks extensively about 1199,  
12 about the potential to employ 1199 staff and cover a  
13 portion of the pension costs as one of the benefits  
14 for having a for-profit nursing home. One of the  
15 benefits was to cover a portion of the pension costs.  
16 So... [interpose]

17 FIRST DEPUTY MAYOR SHORRIS: Right, that  
18 may...

19 CHAIRPERSON GENTILE: that was a subject  
20 of discussion among [background comment] you or among  
21 those at the city level... [crosstalk]

22 FIRST DEPUTY MAYOR SHORRIS: It may well  
23 have been a discussion among the staff; my focus was,  
24 as I mentioned, on the loss of the jobs and I was --  
25 it was not the sole factor, as I mentioned, there



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3 were three or four factors in my thinking; that was  
4 among them.

5 CHAIRPERSON GENTILE: And one of the  
6 drawbacks on that chart, the options, one of the  
7 drawbacks was that no 1199 jobs saved and pensions  
8 would still be addressed. So it seems clear that  
9 that was a major topic of discussion.

10 FIRST DEPUTY MAYOR SHORRIS: It may well  
11 have been among the staff and I'm sure it's, as you  
12 mentioned, one of the factors listed on one of the  
13 many charts we looked at trying to think about what  
14 the issue would be, and it was a factor -- the loss  
15 of jobs was a factor in my thinking on the matter.

16 CHAIRPERSON GENTILE: And I'm showing  
17 here an e-mail from your assistant, Sarah Samis, to  
18 you on September 3rd in which she gives the options  
19 again and repeatedly talks about the need to cover  
20 some pension costs, covering the remaining pension,  
21 1199 -- now this was directly to you.

22 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.  
23 Yes.

24 CHAIRPERSON GENTILE: So what in any way,  
25 given what we just talked about, did it figure into  
your discussions, an analysis that ultimately led to

3 your judgment about what should happen with this  
4 property?

5 FIRST DEPUTY MAYOR SHORRIS: Well as I  
6 mentioned in my statement, Council Member, there were  
7 several factors that influenced my thinking; one of  
8 them was there was a report to me that the community  
9 preference was nursing home use and that was a  
10 factor; the loss of jobs if it was allowed to be  
11 converted to a non-healthcare use was a factor; the  
12 general need for nursing home beds in the city as the  
13 population continues to age -- not for this  
14 particular use, since HIV/AIDS use was reducing, but  
15 generally, for nursing home beds was a factor  
16 **[inaudible]**... [crosstalk]

17 CHAIRPERSON GENTILE: Well let me ask  
18 you; did you weigh this option against other options  
19 for the property, like HRA's proposal for affordable  
20 housing?

21 FIRST DEPUTY MAYOR SHORRIS: We looked at  
22 all the options, yeah; at least I tried to look at an  
23 array of options and as I mentioned in my testimony,  
24 that ran the gamut from doing nothing to supportive  
25 housing, to affordable care, to nursing home use.

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2 CHAIRPERSON GENTILE: Did you ever talk  
3 with anyone in the community or did City Hall or DCAS  
4 talk to anyone in the community or just avoided their  
5 call...? [crosstalk]

6 FIRST DEPUTY MAYOR SHORRIS: I... I... I  
7 personally didn't have conversations with community  
8 members on this matter.

9 CHAIRPERSON GENTILE: So how did you  
10 weigh this, in terms of the 1199 issue, the nursing  
11 home issue, the affordable housing; community  
12 facility; how did you weigh these options -- the  
13 Mayor's signature issue is affordable housing, so  
14 that has to be high on the list.

15 FIRST DEPUTY MAYOR SHORRIS: My job,  
16 Council Member is to weigh competing objectives; it's  
17 common, when we have complicated decisions -- the  
18 kinds of decisions I sometimes I have to make -- that  
19 there are multiple goods or actually, sometimes  
20 multiple evil that I have to weigh in making a  
21 decision among competing [interpose, background  
22 comment] options. This was one that had multiple  
23 options associated with it, each having different  
24 virtues -- maximizing revenue to the City is a  
25 virtue, and the prior Administration had that as a

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3 preeminent concern -- those are not invalid, they're  
4 just different value judgments.

5 CHAIRPERSON GENTILE: So you made that  
6 decision that it remain nursing home. Did you assist  
7 or did your office assist 1199 in any way in finding  
8 a buyer?

9 FIRST DEPUTY MAYOR SHORRIS: I didn't...  
10 never had any conversations with 1199 on anything  
11 other than my conversation about the loss to the jobs  
12 at that meeting, so no; I did not assist 1199 in any  
13 way.

14 CHAIRPERSON GENTILE: Okay. Well there's  
15 an e-mail from I believe Intergovernmental, Emma  
16 Wolfe, on December 17th of 2014 in which she's asking  
17 about 1199; she said they're urgently asking about  
18 the status of Rivington and her e-mail states to you  
19 -- I guess it's to the chief of staff and Deputy  
20 Mayor Alicia Glen and to you -- she said, "1199 says  
21 the following: 'We, City Hall, worked with the First  
22 Deputy Mayor's Office for months to find an operator  
23 for the nursing home at Rivington House; Kevin...' -- I  
24 suppose that means Kevin Finnegan, 1199 -- 'Kevin  
25 says he's been in touch with us on this and got OK on

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3 it.'" Does that refresh your recollection of the  
4 involvement here... [interpose]

5 FIRST DEPUTY MAYOR SHORRIS: It's  
6 consistent with my understanding; in other words, we  
7 did tell them that we were supportive of the notion  
8 of protecting the jobs -- that was an important  
9 objective of the Administration; it certainly was a  
10 factor, as I mentioned, in my thinking; whether 1199  
11 worked to find other potential operators that would  
12 help advance that objective, that may well have been  
13 the case; wouldn't surprise me, they're actively  
14 engaged in this business of trying to expand the  
15 nursing home industry, so I'm sure they were and  
16 **[inaudible]**... [interpose]

17 CHAIRPERSON GENTILE: What does it mean  
18 when it says in an e-mail that Kevin got the OK on  
19 it?

20 FIRST DEPUTY MAYOR SHORRIS: Kevin  
21 probably heard -- I assume, I don't actually know; I  
22 didn't write that note -- maybe heard that we made a  
23 general decision that a nursing home use would be the  
24 best use for the site, which was accurate.

25 CHAIRPERSON GENTILE: Then after the  
February 10th sale of the property, why was there no

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2 follow-up on this sale by your office? 1199 was  
3 satisfied once the sale was made, but the use of the  
4 building after the sale was never checked, basically  
5 your office checked out at that point.

6 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm. My  
7 belief was that we had done what we had to do -- we  
8 had to make a complicated decision among various  
9 options; we made a decision and now it was time to  
10 move on and it was only going into an execution mode,  
11 not a policy mode.

12 CHAIRPERSON GENTILE: Did you or your  
13 staff communicate with DCAS about this property after  
14 the sale?

15 FIRST DEPUTY MAYOR SHORRIS: After the  
16 sale I was generally not involved and did not focus  
17 on Rivington House until February 16 again.

18 CHAIRPERSON GENTILE: So if you view your  
19 testimony in full, and that includes what you said in  
20 the interview to the Comptroller's Office, your  
21 office and Local 1199 had multiple contacts  
22 concerning Rivington over many months and yet you nor  
23 your staff had any significant communication on  
24 Rivington with DCAS, one of the agencies you control,  
25 you supervise...

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2 FIRST DEPUTY MAYOR SHORRIS: I think  
3 there were actually... according... [crosstalk]

4 CHAIRPERSON GENTILE: that's accurate,  
5 **[inaudible]**...

6 FIRST DEPUTY MAYOR SHORRIS: according to  
7 our record, there were many communications with DCAS  
8 during that but not after the decision was made; then  
9 there was nothing for us to... [interpose]

10 CHAIRPERSON GENTILE: During the time  
11 that the sale was pending.

12 FIRST DEPUTY MAYOR SHORRIS: The sale  
13 that we were focused on, Council Member, was  
14 primarily the sale from VillageCare to **[inaudible]**...  
15 [crosstalk]

16 CHAIRPERSON GENTILE: **[inaudible]**. Yes.  
17 Yes.

18 FIRST DEPUTY MAYOR SHORRIS: that was our  
19 focus...

20 CHAIRPERSON GENTILE: Right.

21 FIRST DEPUTY MAYOR SHORRIS: but once  
22 that was executed and we believed our policy  
23 objection was clear, right, we were concerned about  
24 maintaining a nursing home in that community,  
25 maintaining jobs, of course, but primarily

3 maintaining a nursing home, we had accomplished what  
4 we had set out to do.

5 CHAIRPERSON GENTILE: Yes, but my point  
6 is that your contact with 1199 seemed to be far more  
7 than your contact with DCAS during that period. I'm  
8 going to send it over to Speaker Melissa Mark-  
9 Viverito.

10 SPEAKER MARK-VIVERITO: Thank you Mr.  
11 Chair, thank you, First Deputy Mayor for your  
12 testimony. I just have a couple of questions with  
13 regards to something I think that to me comes up a  
14 little bit glaring in the testimony and our interest  
15 here is, we want to find out what transpired,  
16 obviously; then what are we looking to do to make  
17 things different, right, and not repeat the same  
18 mistake from the past.. [crosstalk]

19 FIRST DEPUTY MAYOR SHORRIS: Right.

20 SPEAKER MARK-VIVERITO: Understanding one  
21 of the -- obviously, the major, I would say, priority  
22 of the Administration is building and developing  
23 affordable housing for the City of New York; not  
24 understanding how something like deed restrictions  
25 which specifically apply to properties, specifically  
apply to land, right..



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2 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

3 SPEAKER MARK-VIVERITO: this

4 Administration has done inventory, looking for areas  
5 to develop, looking for properties in which  
6 affordable housing can be built, why something like  
7 deed restrictions, which in revoking them, you know  
8 would make land available or would have implications  
9 on possibly losing affordable housing, depending on  
10 what the use of that building is that has a deed  
11 restriction; not understanding why that type of  
12 action would not be at the top of the Administration  
13 responsibilities or interests, right; you're saying  
14 that typically land use restrictions, **[inaudible]**  
15 restrictions do not get handled by City Hall or high  
16 levels, it's just kind of a random occurrence; that I  
17 thin is an issue, right, so I don't... time [sic]...  
18 could you move a little to the left, just so that I  
19 could see... I'll move a little to the right. Thank  
20 you -- not politically, okay **[inaudible]**...

21 FIRST DEPUTY MAYOR SHORRIS: Yeah. Sure.

22 [laughter]

23 SPEAKER MARK-VIVERITO: So you know in  
24 terms of looking... moving forward as the  
25 Administration, any action, right, that could have

3 these kinds of implications, considering the  
4 priorities of the Administration should be something  
5 that is a priority to your office and to the  
6 executives, right; I mean I would think -- not just  
7 meet the [sic] restrictions, there may be other  
8 actions that we engage in or the City engages in that  
9 could have negative impacts, right, or that could  
10 provide opportunities for the Administration to build  
11 affordability. So I think figuring out what those  
12 other actions that the City gets involved in that  
13 could have -- you know, that would be better suited  
14 for you to look at and review and be more actively  
15 engaged in I think is something that is important to  
16 note -- I don't know if you'd agree to that.

17 But my question on the testimony is --  
18 which I don't think you really answered. So Page 7,  
19 at the top you say, "So that was the outcome I  
20 wanted, a continued nursing home-like use for the  
21 site," then when you go down to the next paragraph,  
22 "This was not the outcome we got; that is one of the  
23 failures in the process that needs to be corrected."  
24 Alright, but why did that breakdown occur? You say  
25 you're being very clear about what your priority was,  
yet it was not implemented, that information did not

2 get down into the agency level, people did not  
3 fulfill that request. So that sounds like some level  
4 of mismanagement, which I think we need to look at --  
5 and just to back that up further, 'cause you also say  
6 on Page 9: "I did not discuss Rivington again until  
7 late February 2016 when the new Commissioner, Lisette  
8 Camilo, reported to me that the site had been sold to  
9 a luxury housing developer," and then you said,  
10 "Knowing this was exactly what I did not want to  
11 happen here, I directed Lisette to immediately  
12 contact Department of Investigation and ask for a  
13 comprehensive review." So in the level of the  
14 management, you as the First Deputy Mayor, being  
15 clear about what you wanted and that is not being  
16 executed..

17 FIRST DEPUTY MAYOR SHORRIS: Correct.

18 SPEAKER MARK-VIVERITO: okay; that I  
19 think is something that -- I would like some more  
20 clarity on from your part.

21 FIRST DEPUTY MAYOR SHORRIS: So if I may,  
22 Speaker. I think you put your finger on exactly the  
23 key points here, both in the first point you made and  
24 in the second and I think they're related. We did  
25 not have a process in place that would surface the

3 kinds of policy issues you're raising in the first  
4 part of your comment in a sufficiently rigorous  
5 manner. The policy that had been in place about the  
6 lifting or modification of deed restrictions was  
7 strictly a financially oriented policy; it was in  
8 place since 1992, formalized in 2010; it was pretty  
9 mechanistic; you would give us 25% of the appraisal;  
10 you get to do what you want in the deed restrictions.

11 SPEAKER MARK-VIVERITO: But if I may --  
12 so that's at the DCAS level, 'cause other agencies  
13 that deal with deed restrictions actually was handled  
14 by the Commissioner, right, needed sign-off by the  
15 Commissioner... [crosstalk]

16 FIRST DEPUTY MAYOR SHORRIS: Exact... and  
17 that... very good point; let me try and address that  
18 correctly. Both HPD and EDC have very different deed  
19 restriction programs and approaches and they're much  
20 more transparent and formalized. The DCAS process  
21 was formalized in a very narrow way, which was, give  
22 us the money; we lift the deed restrictions, and that  
23 was the policy that had been in place for a long time.  
24 It was a failure on our part, as you correctly point  
25 out, to introduce our values into that process. The  
change in process that we are proposing internally --

3 obviously the Council has a number of other changes  
4 that involve our external, but our internal proposal  
5 is to take deed restriction actions of any sort and  
6 elevate them to a policy-making conversation; that we  
7 engage the Office of Management and Budget and the  
8 Law Department, but also the Deputy Mayor for Housing  
9 and Economic Development for precisely the reason you  
10 mentioned, as well as my office -- me -- so that deed  
11 restrictions will be much more formally discussed;  
12 not as this was, in a kind of one-off episodic way,  
13 but that every time a deed restriction question gets  
14 raised at DCAS there is an opportunity to have  
15 precisely the discussion you mentioned -- Could this  
16 be something else? How? What's the math associated  
17 with it; is it a viable site? Is there interest in  
18 developer? [sic] What's the community need? -- that  
19 needs to be done much more formally and explicitly.  
20 That's important for both of the reasons you  
21 mentioned; one is, it introduces the policy overlay  
22 onto this, which was insufficiently introduced here  
23 -- I did try and introduce it, but it was not  
24 executed appropriately; that's a problem -- it also  
25 takes the communication associated with transactions  
like this and formalizes it in a much more rigorous

3 way. And again, part of obviously what was at issue  
4 here was communication, as I'm sure we'll discuss  
5 plenty in the hours to come; it wasn't sufficiently  
6 rigorous and the process change we want to put into  
7 place not only adds the policy overlay, but adds a  
8 rigor to the communication and that's part of the  
9 reason, I believe and I'm more comfortable it can't  
10 reoccur.

11 SPEAKER MARK-VIVERITO: Now in terms of  
12 the issue of the management, of you as a First Deputy  
13 Mayor being clear about what you wanted to happen and  
14 not happening...

15 FIRST DEPUTY MAYOR SHORRIS: Yeah.

16 SPEAKER MARK-VIVERITO: obviously major  
17 breakdown, in terms of execution, so understanding  
18 you're implementing these changes, you're talking  
19 about moving forward on these restrictions, but how  
20 can we have confidence, right, that if there was that  
21 kind of level, how are you making sure that kind of  
22 breakdown in communication, which was pretty  
23 egregious, is not repeated?

24 FIRST DEPUTY MAYOR SHORRIS: That's a  
25 question that was at the heart of our policy change  
process here. As I mentioned, part of the

3 communication failure was related, I believe, to the  
4 informality and lack of rigor associated with this  
5 process. When I look at government process problems  
6 -- and this is much of what I do all day is, look at  
7 things that aren't being as efficient or effective as  
8 we'd want and trying to figure out how to make them  
9 better -- oftentimes, most oftentimes, well-  
10 intentioned people are coming up with an outcome  
11 that's not a good outcome because the processes in  
12 place are leading them that way. In this case,  
13 again, not knowing all the investigations having been  
14 completed, but having read at least two very thorough  
15 ones, which disclosed no misconduct, no untoward  
16 behavior by any level of individual -- and that's  
17 after thousands and thousands of hours and documents  
18 that are being reviewed -- there's no evidence yet,  
19 at least, of anyone having done anything wrong in  
20 that sense; that says to me that it's a procedural  
21 and structural failure of the government and that's  
22 my job is to try and fix it for exactly the reason  
23 you mention. I can't rely on informal  
24 communications; I can't rely on one-off conversations  
25 when it comes to deed restrictions. This particular  
element of deed restrictions, the DCAS process, had

2 to be restructured both within the agency --  
3 something the Commissioner can talk about in more  
4 detail, at whatever time you'd like -- and in terms  
5 of its interaction with the other bodies in the  
6 government -- City Hall, Law, OMB, other aspects of  
7 the government. So we need to fix that and I believe  
8 we're proposing a much more structured approach to  
9 this that will address that and gives me confidence  
10 that this kind of mistake can't happen again.

11 SPEAKER MARK-VIVERITO: Those were my two  
12 questions; I know that your time is limited and many  
13 questions from the members, so I'll pass it back to  
14 the Chairs.

15 CO-CHAIRPERSON KALLOS: Thank you Speaker  
16 Viverito. I'd like to focus again on the role of  
17 outside influences and I'm going to direct you to be  
18 even shorter; I will jump in -- the two and a half  
19 hour time limit is your limit, not our limit..

20 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

21 CO-CHAIRPERSON KALLOS: we would love to  
22 go all day, and if you don't mind missing your flight  
23 we would. So how long did you work for James  
24 Capalino?



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2 FIRST DEPUTY MAYOR SHORRIS: I worked for  
3 him from 1979... some part of 1978 till he left being  
4 Commissioner, which was in about 1980 or 1981.

5 CO-CHAIRPERSON KALLOS: And did you ever  
6 interact or report to James Capalino or did he play a  
7 role in any of your promotions there?

8 FIRST DEPUTY MAYOR SHORRIS: I worked for  
9 people who worked for him, yes... [crosstalk]

10 CO-CHAIRPERSON KALLOS: And...

11 FIRST DEPUTY MAYOR SHORRIS: I did not  
12 report to him directly; I was a very junior... it was  
13 my first job out of college and graduate school.

14 CO-CHAIRPERSON KALLOS: And how many  
15 times were you promoted there?

16 FIRST DEPUTY MAYOR SHORRIS: I would say  
17 twice, I believe; **[inaudible]**... [crosstalk]

18 CO-CHAIRPERSON KALLOS: And so you went  
19 from an analyst in the Management Analyst Unit to  
20 actually running the Management Analyst Unit?

21 FIRST DEPUTY MAYOR SHORRIS: Right, I had  
22 another job in-between, but yes... [crosstalk]

23 CO-CHAIRPERSON KALLOS: And so were you  
24 in meetings with James Capalino?

25 FIRST DEPUTY MAYOR SHORRIS: Yes.

2 CO-CHAIRPERSON KALLOS: So you did have a  
3 relationship with him, you reported to him; he knew  
4 who you were; you knew who he was?

5 FIRST DEPUTY MAYOR SHORRIS: Yes. Yes,  
6 definitely.

7 CO-CHAIRPERSON KALLOS: And have you had  
8 interactions with James Capalino between working at  
9 Department of General Services, the predecessor to  
10 DCAS, and prior to your becoming the First Deputy  
11 Mayor?

12 FIRST DEPUTY MAYOR SHORRIS: Over the  
13 course of the last 35 years, since it has been 35  
14 years since I worked for him, I have seen him on a  
15 number of occasions, generally we have an annual Koch  
16 reunion party; he hosts the Koch reunion party,  
17 usually at Gracie Mansion, so I generally see him  
18 there.

19 CO-CHAIRPERSON KALLOS: And so is this a  
20 person you call a friend; is a collegial  
21 relationship?

22 FIRST DEPUTY MAYOR SHORRIS: A person who  
23 I see once a year at a cocktail party I wouldn't  
24 characterize as a friend, but he is someone I've  
25 known a very long time.

2 CO-CHAIRPERSON KALLOS: And so now that  
3 you're First Deputy Mayor, how often do you  
4 communicate with James Capalino?

5 FIRST DEPUTY MAYOR SHORRIS: In the last  
6 two and a half years I can't think of more than once  
7 or twice. I haven't spoke to him in years...

8 [crosstalk]

9 CO-CHAIRPERSON KALLOS: And does he call  
10 you on your cell phone?

11 FIRST DEPUTY MAYOR SHORRIS: No.

12 CO-CHAIRPERSON KALLOS: So he does not  
13 have your cell phone; you do not have his cell phone?

14 FIRST DEPUTY MAYOR SHORRIS: Oh I'm sure  
15 he has my cell phone; it's on my business card.

16 CO-CHAIRPERSON KALLOS: Okay. And do you  
17 trust James Capalino?

18 FIRST DEPUTY MAYOR SHORRIS: I don't have  
19 any reason not to trust him or trust him; I don't  
20 deal with him professionally, for the last 35 years,  
21 so it's been quite a while.

22 CO-CHAIRPERSON KALLOS: And did James  
23 Capalino influence your decision in any way on  
24 Rivington?

25 FIRST DEPUTY MAYOR SHORRIS: No.

3 CO-CHAIRPERSON KALLOS: And moving over  
4 to who had knowledge of what was going on, you're  
5 saying you didn't know about what had happened with  
6 the deed restrictions until February of 2016?

7 FIRST DEPUTY MAYOR SHORRIS: No, that's  
8 not what I testified. What I testified was; I did  
9 not realize the deed restriction had been amended or  
10 lifted in such a way that it would allow for luxury  
11 housing to occur. We discussed it in 2014, as I  
12 mentioned, when we made our initial decision not to  
13 allow the deed restriction to be lifted and then  
14 ultimately to be amended so, I thought, a for-profit  
15 nursing home could take over the site.

16 CO-CHAIRPERSON KALLOS: So there was a  
17 meeting with Steve Banks, HRA Commissioner, with  
18 Vicki Been, HPD Commissioner, with Alicia Glen, and  
19 others where they produced a Rivington House sale  
20 alternative uses memorandum; have you ever seen any  
21 of them -- there are multiple of them, they're dated  
22 August 6, July 29, September 11, several different  
23 dates -- have you seen any incarnation of the options  
24 memorandum where it **[inaudible]**... [crosstalk]

25 FIRST DEPUTY MAYOR SHORRIS: I do believe  
I saw some of those, yes, Council Member.

2 CO-CHAIRPERSON KALLOS: And so you've  
3 indicated that there was a mayoral directive towards  
4 affordable housing -- and we also have a homeless  
5 crisis -- why did you choose the nursing care  
6 facility over the two competing options that were  
7 being proposed and advocated for by Deputy Mayor  
8 Alicia Glen and by Deputy Mayor Paoli?

9 FIRST DEPUTY MAYOR SHORRIS: Well again,  
10 as I mentioned in my comment earlier, you know my job  
11 is essentially to make decisions on competing  
12 priorities; if the priorities are very simply  
13 executed, it's not an issue that usually comes to me  
14 'cause it's an execution matter; this was an issue..  
15 [crosstalk]

16 CO-CHAIRPERSON KALLOS: So you ma...

17 FIRST DEPUTY MAYOR SHORRIS: where there  
18 were multiple possible uses for the site -- many of  
19 them very beneficial to the City -- I had to make a  
20 decision among them.

21 CO-CHAIRPERSON KALLOS: And you made the  
22 decision that it should remain a nursing?

23 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.  
24  
25

1 COMMITTEE ON OVERSIGHT AND INVESTIGATIONS, JOINTLY  
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3 CO-CHAIRPERSON KALLOS: Did you  
4 communicate that decision personally to Deputy Mayor  
5 Alicia Glen?

6 FIRST DEPUTY MAYOR SHORRIS: I don't  
7 recall personally **[inaudible]**... [crosstalk]

8 CO-CHAIRPERSON KALLOS: Did you  
9 communicate that personally to Deputy Mayor Paoli?

10 FIRST DEPUTY MAYOR SHORRIS: I don't  
11 recall my conversations with **[inaudible]**... [crosstalk]

12 CO-CHAIRPERSON KALLOS: Did you  
13 communicate that personally to Commissioner  
14 Cumberbatch?

15 FIRST DEPUTY MAYOR SHORRIS: Now remember  
16 what I mentioned, Council Member, is that this was...  
17 we did have a series of discussions involving a  
18 number of staff people across different elements of  
19 City Hall; my decision would have gone through those  
20 people back to their principals **[inaudible]**...  
21 [crosstalk]

22 CO-CHAIRPERSON KALLOS: So who did you  
23 give your decision to; who did you tell to give that...  
24 [crosstalk]

25 FIRST DEPUTY MAYOR SHORRIS: The folks on  
my staff were in the room when we made the decision.

2 CO-CHAIRPERSON KALLOS: Did you give that  
3 decision to Dominic Williams?

4 FIRST DEPUTY MAYOR SHORRIS: I believe he  
5 was in the room.

6 CO-CHAIRPERSON KALLOS: And did you give  
7 that decision to Sarah Samis?

8 FIRST DEPUTY MAYOR SHORRIS: I believe  
9 she was likely in the room as well, yeah.

10 CO-CHAIRPERSON KALLOS: And did you... And  
11 you believe that they passed that on to those three  
12 different Deputy Mayors **[inaudible]**... [crosstalk]

13 FIRST DEPUTY MAYOR SHORRIS: Who... I  
14 believe they would have **[inaudible]** in whatever they  
15 needed to do to implement the decision I made.

16 CO-CHAIRPERSON KALLOS: And after you  
17 made that decision you did not follow-up to confirm;  
18 it never came up again in conversation with anyone?

19 FIRST DEPUTY MAYOR SHORRIS: I make  
20 decisions all day long; I need to make sure and trust  
21 my staff to implement them and in this case I trusted  
22 the staff to implement and had no evidence to the  
23 contrary.

1 COMMITTEE ON OVERSIGHT AND INVESTIGATIONS, JOINTLY  
2 WITH THE COMMITTEE ON GOVERNMENTAL OPERATIONS 64

3 CO-CHAIRPERSON KALLOS: 20/20 hindsight,  
4 now that you make decisions, do you give the answers  
5 to the Deputy Mayors or Commissioners yourself?

6 FIRST DEPUTY MAYOR SHORRIS: No, not  
7 necessarily, no.

8 CO-CHAIRPERSON KALLOS: So you've just  
9 been through a situation where you gave a decision to  
10 your staff to provide to a Deputy Mayor or a  
11 Commissioner and having seen that that did not work,  
12 that flow of communication didn't work, you still  
13 don't just let the Commissioner or Deputy Mayor know  
14 what you want?

15 FIRST DEPUTY MAYOR SHORRIS: Council  
16 Member, the government's large and we have very  
17 excellent staff at City Hall who work together very  
18 well on many, many issues; I don't personally execute  
19 the decisions I make with each of the other senior  
20 officials in government [sic]... [crosstalk]

21 CO-CHAIRPERSON KALLOS: How many agencies  
22 are you overseeing that you can't personally work  
23 with your commissioners and deputy mayors?

24 FIRST DEPUTY MAYOR SHORRIS: Well I  
25 personally oversee approximately 30 agencies, I  
manage the rest as a respectively Chief Operating



1 COMMITTEE ON OVERSIGHT AND INVESTIGATIONS, JOINTLY  
2 WITH THE COMMITTEE ON GOVERNMENTAL OPERATIONS 65

3 Officer; I have a coordinating role over the people  
4 who supervise all 350,000 people in the government.

5 CO-CHAIRPERSON KALLOS: And how -- That's  
6 a log of agencies, wouldn't you admit?

7 FIRST DEPUTY MAYOR SHORRIS: Yes.

8 CO-CHAIRPERSON KALLOS: And were you  
9 involved in the decision to remove the position of  
10 Deputy Mayor of Operations and consolidate that into  
11 First Deputy Mayor?

12 FIRST DEPUTY MAYOR SHORRIS: Well the  
13 decision on the structure of the government at City  
14 Hall is obviously the Mayor's decision; we discussed  
15 that and there are many models -- as I'm sure you  
16 know, over the course of the years there have been  
17 many different structures for City Hall, some have  
18 first deputy mayors, some don't; some have deputy  
19 mayors for operations, some don't; some have seven  
20 deputy mayors; some have three; it's all based on how  
21 a mayor wants to organize his government and do so  
22 effectively.

23 CO-CHAIRPERSON KALLOS: Do you feel that  
24 you've been able to effectively manage these 30  
25 agencies so that mistakes don't happen like this?

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WITH THE COMMITTEE ON GOVERNMENTAL OPERATIONS 66

2 FIRST DEPUTY MAYOR SHORRIS: Council  
3 Member, I'm extremely proud of the record of this  
4 administration in implementing a series of  
5 initiatives **[inaudible]**... [interpose]

6 CO-CHAIRPERSON KALLOS: Are you proud of  
7 Rivington?

8 FIRST DEPUTY MAYOR SHORRIS: reduced  
9 crime... that have reduced crime, built housing,  
10 improved test scores **[inaudible]**... [crosstalk]

11 CO-CHAIRPERSON KALLOS: Deputy Mayor, are  
12 you proud of Rivington?

13 FIRST DEPUTY MAYOR SHORRIS: No.

14 CO-CHAIRPERSON KALLOS: So you're  
15 managing 30 agencies, that seems like a lot, it's  
16 more than any other deputy mayor or first deputy  
17 mayor before, but that outcome happened; would you  
18 consider recreating the -- the two previous  
19 administrations had a Deputy Mayor for Operations,  
20 which handled a lot of these agencies like DCAS,  
21 which is massive -- I chair that Committee, it is a  
22 very big agency -- would you consider offloading  
23 agencies; have you offloaded any; would you consider  
24 offloading more?

25

1 COMMITTEE ON OVERSIGHT AND INVESTIGATIONS, JOINTLY  
WITH THE COMMITTEE ON GOVERNMENTAL OPERATIONS 67

2 FIRST DEPUTY MAYOR SHORRIS: Council  
3 Member, the organization of the government is the  
4 Mayor's responsibility; you're factually not, I  
5 believe, correct on how prior governments have been  
6 organized; the Koch Administration had the first  
7 deputy mayor; other governments have had first deputy  
8 mayors **[inaudible]**... [crosstalk]

9 CO-CHAIRPERSON KALLOS: Giuliani had a  
10 Mayor for Operations... [crosstalk]

11 FIRST DEPUTY MAYOR SHORRIS: And a first  
12 deputy mayor **[inaudible]**.

13 CO-CHAIRPERSON KALLOS: Bloomberg had a  
14 mayor for operations; both of them had DCAS...

15 FIRST DEPUTY MAYOR SHORRIS: They all...

16 CO-CHAIRPERSON KALLOS: Fire Department  
17 used to report directly to the Mayor; now they have  
18 to go through you... [crosstalk]

19 FIRST DEPUTY MAYOR SHORRIS: Yeah, every  
20 mayor organizes their government to effectuate their  
21 policies **[inaudible]**... [crosstalk]

22 CO-CHAIRPERSON KALLOS: And how are you  
23 managing these 30 agencies?

24 FIRST DEPUTY MAYOR SHORRIS: I have a  
25 substantial staff, both at City Hall and I use other

1 COMMITTEE ON OVERSIGHT AND INVESTIGATIONS, JOINTLY  
WITH THE COMMITTEE ON GOVERNMENTAL OPERATIONS 68

2 agencies, such as the Office of Operations and  
3 others... [crosstalk]

4 CO-CHAIRPERSON KALLOS: Do they provide  
5 weekly memos to you?

6 FIRST DEPUTY MAYOR SHORRIS: Do who  
7 provide **[inaudible]**?

8 CO-CHAIRPERSON KALLOS: The 30 agencies;  
9 do they provide weekly memorandums to you...?

10 [crosstalk]

11 FIRST DEPUTY MAYOR SHORRIS: Most of them  
12 continue to provide a weekly memo.

13 CO-CHAIRPERSON KALLOS: And do you read  
14 those weekly memos?

15 FIRST DEPUTY MAYOR SHORRIS: As I  
16 mentioned in my testimony, Councilman, when I began,  
17 I asked them to provide a weekly memo that summarized  
18 their activities in the prior week; I initially read  
19 some of them, 'cause I was obviously trying to learn  
20 the way the government operated; over time, as I  
21 became more comfortable with the operations of the  
22 government and my meetings with the agencies became  
23 more and more frequent, that became less necessary;  
24 as a result, as I mentioned in my testimony, I took  
25 to reviewing the memos on an episodic basis, just to

2 sort of get a feel for what was going on; they were  
3 not decision-making vehicles.

4 CO-CHAIRPERSON KALLOS: So you're not  
5 reading all the memorandum anymore?

6 FIRST DEPUTY MAYOR SHORRIS: I don't  
7 ready every one of them very week... [crosstalk]

8 CO-CHAIRPERSON KALLOS: So have you told  
9 the commissioners and agencies that they don't  
10 actually have to do these anymore because they're not  
11 useful...? [crosstalk]

12 FIRST DEPUTY MAYOR SHORRIS: No. No,  
13 what I've told them is they should continue to send  
14 them and our staff reviews them, I review some of  
15 them; from time to time they provide information  
16 that's helpful in context, but they're not for  
17 decision-making, Councilman, but they have other  
18 purposes.

19 CO-CHAIRPERSON KALLOS: And along those  
20 lines, have you communicated personally to any of  
21 these people, like DCAS Commissioner Cumberbatch,  
22 that the memos were not for decision-making?

23 FIRST DEPUTY MAYOR SHORRIS: No, I meet  
24 with the Commissioners all the time to have my  
25 decision-making [inaudible]... [crosstalk]

1 COMMITTEE ON OVERSIGHT AND INVESTIGATIONS, JOINTLY  
2 WITH THE COMMITTEE ON GOVERNMENTAL OPERATIONS 70

3 CO-CHAIRPERSON KALLOS: How many times  
4 did you meet with Stacey Cumberbatch in 2015?

5 FIRST DEPUTY MAYOR SHORRIS: I don't  
6 recall the exact number; my general rule was to see  
7 the Commissioners -- some commissioners I saw weekly;  
8 some commissioners I saw biweekly; some I saw monthly  
9 -- DCAS was a monthly... [crosstalk]

10 CO-CHAIRPERSON KALLOS: Did you see DCAS  
11 Commissioner Cumberbatch monthly in 2015, each and  
12 every month?

13 FIRST DEPUTY MAYOR SHORRIS: For much of  
14 2015; I'm sure I missed some months.

15 CO-CHAIRPERSON KALLOS: Did you miss  
16 July, August, September, October; November?

17 FIRST DEPUTY MAYOR SHORRIS: Probably  
18 because I was seeing her on other matters and we  
19 didn't need a weekly check-in?

20 CO-CHAIRPERSON KALLOS: So you weren't  
21 checking... [crosstalk]

22 FIRST DEPUTY MAYOR SHORRIS: **[inaudible]**  
23 check-in.

24 CO-CHAIRPERSON KALLOS: So you weren't  
25 checking in with your DCAS Commissioner while  
Rivington was happening?

2 FIRST DEPUTY MAYOR SHORRIS: From my  
3 perspective, Council Member, Rivington had happened.  
4 I concluded my engagement with Rivington towards the  
5 end of 2014, when we made our decision as to what  
6 should happen; many, many matters transpire amongst  
7 the agencies, in-between the agencies and City Hall  
8 on a daily and monthly, weekly basis, so I don't go  
9 back over issues that were eight months old unless  
10 there's a reason.

11 CO-CHAIRPERSON KALLOS: And in terms of  
12 it -- you mentioned that you expect commissioners to  
13 call you; did former DCAS Commissioner Stacey  
14 Cumberbatch ever call you about Rivington?

15 FIRST DEPUTY MAYOR SHORRIS: No.

16 CO-CHAIRPERSON KALLOS: And they only  
17 were supposed to call you with important matters; is  
18 that correct?

19 FIRST DEPUTY MAYOR SHORRIS: Or e-mail or  
20 communicate through the staff.

21 CO-CHAIRPERSON KALLOS: Do you read all  
22 of your e-mails?

23 FIRST DEPUTY MAYOR SHORRIS: I do.

24 CO-CHAIRPERSON KALLOS: Do you read the  
25 attachments?

2 FIRST DEPUTY MAYOR SHORRIS: Sometimes on  
3 the weekly reports I've made the decision, as I  
4 described previously, that I would look at some of  
5 them but not all of them.

6 CO-CHAIRPERSON KALLOS: Did you read the  
7 attachments that included the weekly memorandum on  
8 DCAS?

9 FIRST DEPUTY MAYOR SHORRIS: I don't  
10 recall, as I mentioned, whether I read that  
11 particular one on Rivington.

12 CO-CHAIRPERSON KALLOS: And at the time,  
13 did you believe Rivington was of particular  
14 importance, worthy of a phone call?

15 FIRST DEPUTY MAYOR SHORRIS: Had there  
16 been a decision at the agency to reverse the policy  
17 choice we had made, that would have been worthy of a  
18 phone call, yes.

19 CO-CHAIRPERSON KALLOS: Did you ever tell  
20 the Commissioner of DCAS, Stacey Cumberbatch, of your  
21 policy decision so that she could have advised you  
22 that she was going against your policy decision?

23 FIRST DEPUTY MAYOR SHORRIS: I believe  
24 she was... I believe the agency was made aware of the  
25 policy.



2 CO-CHAIRPERSON KALLOS: Why do you  
3 believe this?

4 FIRST DEPUTY MAYOR SHORRIS: Because I  
5 had staff in the room, as I mentioned, who were aware  
6 of what policy choice we had made and we execute that  
7 policy.

8 CO-CHAIRPERSON KALLOS: Why did former  
9 Commissioner Stacey Cumberbatch leave DCAS?

10 FIRST DEPUTY MAYOR SHORRIS: She found an  
11 opportunity at the Health and Hospitals Corporation.

12 CO-CHAIRPERSON KALLOS: And when did she  
13 make you aware that there was an opportunity at  
14 Health and Hospitals?

15 FIRST DEPUTY MAYOR SHORRIS: I believe it  
16 was towards the end of 2015, into early 2016.

17 CO-CHAIRPERSON KALLOS: Was it before or  
18 after the deed restrictions were lifted at Rivington?

19 FIRST DEPUTY MAYOR SHORRIS: It's after  
20 they were lifted; it's well before I became aware of  
21 it, since I didn't become aware of it till

22 **[inaudible]**... [crosstalk]

23 CO-CHAIRPERSON KALLOS: Did you have a  
24 role in finding her position at Health and Hospitals?  
25

2 FIRST DEPUTY MAYOR SHORRIS: I had to  
3 approve her move; it wouldn't have happened if I had  
4 not approved it.

5 CO-CHAIRPERSON KALLOS: And why did you  
6 approve it?

7 FIRST DEPUTY MAYOR SHORRIS: I thought it  
8 was a good opportunity for her; it's a burgeoning  
9 field; she wanted to get out of where she was.

10 CO-CHAIRPERSON KALLOS: So you were happy  
11 with her performance as DCAS Commissioner and her  
12 having lifted the Rivington deed restriction?

13 FIRST DEPUTY MAYOR SHORRIS: No,  
14 obviously, in retrospect; I didn't know about them at  
15 the time you're asking, so it wouldn't have been a  
16 factor.

17 CO-CHAIRPERSON KALLOS: And so you mean  
18 to tell me she had an opportunity at H + H, which  
19 started in March and she chose to take two months off  
20 from being employed and left in January, went  
21 unemployed for two months before going to H + H,  
22 that...

23 FIRST DEPUTY MAYOR SHORRIS: I don't know  
24 her personal transactions taken... [crosstalk]

2 CO-CHAIRPERSON KALLOS: And so you're  
3 saying under oath she not asked to leave; you had no  
4 role -- no one had a role in her leaving; she just  
5 left on her own accord...? [crosstalk]

6 FIRST DEPUTY MAYOR SHORRIS: Again, I  
7 have to approve transfers like that, Council Member;  
8 I would've had to agree, and we did agree that HHC  
9 was a place where she could go.

10 CO-CHAIRPERSON KALLOS: Did you ask her  
11 why she was leaving? Did you ask her if there were  
12 any things that came up that made her want to leave?

13 FIRST DEPUTY MAYOR SHORRIS: I did not,  
14 no. People sometimes do leave the government for  
15 other opportunities **[inaudible]**... [crosstalk]

16 CO-CHAIRPERSON KALLOS: Do you do exit  
17 interviews; do you ask people why they're leaving and  
18 what's wrong and if there's room for... [crosstalk]

19 FIRST DEPUTY MAYOR SHORRIS: As a... As a  
20 general matter, I might ask; I don't recall and I  
21 don't actually even necessarily discuss all my  
22 personnel interactions, but in this case I did have  
23 to approve her move and I did.

24 CO-CHAIRPERSON KALLOS: So there was an  
25 issue with the deed restriction; once you found out

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2 about the fact that the deed restriction had been  
3 lifted, were you happy with Commissioner  
4 Cumberbatch's performance?

5 FIRST DEPUTY MAYOR SHORRIS: I was, as I  
6 mentioned in my statement, I was disappointed at the  
7 entire outcome... [interpose]

8 CO-CHAIRPERSON KALLOS: Did you advise  
9 H + H about this before they brought her on in March?

10 FIRST DEPUTY MAYOR SHORRIS: I don't  
11 believe I did that, no.

12 CO-CHAIRPERSON KALLOS: And do you know  
13 where she is now?

14 FIRST DEPUTY MAYOR SHORRIS: I believe I  
15 was told she retired.

16 CO-CHAIRPERSON KALLOS: So according to  
17 Linked in, she's no longer at H + H; part of one of  
18 the reasons we can't have her here today. I'm gonna  
19 pass it back to my colleague Vinnie Gentile and  
20 we'll...

21 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

22 CO-CHAIRPERSON KALLOS: I'll continue  
23 with more questions once he's done.

24 CHAIRPERSON GENTILE: Thank you,  
25 Mr. Chairman.

3 Just some follow-up questions -- during  
4 December of 2015, your staff and all of City Hall was  
5 in a flurry of activity because they knew what was  
6 happening; the community was informing them; the  
7 Borough President was informing them about what was  
8 happening with the sale of Rivington to Slate  
9 Property Group, and that coincides with the time that  
10 Stacey Cumberbatch was looking to leave and go to  
11 Health and Hospitals, so can you say that that did  
12 not come up during the course of time where she's  
13 looking to leave?

14 FIRST DEPUTY MAYOR SHORRIS: It did not  
15 with me, Council Member; I was not aware of the  
16 community concern in December.

17 CHAIRPERSON GENTILE: Despite the fact  
18 the rest of City Hall knew about it?

19 FIRST DEPUTY MAYOR SHORRIS: A number of  
20 people at City Hall apparently knew, according to  
21 records **[inaudible]**...

22 CO-CHAIRPERSON KALLOS: Including your  
23 staff knew about it.

24 FIRST DEPUTY MAYOR SHORRIS: Including  
25 staff, but I was not aware.

CO-CHAIRPERSON KALLOS: And you didn't?

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2 FIRST DEPUTY MAYOR SHORRIS: Did...

3 CO-CHAIRPERSON KALLOS: You didn't know  
4 about it in... [crosstalk]

5 FIRST DEPUTY MAYOR SHORRIS: I did not at  
6 the time.

7 CHAIRPERSON GENTILE: December...

8 FIRST DEPUTY MAYOR SHORRIS: No.

9 CHAIRPERSON GENTILE: of 2015? Let me  
10 ask you another management question. By mid 2014 you  
11 said in your interview -- I think it was with the  
12 Comptroller -- did you rely on your Policy Advisor  
13 for Hospitals, Sarah Samis...

14 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

15 CHAIRPERSON GENTILE: to help you with  
16 understanding Rivington; is that correct?

17 FIRST DEPUTY MAYOR SHORRIS: Yes.

18 CHAIRPERSON GENTILE: Now did Sarah Samis  
19 understand the deed restriction issue and the removal  
20 process?

21 FIRST DEPUTY MAYOR SHORRIS: I have no  
22 reason to believe she would have; I relied on her, as  
23 I mentioned, **[inaudible]**... [crosstalk]

24 CHAIRPERSON GENTILE: Right, she has a  
25 hospital background; correct...? [crosstalk]

3 FIRST DEPUTY MAYOR SHORRIS: Well yes,  
4 healthcare background.

5 CHAIRPERSON GENTILE: She comes from the  
6 hos... and what we're talking about here is a land use  
7 issue primarily.

8 FIRST DEPUTY MAYOR SHORRIS: Well that's  
9 why I wanted to separate in my statement, Council  
10 Member, the distinction here. Our interest in  
11 Rivington House was not on the deed restriction per  
12 se; as I mentioned, City Hall generally isn't  
13 involved in lifting or amendment or anything else  
14 about deed restrictions; I'd never actually heard of  
15 them until this came up. We were interested in the  
16 issue of the nursing home and the future of the  
17 nursing home and whether the nursing home would go  
18 bankrupt; for that reason, I engaged the only person  
19 on the staff who had any familiarity with **[inaudible]**  
20 issue... [crosstalk]

21 CHAIRPERSON GENTILE: But Mr. Deputy  
22 Mayor, VillageCare came to you as a land use problem  
23 with the deed restrictions; that was what they came  
24 to you with.

25 FIRST DEPUTY MAYOR SHORRIS: Actually, it  
came to my initial understanding that VillageCare was

3 in great financial stress and was nearing bankruptcy  
4 and that the facility could be closed; that was the  
5 issue that actually came to my attention; not a deed  
6 restriction issue, but the future of a nursing home  
7 facility and a nonprofit operator.

8 CHAIRPERSON GENTILE: So you had no  
9 thought or no consideration of then possibly bringing  
10 in or using your policy advisor that you have on your  
11 staff for DCAS; wouldn't that made -- or least to add  
12 that person to your team here dealing with this issue  
13 -- from a management viewpoint, wouldn't have that  
14 made more sense than to leave someone with a  
15 background in hospital work...

16 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

17 CHAIRPERSON GENTILE: to have to deal  
18 with the issue of deed restriction removal?

19 FIRST DEPUTY MAYOR SHORRIS: This was an  
20 issue that crossed over multiple fields, for sure,  
21 and as is common at City Hall, when we have to jockey  
22 things that have complex implications, as a general  
23 matter we have a bright and thoughtful staff; where  
24 they need help on an issue they may get help; many  
25 times I don't use every single person on every issue  
that has multiple implications but rather have a lead



3 person or two; I felt that was a good way to handle  
4 the issue.

5 CHAIRPERSON GENTILE: Well have you come  
6 to realize now that Sarah Samis, in a series of  
7 e-mails among the City Hall staff, just among the  
8 City Hall staff, that she was saying that City Hall  
9 must approve any change in use, which should have  
10 happened, but it was not required to happen, as she  
11 was saying in regard to Rivington?

12 FIRST DEPUTY MAYOR SHORRIS: Council  
13 Member...

14 CHAIRPERSON GENTILE: So do you come to  
15 realize now that she was giving out wrong information  
16 and that maybe your DCAS policy advisor might have  
17 been the better person to get it right in  
18 communicating with other members of the Mayor's  
19 Administration?

20 FIRST DEPUTY MAYOR SHORRIS: Council  
21 Member, as I mentioned in my answer to the Speaker,  
22 who I think focused on the issue here that is key;  
23 the internal operations of the informal dealing with  
24 City Hall staff on a particular issue that was unique  
25 and new to us was flawed in this case, to be sure,  
but the answer to that is to create a process and a

3 structure that will formalize this communication in  
4 such that we don't have this kind of risk any  
5 further. This is not an issue that is an  
6 individualized issue; this is a procedural question  
7 -- we made a mistake on this issue, the government  
8 did generally; it needs to be rectified. No  
9 individual had ill intent or misconduct, as reviewed  
10 by hundreds of hours of review; instead, we need  
11 therefore a structural change to this...

12 CHAIRPERSON GENTILE: But... so we need...  
13 Right... [crosstalk]

14 FIRST DEPUTY MAYOR SHORRIS: the process  
15 we have proposed would obviate this problem.

16 CHAIRPERSON GENTILE: Okay. Structural  
17 changes there, but this failure in, as you say, in  
18 management, we're here to ask whether that impacts  
19 other areas, this failure of management -- we got it  
20 wrong -- is it endemic to the rest of the management  
21 that occurs...? [crosstalk]

22 FIRST DEPUTY MAYOR SHORRIS: And my  
23 answer to that question, as I mentioned to Chair  
24 Kallos, was the same, which is the record of this  
25 Administration is extremely strong on execution --  
there is a reason why the streets are safer; there's

2 a reason why more children graduate from high school;  
3 there is a reason why 200,000 units of affordable  
4 housing are on track; there's a reason **[inaudible]**..  
5 [crosstalk]

6 CO-CHAIRPERSON KALLOS: First Deputy  
7 Mayor Shorris, just wanna...

8 FIRST DEPUTY MAYOR SHORRIS: I just wanna  
9 finish -- I believe that is... [crosstalk]

10 CO-CHAIRPERSON KALLOS: We're familiar  
11 with the record.

12 FIRST DEPUTY MAYOR SHORRIS: that is a  
13 demonstration of the record of the Administration  
14 executing on policy.

15 CO-CHAIRPERSON KALLOS: So with regards  
16 to it, so @nomias [sp?], a political reporter, has  
17 tweeted back that according to *Politico*, they only  
18 have record of you meeting with former Commissioner  
19 Cumberbatch once in 2015.

20 FIRST DEPUTY MAYOR SHORRIS: I don't know  
21 what records they have, but again, I generally had  
22 monthly meetings with commissioners, although they  
23 did get canceled if I had other interactions in-  
24 between.

2 CO-CHAIRPERSON KALLOS: And so  
3 ultimately, you've stated for the record, that you  
4 did not communicate directly to Commissioner  
5 Cumberbatch your desires on Rivington; she seems to  
6 have done her job; now she's not DCAS Commissioner --  
7 whose responsibility was Rivington; was it  
8 Commissioner Cumberbatch or yours?

9 FIRST DEPUTY MAYOR SHORRIS: Ultimately  
10 the responsibility for an error like this has to be  
11 mine.

12 CO-CHAIRPERSON KALLOS: And so why is she  
13 just gone now; why isn't she still serving as DCAS  
14 Commissioner?

15 FIRST DEPUTY MAYOR SHORRIS: Because she  
16 took an opportunity at the Health and Hospitals  
17 Corporation and moved on.

18 CO-CHAIRPERSON KALLOS: So speaking of  
19 which, you've brought in a new commissioner; was  
20 there a transition memorandum?

21 FIRST DEPUTY MAYOR SHORRIS: I actually  
22 don't know, I'm not sure whether there -- we could  
23 ask the Commissioner [sic]... [crosstalk]

24 CO-CHAIRPERSON KALLOS: I will ask  
25 Lisette Camilo shortly.

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2 FIRST DEPUTY MAYOR SHORRIS: Okay.

3 CO-CHAIRPERSON KALLOS: When did you  
4 begin seeking a replacement for the DCAS  
5 Commissioner?

6 FIRST DEPUTY MAYOR SHORRIS: Probably --  
7 Lisette, if I remember, our first discussions on this  
8 was probably in late December 2015, mid December of  
9 2015, something like that... [crosstalk]

10 CO-CHAIRPERSON KALLOS: So late December  
11 2015. And when do you... [crosstalk]

12 FIRST DEPUTY MAYOR SHORRIS: **[inaudible]**  
13 November.

14 CO-CHAIRPERSON KALLOS: Did you publicly  
15 post for the position of Commissioner of DCAS?

16 FIRST DEPUTY MAYOR SHORRIS: No, we  
17 generally don't post positions **[inaudible]**...  
18 [crosstalk]

19 CO-CHAIRPERSON KALLOS: And who suggested  
20 Lisette Camilo to fill this role?

21 FIRST DEPUTY MAYOR SHORRIS: I knew  
22 Lisette Camilo from within the government.

23 CO-CHAIRPERSON KALLOS: And so you  
24 suggested her?

25 FIRST DEPUTY MAYOR SHORRIS: Yeah.

2 CO-CHAIRPERSON KALLOS: And did the Mayor  
3 have to approve the appointment of Lisette Camilo?

4 FIRST DEPUTY MAYOR SHORRIS: Yes he did.

5 CO-CHAIRPERSON KALLOS: And at that  
6 point, as you were in transition between the two  
7 commissioners, you had no knowledge of the deed  
8 restrictions having been lifted in November?

9 FIRST DEPUTY MAYOR SHORRIS: I had no  
10 knowledge that the deed restrictions were lifted in  
11 such a way that this problem would occur. No, I did  
12 not know that **[inaudible]**... [crosstalk]

13 CO-CHAIRPERSON KALLOS: And the Mayor  
14 approved a change in the DCAS Commissioner without  
15 having a valid reason for something that may have  
16 happened for that?

17 FIRST DEPUTY MAYOR SHORRIS: I don't  
18 understand **[inaudible]**... [crosstalk]

19 CO-CHAIRPERSON KALLOS: Did the Mayor ask  
20 you why the commissioners were changing, so  
21 [crosstalk]

22 FIRST DEPUTY MAYOR SHORRIS:  
23 Commissioner...

24 CO-CHAIRPERSON KALLOS: so soon into his  
25 new administration?

2 FIRST DEPUTY MAYOR SHORRIS: Well it was  
3 nearly two years; commissioners do move with a two-  
4 year period; I'm sure other commissioners had moved  
5 at that time, it's not unusual.

6 CO-CHAIRPERSON KALLOS: And so you spoke  
7 to the Mayor about this; he didn't ask you about why  
8 the Commissioner was moving?

9 FIRST DEPUTY MAYOR SHORRIS: She had an  
10 opportunity at Health and Hospitals; we let her move  
11 to Health and Hospitals; he, I'm sure, wanted to know  
12 whether I thought that was something I would approve;  
13 I did approve of it; we moved on [sic]... [crosstalk]

14 CO-CHAIRPERSON KALLOS: And so the Mayor  
15 himself also approved of it?

16 FIRST DEPUTY MAYOR SHORRIS: He had to  
17 approve of the hiring of Commissioner Camilo,  
18 absolutely.

19 CO-CHAIRPERSON KALLOS: And did the Mayor  
20 also interview the new applicant?

21 FIRST DEPUTY MAYOR SHORRIS: I believe  
22 so.

23 CO-CHAIRPERSON KALLOS: I'll ask her.  
24 And so this position went without any gap; it  
25

2 literally went from Commissioner Cumberbatch to  
3 Commissioner Camilo; is that correct?

4 FIRST DEPUTY MAYOR SHORRIS: There was no  
5 intervening commissioner, no.

6 CO-CHAIRPERSON KALLOS: But like there  
7 was no gap in time, like they started -- so for  
8 instance, Lilliam Barrios-Paoli left City Hall in  
9 September 2015; she wasn't replaced until January  
10 2016... [crosstalk]

11 FIRST DEPUTY MAYOR SHORRIS: Right. Yes.

12 CO-CHAIRPERSON KALLOS: Is there a reason  
13 why the DCAS Commissioner needs to be filled so much  
14 more quickly than a Deputy Mayor position?

15 FIRST DEPUTY MAYOR SHORRIS: No, it's  
16 based on the search process that we use; in this case  
17 we had a very talented internal candidate for the  
18 position and so it made for a much easier transition.

19 CO-CHAIRPERSON KALLOS: And so in terms  
20 of the deed restriction process; when did you discuss  
21 it with Mayor de Blasio?

22 FIRST DEPUTY MAYOR SHORRIS: As media  
23 reports were emerging, in either the last day or two  
24 of February; the first day of March, whenever that  
25 was.



2 CO-CHAIRPERSON KALLOS: And so you never  
3 communicate -- and I remind you're under oath --  
4 you've never communicated with the Mayor about  
5 Rivington before February 2016?

6 FIRST DEPUTY MAYOR SHORRIS: That's  
7 correct.

8 CO-CHAIRPERSON KALLOS: And so on  
9 August 3, 2014, did you e-mail Mayor de Blasio,  
10 Chirlane McCray and Santucci [sp?] monthly meeting  
11 notes, including the one I showed you, listing  
12 Rivington House as an element?

13 FIRST DEPUTY MAYOR SHORRIS: I did.

14 CO-CHAIRPERSON KALLOS: And did the Mayor  
15 read that e-mail?

16 FIRST DEPUTY MAYOR SHORRIS: I don't  
17 know.

18 CO-CHAIRPERSON KALLOS: Did you follow up  
19 with him, as you've indicated in your testimony that  
20 a good manager should, in terms of managing -- did  
21 you follow up with the Mayor about the e-mail that  
22 you don't know if he read?

23 FIRST DEPUTY MAYOR SHORRIS: Actually,  
24 that was the follow-up to a conversation we had; that  
25 was the follow-up.

2 CO-CHAIRPERSON KALLOS: And in that  
3 conversation did you discuss Rivington?

4 FIRST DEPUTY MAYOR SHORRIS: No.

5 CO-CHAIRPERSON KALLOS: What in the e-  
6 mail were you discussing was he interested in?

7 FIRST DEPUTY MAYOR SHORRIS: The e-mail  
8 had to do with a question he had posed about what  
9 tools people used to track events after a meeting; he  
10 asked to see a sample of the tool I used, what the  
11 agenda structure is like; what the minutes and  
12 follow-up structure was like; that was an example  
13 that I pulled; it happened to be a recent example.

14 CO-CHAIRPERSON KALLOS: Is that a good  
15 example of the management tools you use?

16 FIRST DEPUTY MAYOR SHORRIS: As to form,  
17 yes; as to the -- and the substance of that  
18 particular one was actually executed fine; that was...  
19 [interpose]

20 CO-CHAIRPERSON KALLOS: Do you believe  
21 now that that form works?

22 FIRST DEPUTY MAYOR SHORRIS: For the most  
23 part, yes.

24 CO-CHAIRPERSON KALLOS: Except for  
25 Rivington?

2 FIRST DEPUTY MAYOR SHORRIS: Actually,  
3 with regard to the Rivington in that element, it  
4 worked out fine.

5 CO-CHAIRPERSON KALLOS: And did you  
6 happen to report to the Mayor on September 19th or  
7 20th of 2014 with a weekly update memo from you to  
8 the Mayor including as an attachment e-mails between  
9 Williams and Sharpe [sp?] -- states: HPD Law  
10 Legislative Affairs on Rivington House; did you...

11 FIRST DEPUTY MAYOR SHORRIS: I did not  
12 discuss that with him.

13 CO-CHAIRPERSON KALLOS: And you gave him  
14 a document; did you follow up?

15 FIRST DEPUTY MAYOR SHORRIS: I did not.

16 CO-CHAIRPERSON KALLOS: So you've said  
17 that your people who report to you are instructed to  
18 call or bring things up in a meeting, if they are to  
19 be trusted, if they're good; is that correct?

20 FIRST DEPUTY MAYOR SHORRIS: Yes, their  
21 job is **[inaudible]**... [crosstalk]

22 CO-CHAIRPERSON KALLOS: Did you do that  
23 for the Mayor on Rivington?

24 FIRST DEPUTY MAYOR SHORRIS: I didn't  
25 discuss Rivington with the Mayor.

2 CO-CHAIRPERSON KALLOS: Do you think that  
3 is a good thing that you did not report up to the  
4 Mayor about this?

5 FIRST DEPUTY MAYOR SHORRIS: At the time  
6 I actually thought this was not a matter of great  
7 import because I thought we made a pretty clear  
8 policy decision and it was being executed; that's my  
9 job, I don't tell him all the things going on in the  
10 350,000-people government we manage.

11 CO-CHAIRPERSON KALLOS: On March 1, 2016,  
12 Mark Peters began an investi... DOI began an  
13 investigation; were you aware of it on March 1, 2016?

14 FIRST DEPUTY MAYOR SHORRIS: I requested  
15 the investigation.

16 CO-CHAIRPERSON KALLOS: You requested... Is  
17 there a record of that request?

18 FIRST DEPUTY MAYOR SHORRIS: I called  
19 Mark Peters that day to ask him.

20 CO-CHAIRPERSON KALLOS: And did you let  
21 the Mayor know ahead of time?

22 FIRST DEPUTY MAYOR SHORRIS: At the time  
23 when I briefed the Mayor, I told him I had called DOI  
24 to ask them to begin an investigation.

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2 CO-CHAIRPERSON KALLOS: On what day did  
3 you tell the Mayor you had called DOI to begin the  
4 investigation...? [crosstalk]

5 FIRST DEPUTY MAYOR SHORRIS: That was  
6 somewhere in that period; it was as news stories were  
7 appearing, so whenever those were -- the 29th or the  
8 1st, I don't know exactly.

9 CHAIRPERSON GENTILE: Mr. Deputy Mayor,  
10 backing September of 2014 you at some point decided  
11 that the property should remain a healthcare facility  
12 and preferred it to be a nonprofit, but for-profit  
13 would be okay if it were a healthcare facility, but  
14 as the record reflects, you don't know any evidence  
15 that that decision was communicated to DCAS; am I  
16 accurate on that?

17 FIRST DEPUTY MAYOR SHORRIS: What is  
18 accurate, Council Member, as I mentioned, that we did  
19 not have a sufficiently rigorous process to ensure  
20 deed restrictions actions were rigorously enforced...

21 CHAIRPERSON GENTILE: Okay.

22 FIRST DEPUTY MAYOR SHORRIS: that's the  
23 process change we are making.

24 CHAIRPERSON GENTILE: So let me ask you;  
25 City Hall has had a practice of drafting decision

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3 memos when those types of decisions are made; after  
4 you made this decision, was there a decision memo  
5 drafted?

6 FIRST DEPUTY MAYOR SHORRIS: No.

7 CHAIRPERSON GENTILE: Sorry?

8 FIRST DEPUTY MAYOR SHORRIS: No.

9 CHAIRPERSON GENTILE: Was not?

10 FIRST DEPUTY MAYOR SHORRIS: No.

11 CHAIRPERSON GENTILE: And why was a  
12 decision memo not drafted at this point?

13 FIRST DEPUTY MAYOR SHORRIS: Because I  
14 did not believe this rose to the level that required  
15 a mayoral intervention.

16 CHAIRPERSON GENTILE: But a decision memo  
17 would also be seen by the agencies too, I would  
18 imagine.

19 FIRST DEPUTY MAYOR SHORRIS: Some are  
20 drafted by the agency and..

21 CHAIRPERSON GENTILE: Right.

22 FIRST DEPUTY MAYOR SHORRIS: some are  
23 not.

24 CHAIRPERSON GENTILE: Okay, in absence of  
25 a decision memo then, did you ever instruct or inform

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3 or tell your policy advisor for DCAS to communicate  
4 this decision to DCAS?

5 FIRST DEPUTY MAYOR SHORRIS: I believed  
6 the decision was being communicated to DCAS

7 **[inaudible]**... [crosstalk]

8 CHAIRPERSON GENTILE: No, no, my question  
9 was; did you ever indicate or tell your policy  
10 advisor for DCAS to communicate this decision of  
11 yours to DCAS?

12 FIRST DEPUTY MAYOR SHORRIS: Not the  
13 person who was covering DCAS, but the person who was  
14 covering Rivington.

15 CHAIRPERSON GENTILE: So what if any  
16 instructions did you give to this person that you  
17 thought was going to inform... [crosstalk]

18 FIRST DEPUTY MAYOR SHORRIS: They un...

19 CHAIRPERSON GENTILE: others of your  
20 decision?

21 FIRST DEPUTY MAYOR SHORRIS: They  
22 understood the decision we had made and their job is  
23 to **[inaudible]**... [crosstalk]

24 CHAIRPERSON GENTILE: And they, being  
25 who?

2 FIRST DEPUTY MAYOR SHORRIS: The staff  
3 who's involved in any given issue.

4 CHAIRPERSON GENTILE: Did you ask your  
5 decision to be memorialized in any way -- e-mail and  
6 disseminated in some way?

7 FIRST DEPUTY MAYOR SHORRIS: But  
8 Councilman, that's exactly what I'm referring to when  
9 I note that this process needs to become a more  
10 formalize one; the procedures we have put in place,  
11 the new process that I mentioned, will ensure that  
12 all such decisions are formalized and can't be --  
13 there won't be a failure to adhere to them.

14 CHAIRPERSON GENTILE: Did you ever follow  
15 up to check that your decision was sent down the  
16 line?

17 FIRST DEPUTY MAYOR SHORRIS: No, I make  
18 many decisions; I don't personally follow up on all  
19 of them.

20 CHAIRPERSON GENTILE: So that one you did  
21 not follow up on?

22 FIRST DEPUTY MAYOR SHORRIS: No.

23 CHAIRPERSON GENTILE: Did you ever again  
24 discuss your decision with your staff?



2 FIRST DEPUTY MAYOR SHORRIS: Once the  
3 decision was made, we moved on.

4 CHAIRPERSON GENTILE: So did anybody on  
5 your staff indicate to you, the time you spoke to  
6 them about your policy decision, that they were going  
7 to do something to communicate it down the line?

8 FIRST DEPUTY MAYOR SHORRIS: I don't  
9 recall the nature of their discussion, but in  
10 general, when we have a decision, the staff helps to  
11 execute it. In this case, because it was an outlier,  
12 an unusual case -- as I mentioned, we don't intervene  
13 in this policy area generally -- we did not have a  
14 formal enough process; that's what we have proposed  
15 to change.

16 CHAIRPERSON GENTILE: But aren't we  
17 making this more difficult than it really should be?  
18 Why not just pick up the phone, tell DCAS to remove  
19 the not-for-profit restriction, keep it a healthcare  
20 facility and move on?

21 FIRST DEPUTY MAYOR SHORRIS: Because I  
22 believed that had happened.

23 CHAIRPERSON GENTILE: Well what I'm  
24 saying is, rather than have these changes -- you have  
25 direct access to the Commissioner.. [crosstalk]

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3 FIRST DEPUTY MAYOR SHORRIS: [inaudible]

4 CHAIRPERSON GENTILE: you have a direct  
5 access to anybody.. [crosstalk]

6 FIRST DEPUTY MAYOR SHORRIS: [inaudible]

7 CHAIRPERSON GENTILE: just -- let's not  
8 make it complicated; pick up the phone and tell them,  
9 look, remove the not-for-profit, keep it a healthcare  
10 facility; that's then end, period.

11 FIRST DEPUTY MAYOR SHORRIS: Council  
12 Member, again, I have a variety of responsibilities  
13 in the Administration, I don't personally execute on  
14 all of them, that's why we have our staff to assist  
15 us in that; this was an area where I believed our  
16 decision was being executed; I had no reason to think  
17 otherwise, so I made my decision and moved on..  
18 [crosstalk]

19 CHAIRPERSON GENTILE: Okay. [background  
20 comments] Okay. Let me move on, 'cause we wanna get  
21 to other members.

22 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

23 CHAIRPERSON GENTILE: You indicated that  
24 this was -- repeatedly -- a second-tier issue and  
25 that you weren't really interested in it other than  
for the use of the site and yet, by July 2014, even

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2 by mid 2014, there were top-tier agency heads and  
3 deputy mayors meeting over what you're calling a  
4 second-tier issue. So how many times -- other than  
5 this time -- has it happened where a second-tier  
6 issue requires the meeting of top agency heads;  
7 deputy mayors coming together to discuss what you  
8 term a second-tier issue?

9 FIRST DEPUTY MAYOR SHORRIS: We have many  
10 issues that we have to address, Council Member; we...

11 CHAIRPERSON GENTILE: How many other  
12 times did that happen?

13 FIRST DEPUTY MAYOR SHORRIS: I don't  
14 know, Council Member.

15 CHAIRPERSON GENTILE: But it hap..  
16 [crosstalk]

17 FIRST DEPUTY MAYOR SHORRIS: All I can  
18 tell you is; we have many issues that we address,  
19 some of them are easy to execute, some of them are  
20 harder; this one we came to a decision on and I  
21 believed it was being executed again [sic]...

22 [crosstalk]

23 CHAIRPERSON GENTILE: And if it was such  
24 a second-tier issue; why is it then you sent the  
25

3 Mayor a summary about a July 2014 meeting you had  
4 with DCAS?

5 FIRST DEPUTY MAYOR SHORRIS: As I  
6 described to the Chair before, that summary was not  
7 about -- that memo you're referring to had nothing to  
8 do with Rivington; that was a memo to demonstrate a  
9 format that was used to track issues. That July  
10 meeting, which was a meeting with DCAS, where  
11 Rivington was discussed, was a meeting where we  
12 instructed the Commissioner not to move forward on  
13 any adjustments to the deed restriction; we executed  
14 on that, we followed up on it and it was executed  
15 exactly as planned; that was a very good example of  
16 how a management tool could be effective.

17 CHAIRPERSON GENTILE: Well while you're  
18 thinking it was a second-tier issue, clearly  
19 Commissioner Cumberbatch thought it was an important  
20 issue to you and that Rivington was an interest to  
21 you, because she kept sending you update memos about  
22 its progress; in fact, we've said this before; there  
23 were three memos in particular that directly  
24 addressed those issues -- on May 6, 2015 she sent you  
25 an e-mail memo discussing Landau's arguments about  
buying the property; on July 8, 2015 she advises you

3 that both deed restrictions are in the process of  
4 being lifted, and then on November 18 she sent you an  
5 e-mail telling you that both deed restrictions have  
6 been formally lifted. Now you've testified before --  
7 several times -- that you never read any of those  
8 e-mails, nor did your staff read any of those e-  
9 mails, because even though they were cc'd on them,  
10 neither you nor your staff, whether it be Samis or  
11 Williams, nobody read those e-mails. Do you realize  
12 now that... Let me give you... your interview, in your  
13 interview you said: "At some point that transaction,  
14 Rivington, was executed in a way different than I  
15 thought it was going to be executed. I would have  
16 liked if someone raised the issue to me and in  
17 retrospect, I believe had it been raised to me at the  
18 time, the course of action would've been different."  
19 Do you realize now, Mr. Deputy Mayor, that indeed  
20 this issue was raised to you at least, at least three  
21 times by the Commissioner?

22 FIRST DEPUTY MAYOR SHORRIS: So let's go  
23 over a couple of things you said, Council Member, if  
24 I can respond. First of all, I just wanna be clear;  
25 second-tier issues are not necessarily unimportant  
issues, they can be issues of import, they're just

2 not the same as the most serious or most urgent  
3 issues that may be going on, whether it's -- you can  
4 imagine issues we deal with all day, as do you.

5 Secondly, I don't believe I've ever said that no one  
6 -- that I know for a fact that neither I nor anyone  
7 ever looked at any of those memos; I do not know for  
8 a fact whether that was true or not, but I do know  
9 that that's not actually the relevant, to me, most  
10 important factor here. What is important is that  
11 what was in the text of those memos did not identify  
12 the issue as being of great import; first of all, if  
13 it was of the most urgent import to the Commissioner,  
14 I would've surely expected a call, an e-mail or some  
15 other communication. Second, if the issue was of  
16 sufficient gravity in the memo even, it would've  
17 indicated we have changed your approach and are now  
18 going to allow luxury housing on the site, which it  
19 did not. So no one ever -- in fact, reading those  
20 memos eight months after -- and finally, I would...  
21 again, as I mentioned, the point of those memos was  
22 really only to report on actions that have already  
23 taken place or that were continuing ongoing matters;  
24 generally matters of urgency and great seriousness  
25 were raised in many other vehicles. So sure, in

3 answer to your final point, had somebody said early  
4 on the agency expects to execute this policy in a way  
5 different than you had asked it to be executed, I  
6 would like to have known that and would have reversed  
7 that. Had anybody brought this decision to me or the  
8 Mayor or anyone else on my team and said we are  
9 planning to do this differently, in a way that would  
10 execute a policy the opposite of what you wanted;  
11 that should have been raised; it was not. The  
12 process we are putting in place now will ensure that  
13 that cannot happen again and that is why I have  
14 confidence this cannot reoccur.

15 CHAIRPERSON GENTILE: One can only hope,  
16 right? Well we wanna get to some members' questions;  
17 I do wanna acknowledge we have been joined by -- from  
18 my committee -- Rory Lancman and Council Member Inez  
19 Dickens. Council Member Lancman, Council Member  
20 Dickens and -- and also, Council Member Lander has  
21 joined us also. We will start with the questioning  
22 by Council Member Margaret Chin.

23 COUNCIL MEMBER CHIN: Thank you, Chair.  
24 I'm gonna ask a couple questions and then pass it on  
25 to my colleagues and I'll come back.

2 I wanted to ask, Deputy Mayor, this is a  
3 big loss to the community, so we wanna know what  
4 methods are being considered to return Rivington  
5 House to the community? Have all the options,  
6 including landmarking, eminent domain or legal action  
7 -- have you explored these options so that we can get  
8 Rivington House back?

9 FIRST DEPUTY MAYOR SHORRIS: I believe we  
10 will continue to explore those options, Council  
11 Member. The investigation that's going on now as to  
12 the deceptive practices of Allure, the purchaser of  
13 the property from VillageCare, may or may not give us  
14 an opportunity to take action; those investigations  
15 are ongoing by the State Attorney General and others.  
16 We believe, we believe, and not as a lawyer, but that  
17 there was deceptive practices involved and engaged in  
18 by Allure; that's part of the reason I think the  
19 City, but also I believe the State may not have been  
20 informed correctly of their intentions. So the first  
21 question is; is there gonna be a criminal action  
22 involved here and whether that would or wouldn't  
23 trigger any opportunities is something our Law  
24 Department needs to continue to look at. The City's  
25 actual right -- of course we never owned the



3 property, we only owned the restriction on its use --  
4 but whether -- which was sold as part of the  
5 transaction we're talking about -- so whether that  
6 gives us any further right is something that we  
7 should continue to explore and we will continue to  
8 explore, but in the meantime, as you know, one of the  
9 things we're trying to do is to take the beds that  
10 were lost and find a different site for them; again,  
11 different than nursing home; not HIV/AIDS nursing  
12 home, but other beds for seniors, and that was why we  
13 were pleased to be able to designate a site that will  
14 be our target to replace those beds.

15 COUNCIL MEMBER CHIN: I mean that's a  
16 good start; I mean we welcome you know more support  
17 to the community, but I think you will hear from the  
18 community later; we don't wanna give up yet; we wanna  
19 fight to make sure that this facility is gonna come  
20 back to the community. And so I think we're urging  
21 the Administration to pursue all options, you know,  
22 to make sure that this happens, because the community  
23 -- and also, I think working together with the  
24 Administration, with were excited in a way that it  
25 was gonna continue to stay as a nursing facility and  
we fought very hard to get State approval, so that is

3 something that we still haven't gotten an answer back  
4 from the State; the State approved over 200 beds for  
5 Rivington House and the community thought that it's  
6 gonna stay as a nursing home for the community, and  
7 when it closed, we didn't hear from the State and I  
8 think that's something that we're also asking the  
9 Administration to pursue that with us, because what  
10 happened; if they were gonna close it as a nursing  
11 home, how come the community didn't know about it?  
12 We found out about it from people working in there  
13 that said something is wrong where they're not  
14 getting patients, they're not getting more residents  
15 and people are being removed. So that is something  
16 the Administration needs to continue to pursue.

17 One of the things that came out in the  
18 investigation was that the public notice -- we didn't  
19 know that the hearing was happening on removing the  
20 deed restriction; that the deed had public notice,  
21 nor the MOCS public calendar identify Rivington House  
22 by its incorrect name and address; there was nothing  
23 mentioned that it was Rivington House that was coming  
24 up; if it was, I think my office, the Borough  
25 President Office, the community could've been

3 alerted, but we did not even know that this  
4 discussion was happening.

5 FIRST DEPUTY MAYOR SHORRIS: So Council  
6 Member, I 100% agree with you on both of those  
7 points, that we need to continue to pursue the  
8 Rivington options, and the failure for the community  
9 to get full awareness of this is clearly a focus,  
10 both of your legislation, but also of the regulations  
11 that we have now issued publicly for comment; that  
12 would require things like taking all of the files and  
13 documents related to any land action and sending it  
14 into the community so people in the community can  
15 directly review and access them individually. It  
16 would require much more extensive notification when  
17 there is gonna be a hearing on a property, so that it  
18 isn't a one-day appearance on the City Record, which  
19 is appropriate in some cases and isn't appropriate  
20 for something perhaps of this enormity or importance  
21 to a community; we're talking about much more direct  
22 noticing of elected officials and others. So we need  
23 to change the opportunity that a community has to be  
24 engaged in something like this, beyond the standard  
25 [bell] that's set for others, and that's part of the  
reason why we've proposed the changes, many of which

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2 are very well aligned with some of the changes the  
3 Council is looking at through your bill.

4 COUNCIL MEMBER CHIN: Well that's what  
5 we're putting into the legislation...

6 FIRST DEPUTY MAYOR SHORRIS: That's  
7 right. That's right.

8 COUNCIL MEMBER CHIN: so that this  
9 doesn't happen again...

10 FIRST DEPUTY MAYOR SHORRIS: Correct.

11 COUNCIL MEMBER CHIN: with incorrect  
12 information and we wanna make sure that the community  
13 has direct input.

14 FIRST DEPUTY MAYOR SHORRIS: That's  
15 correct.

16 COUNCIL MEMBER CHIN: Thank you, Chair.

17 FIRST DEPUTY MAYOR SHORRIS: Okay.

18 CHAIRPERSON GENTILE: Thank you, Council  
19 Member Chin. I believe Council Member Van Bramer has  
20 left and so has Council Member Menchaca, I believe,  
21 so we'll go to Council Member Garodnick.

22 COUNCIL MEMBER GARODNICK: Thank you very  
23 much, Mr. Chair. Deputy Mayor Shorris, I just -- I  
24 recognize I'm on the clock here, so I just have a few  
25 very specific questions.

2 FIRST DEPUTY MAYOR SHORRIS: Yes, sir.

3 COUNCIL MEMBER GARODNICK: In the meeting  
4 in which you communicated to your staff your  
5 preference on Rivington House, there was no e-mail or  
6 communication or writing that memorializes that  
7 decision, as far as you know; is that correct?

8 FIRST DEPUTY MAYOR SHORRIS: That's  
9 correct, Council Member.

10 COUNCIL MEMBER GARODNICK: Okay. And in  
11 your testimony you had cited duplicitous behavior and  
12 deceitful manipulation as the primary cause to allow  
13 this to happen. Can you say a little more about what  
14 you mean -- who was manipulated; who did the  
15 manipulating -- what are you pointing to when you say  
16 it?

17 FIRST DEPUTY MAYOR SHORRIS: I believe  
18 from the documentation I have seen that there was a  
19 fairly specific effort by the purchaser of the  
20 property, by Allure, to not make clear what its  
21 intentions were; in fact, we have a document from  
22 them, and I'm reading it to you; I'm sure you have it  
23 too, that says: "Do not discuss this deal; the seller  
24 is very concerned that the City will find out that  
25 we're in contract, directly impacting our ability to

2 have the deed restriction removed; once he has it  
3 removed, we can do whatever we want." That would  
4 imply to me -- I'm using this term not as a lawyer --  
5 but a nearly conspiratorial effort to deceive the  
6 City and as I mentioned, potentially also the State,  
7 about their intentions in this. We on the other hand  
8 had direct communication from that same enterprise,  
9 from Allure, that they intended to keep it a nursing  
10 home. So on the one hand they're telling us they  
11 plan to keep it a nursing home -- they were in fact a  
12 nursing home operator -- but at the same time we get  
13 communications like this that say don't tell the City  
14 what our plans are; once we have it, we can do  
15 whatever we want. So whether this is legally  
16 actionable I will leave to the investigatory bodies  
17 on this, but all I know is; there was a -- what  
18 appears to me as a layman -- a clear effort to  
19 deceive the City as to their intentions for this  
20 site.

21 COUNCIL MEMBER GARODNICK: Do you have  
22 any reason to believe that DCAS did not understand  
23 that by lifting the deed restriction, regardless of  
24 what any private applicant's true intentions were,

3 allowed for market rate housing or other potential  
4 development opportunities to take place?

5 FIRST DEPUTY MAYOR SHORRIS: I don't know  
6 what they knew and didn't know, but I do know this;  
7 one of the changes we will be making in our process  
8 is we are gonna require applicants for deed  
9 restriction amendments or removals to state very  
10 explicitly and very formally what their plan use is  
11 for the site; that should be a real consideration of  
12 ours; we thought it was here, but we also wanna  
13 document that it could potentially be actionable if  
14 they change afterwards so that this kind of deception  
15 of the City can't reoccur; if it does, that we have  
16 course of action.

17 COUNCIL MEMBER GARODNICK: Well it seems  
18 to me that we would need to even more than just a  
19 representation from the applicant... [crosstalk]

20 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.  
21 Uhm-hm.

22 COUNCIL MEMBER GARODNICK: right? I mean  
23 the City has all of the power when it comes to  
24 changing the rules...

25 FIRST DEPUTY MAYOR SHORRIS: Yeah.

2 COUNCIL MEMBER GARODNICK: so if new  
3 rules are in place, the rules should spell out  
4 exactly what is allowed and what is not; correct?

5 FIRST DEPUTY MAYOR SHORRIS: And I think  
6 what we are -- two things I think on that point --  
7 one, that our bias is very strongly gonna be not to  
8 ever remove the restrictions -- there'll be minor  
9 cases where that may be appropriate -- but generally,  
10 to modify them, if ever, based on this whole process  
11 that we're talking about, so that the City can have  
12 continuing engagement on the site. And second of  
13 all, to build an enforcement mechanism into this,  
14 using the Buildings Department and others, to make  
15 sure that whatever the stated use of the site is is  
16 in fact the actual use of the site. So we need both  
17 more specificity -- all of which are part of the  
18 reforms we're talking about -- and we need tougher  
19 enforcement to make sure that nobody slides through  
20 some loophole again.

21 COUNCIL MEMBER GARODNICK: As I  
22 understand the analysis that at least historically  
23 had been done about lifting a deed restriction, it  
24 really was a rational basis, like is there some  
25 reason to do this that a reasonable person could



2 understand, as opposed to this is in the best  
3 interests of the City of New York. Is there now a  
4 heightened standard for evaluating these sorts of  
5 things to say, it can't just be better for you; it  
6 must be better for the City, and how exactly is that  
7 **[inaudible]**... [crosstalk]

8 FIRST DEPUTY MAYOR SHORRIS: Well as I  
9 mentioned, when I was talking.. mentioned, talking  
10 about with the Speaker, the policies have been in  
11 place for some 20 years and was memorialized in 2010  
12 -- was very specific -- it said, if you've had this  
13 restriction for more than 10 years and you want it  
14 lifted, come in and pay the City 25% of the appraised  
15 value and you're good. I think the rationale behind  
16 that is not crazy rationale; it's about maximizing  
17 revenue to the City, and in this case that is exactly  
18 the process, better or worse, that was followed; they  
19 paid 25% of an appraised value. [bell] I think what  
20 we need to change and the reason we have proposed  
21 these changes in our process, is to make exactly sure  
22 that that's not our policy direction. We need to  
23 make sure that public policy goals override or at  
24 least are on the table with any financial benefit to  
25 the City, so that we can have a much richer

2 conversation about what should happen with a site  
3 like this; this shouldn't be a one-off conversation  
4 that happened because somebody happened to raise the  
5 issue with us; this should be a formalized process  
6 that will ensure better communication and better  
7 execution.

8 COUNCIL MEMBER GARODNICK: Thank you.

9 CHAIRPERSON GENTILE: Thank you, Council  
10 Member Garodnick. I just wanna recognize the  
11 presence of Council Member Rosenthal, a member of the  
12 O & I committee and Councilman Menchaca's return, so  
13 we'll go to him, Councilman Carlos Menchaca, yeah.

14 COUNCIL MEMBER MENCHACA: Okay. Thank  
15 you, Chairs. And I wanted to start a little bit  
16 with, and I think this was something that Council  
17 Member Chin and the Borough President and others have  
18 been talking a lot about -- the \$16 million -- and  
19 can you tell us about -- can you just remind us a  
20 little bit about that plan and the role of kinda  
21 community engagement that will happen in terms of how  
22 and how you kind of describe as addressing the gap;  
23 what's your plan...? [crosstalk]

24 FIRST DEPUTY MAYOR SHORRIS: The...

25 Initially, when the Mayor looked at this -- and it

2 was raised initially I think by both Council Member  
3 Chin and the Borough President in Manhattan -- the  
4 first thing we need to do is to take what were, in  
5 essence, dollars the City probably shouldn't have  
6 received, because this transaction shouldn't have  
7 gone forward, and at a minimum we'd dedicate those to  
8 the community. So the first commitment was to take...  
9 [interpose]

10 COUNCIL MEMBER MENCHACA: Sorry, can you  
11 repeat that; I couldn't hear that last part?

12 FIRST DEPUTY MAYOR SHORRIS: was to  
13 rededicate any proceeds the City had received -- the  
14 \$16 million -- and put it back into that community.  
15 So our first commitment was; whatever we did with  
16 those dollars would benefit that affected community.

17 But the second thing, another step we  
18 wanted to take was to see if we could find some way  
19 to replace the beds themselves, which were, as the  
20 Council member mentioned, initially HIV-oriented  
21 beds, but more generally, should be beds for seniors  
22 **[inaudible]** with some kind of health care import. So  
23 we've been looking around for a while for a potential  
24 site where we could locate such a facility and we  
25 believe we have found such a site; it will require,

2 actually, extensive community engagement; I expect  
3 there would have to be a ULURP action associated with  
4 it, so there'll be opportunity for engagement by the  
5 Council, the community board, borough, and other  
6 members of the community, so they'll [inaudible]...  
7 [interpose]

8 COUNCIL MEMBER MENCHACA: Can I pause you  
9 there really quick...? [crosstalk]

10 FIRST DEPUTY MAYOR SHORRIS: Yeah.

11 COUNCIL MEMBER MENCHACA: So is this a  
12 site that's owned by the City?

13 FIRST DEPUTY MAYOR SHORRIS: Yes, sir.

14 COUNCIL MEMBER MENCHACA: Okay, great.

15 FIRST DEPUTY MAYOR SHORRIS: Yes, sir.

16 COUNCIL MEMBER MENCHACA: And I guess I  
17 kinda wanna just open the opportunity to talk a  
18 little bit about your testimony saying that the City  
19 has... the City agencies, anyway, are not really  
20 focused on nursing homes; there's no staffing that's  
21 dedicated to these issues; clearly, this is something  
22 that we're all dealing with in different ways in our  
23 districts when we're trying to site nursing homes...  
24 [crosstalk]

25 FIRST DEPUTY MAYOR SHORRIS: Yeah. Yeah.

2 COUNCIL MEMBER MENCHACA: and I think a  
3 sentiment is that they're gonna be outside the city;  
4 these are critical infrastructure, but they need to  
5 be placed in the right location...

6 FIRST DEPUTY MAYOR SHORRIS: Yeah.

7 COUNCIL MEMBER MENCHACA: and some of  
8 these, they're gonna be City-owned sites and some of  
9 these are gonna be private sites...

10 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

11 COUNCIL MEMBER MENCHACA: and so back to  
12 your kind of ULURP concept of response to what  
13 happened here; how does the ULURP process solve this  
14 issue?

15 FIRST DEPUTY MAYOR SHORRIS: Well I wanna  
16 start by [sic] two different things you mentioned.  
17 So on nursing homes, generally; as I mentioned, the  
18 City is -- as you pointed out correctly -- doesn't  
19 have any active role in the management, regulation  
20 and structuring of this nursing home delivery system,  
21 that's a State responsibility; that said, I think my  
22 take-away from your point is -- should there be  
23 broader City engagement in the questions of nursing  
24 homes and dealing with our senior citizen population  
25 in the long-term future of the City -- I think the

3 answer has to be yes and I think we do need to start  
4 engaging in that area, as in some other areas where  
5 we don't have any formal role -- private hospitals or  
6 other areas that affect people who live here but  
7 aren't necessarily in the direct ambit of the City  
8 government -- there's no City Council committee on  
9 nursing homes, 'cause we don't regulate nursing  
10 homes, but there could be and we could engage in that  
11 much more richly.

12 To the matter of ULURP, particularly,  
13 obviously that's a subject of discussion and we'll  
14 continue to discuss with the Council; our sense is  
15 that, you know, some actions, deed restrictions that  
16 affect properties that were ULURP'ed and where the  
17 deed restrictions related to ULURP do have to go back  
18 to ULURP; that would not have been the case here.  
19 The question as to whether we're gonna apply ULURP  
20 more generally to all deed restriction actions is I  
21 think we wouldn't wanna debate; my own view on that  
22 is that many, many; the vast majority of deed  
23 restriction actions are very trivial in nature and  
24 would not be a worthwhile use of your time or even  
25 the cost to the applicant, but there are some,  
clearly, and we need to talk through with you -- you,

2 the Council -- and others and the City Planning  
3 Commission is engaged in that conversation as to what  
4 role ULURP should play going forward.

5 COUNCIL MEMBER MENCHACA: And I look  
6 forward to that conversation when we get to it.  
7 Thank you.

8 CO-CHAIRPERSON KALLOS: Next up is  
9 Council Member Crowley, followed by Levine, followed  
10 by Greenfield, followed by Lancman, followed by  
11 Dickens, followed by Lander; if you have questions  
12 for a second round with Camilo or Carter, please let  
13 us know.

14 COUNCIL MEMBER CROWLEY: Thank you to our  
15 co-chairs. Good morning, Deputy Mayor.

16 FIRST DEPUTY MAYOR SHORRIS: Good  
17 morning.

18 COUNCIL MEMBER CROWLEY: How was it that  
19 Allure was able to even purchase the property from  
20 the VillageCare if there was a deed restricting it to  
21 only nonprofits and they're not a nonprofit?

22 FIRST DEPUTY MAYOR SHORRIS:  
23 Interestingly, Allure actually has a nonprofit arm  
24 and was able initially to purchase it through its  
25 nonprofit arm.

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2 COUNCIL MEMBER CROWLEY: Did Allure have  
3 assurance from someone in the Bill de Blasio  
4 Administration that the deed would be changed and  
5 lifted, before they purchased this property?

6 FIRST DEPUTY MAYOR SHORRIS: No.

7 COUNCIL MEMBER CROWLEY: No?

8 FIRST DEPUTY MAYOR SHORRIS: No; not that  
9 I **[inaudible]**... [crosstalk]

10 COUNCIL MEMBER CROWLEY: But there were  
11 meetings with the Allure Group and people from your  
12 administration prior to them purchasing the property.

13 FIRST DEPUTY MAYOR SHORRIS: Yes, because  
14 as I mentioned, part of our goal was to have it stay  
15 a nursing home; we wanted to make sure it was going  
16 from one nursing home operator to another -- Allure  
17 was and is a nursing home operator -- so we were  
18 executing the transactions that would achieve the  
19 policy goal.

20 COUNCIL MEMBER CROWLEY: But it didn't  
21 stay a nursing home.

22 FIRST DEPUTY MAYOR SHORRIS: It did not.  
23 Correct. That's why **[inaudible]**... [crosstalk]

24 COUNCIL MEMBER CROWLEY: Can you explain  
25 what was going on -- there's a report on February



2 25th -- Deputy Mayor Alicia Glen and her office were  
3 frantically trying to give back the \$16 million to  
4 Allure Group -- did that happen; what was going on  
5 there?

6 FIRST DEPUTY MAYOR SHORRIS: I believe  
7 when public reports of this surfaced, which was when  
8 we actually learned that something had gone wrong  
9 here and it had been transferred to still another  
10 developer, not Allure, but... so another developer  
11 beyond that, for luxury housing, there was a series  
12 of efforts made just to understand what happened and  
13 see if there was any recourse at that time; the  
14 City's rights had already, of course, been sold and  
15 they were private properties that we had no legal  
16 right to, although as the council member asked [sic]...  
17 [crosstalk]

18 COUNCIL MEMBER CROWLEY: When did you  
19 lose the right to follow through with recourse, to  
20 give back the money [inaudible]... [crosstalk]

21 FIRST DEPUTY MAYOR SHORRIS: My... My  
22 understanding is once the deed restriction was  
23 lifted, that was the end of the City's right on that  
24 property. Yeah... [crosstalk]

2 COUNCIL MEMBER CROWLEY: So that was  
3 November; once that happened, you couldn't go back...  
4 [crosstalk]

5 FIRST DEPUTY MAYOR SHORRIS: That is...  
6 That is my understanding, although as the council  
7 member asked, we need to go back and continue to  
8 revisit whether there's any other opportunity there.  
9 But that's my general understanding, yes.

10 COUNCIL MEMBER CROWLEY: And nobody in  
11 your administration made a promise to Allure that  
12 they were gonna get this deed restriction prior to  
13 them purchasing this property?

14 FIRST DEPUTY MAYOR SHORRIS: Not that I'm  
15 aware of, no.

16 COUNCIL MEMBER CROWLEY: Now what is your  
17 process right now ensuring that groups that own  
18 property and get these deed restrictions lifted that  
19 make promises to the Administration; what guarantees  
20 do you have that they're gonna carry through?

21 FIRST DEPUTY MAYOR SHORRIS: Well as I  
22 mentioned, Council Member, I think that's a gap in  
23 our process and I think that's why we have proposed a  
24 set of changes... [interpose]

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2 COUNCIL MEMBER CROWLEY: So what have you  
3 done since then; have you had any deed restrictions  
4 lifted...? [crosstalk]

5 FIRST DEPUTY MAYOR SHORRIS: Oh... No, no;  
6 when this happened, we immediately froze and have not  
7 entertained any deed restriction amendments or -- we  
8 haven't done anything on them since February of 2016,  
9 actually. So no, nothing has happened.

10 COUNCIL MEMBER CROWLEY: So how many do  
11 you have right now with proposals that **[inaudible]**...  
12 [crosstalk]

13 FIRST DEPUTY MAYOR SHORRIS: I... I... My... I  
14 don't... I believe approximately maybe a dozen, but not  
15 many, but we will not in fact move on any of them  
16 until the process is in place to protect us.

17 COUNCIL MEMBER CROWLEY: And what type of  
18 process will be put in place?

19 FIRST DEPUTY MAYOR SHORRIS: So we really  
20 focused on three different things -- one is a more  
21 robust engagement with community, which I mentioned  
22 before was I think a gap here; second, an enriched  
23 engagement of our policy apparatus in these  
24 decisions, meaning -- this is not gonna happen at an  
25 agency level any more; it won't even happen

2 informally in interactions with the City; it'll  
3 happen through a very formal government structure  
4 involving two deputy mayors, the Law Department and  
5 OMB; we are also changing the process of our  
6 relationship with any applicants -- number one,  
7 generally not to remove deed restrictions, but to  
8 generally amend them, but when anybody applies,  
9 they'll have to say what they plan to do with the  
10 site and on record have a formal, as opposed to an  
11 e-mail here or there, say here's what our intention  
12 is, potentially actionable if they violate that.  
13 We're also creating an enforcement mechanism that  
14 we're gonna do through the Buildings Department to  
15 make sure that commitments made to the City are  
16 adhered to **[inaudible]**, so we're trying **[inaudible]**...  
17 [crosstalk]

18 COUNCIL MEMBER CROWLEY: Just... uhm before  
19 I run out of time -- can you go back to the Allure  
20 Group and how they have one arm that's a nonprofit?  
21 I understand that they owe the City a lot of money in  
22 taxes too; is that true that they owe about \$6  
23 million in taxes to the City?

24  
25

2 FIRST DEPUTY MAYOR SHORRIS: I actually  
3 don't have that number with me, Council Member; I'm  
4 sure you **[inaudible]**... [crosstalk]

5 COUNCIL MEMBER CROWLEY: I just don't  
6 understand how a group could be nonprofit at one time  
7 and then for-profit at another.

8 FIRST DEPUTY MAYOR SHORRIS: It's not  
9 uncommon in their business, in health care generally,  
10 that nonprofit organizations will have both for-  
11 profit and not-for-profit subsidiaries; it's actually  
12 not uncommon in that industry.

13 COUNCIL MEMBER CROWLEY: It seems as if  
14 they tricked the City when they purchased.

15 FIRST DEPUTY MAYOR SHORRIS: I think they  
16 were deceptive with [bell] the City to their benefit,  
17 yes.

18 COUNCIL MEMBER CROWLEY: And it seems  
19 almost illegal that could happen; that they could  
20 purchase as a nonprofit and then turn around...

21 [crosstalk]

22 CO-CHAIRPERSON KALLOS: Thank you uh...

23 COUNCIL MEMBER CROWLEY: and sell it as a  
24 profit.

2 CO-CHAIRPERSON KALLOS: Thank you..

3 [interpose]

4 FIRST DEPUTY MAYOR SHORRIS: That's  
5 exactly one of the things we're looking at.

6 CO-CHAIRPERSON KALLOS: Thank you,  
7 Council Member Crowley. Next up is Council Member  
8 Levine, Greenfield, Dickens, Lander; Rosenthal.  
9 We've been joined by Council Member Ritchie Torres,  
10 on the Governmental Operations Committee, who will  
11 ask questions after Rosenthal.

12 COUNCIL MEMBER LEVINE: Thank you to our  
13 co-chairs. Good morning, Deputy Mayor.. [crosstalk]

14 FIRST DEPUTY MAYOR SHORRIS: Good  
15 morning.

16 COUNCIL MEMBER LEVINE: At almost the  
17 same time that the deed restriction on Rivington was  
18 being lifted, a restriction was being lifted on a  
19 site in my district -- 152nd and St. Nicholas --  
20 that's been owned for many years by Dance Theatre of  
21 Harlem. That restriction was put in place in 1976  
22 and that was the era of the Board of Estimates, and I  
23 guess as was customary at the time, it was by a vote  
24 of Board of Estimates that that restriction was  
25 placed. So can you help us... can you explain to us

2 your understanding of the succession of power here  
3 and why if it was put in by an act of what was then  
4 the legislative body, the Board of Estimates, it  
5 wouldn't need to be taken out by today's board,  
6 today's City Council, which is our current  
7 legislative body...? [crosstalk]

8 FIRST DEPUTY MAYOR SHORRIS: I'm gonna be  
9 on thin legal ice on this one, 'cause I actually  
10 don't know that issue of the success of powers  
11 particularly. I do know if a deed restriction was  
12 put in as a result of a ULURP action, a change in  
13 that has to go back to ULURP; that I do know. But as  
14 to the matter -- and I know I'm not allowed to call  
15 on the Corporation Counsel -- but as to the matter of  
16 succession of powers, I'm not actually sure...

17 **[inaudible]**... is it... can he speak to that...?

18 [crosstalk]

19 COUNCIL MEMBER LEVINE: It... It... It would  
20 be fine by me if Corp. Counsel answered, but I don't  
21 know whether the Chairs will wanna... [interpose]

22 CO-CHAIRPERSON KALLOS: If you can hold  
23 your question until the next round.

24 [background comments]

2 COUNCIL MEMBER LEVINE: Can't hang  
3 around, but... but... Alright, my question is out there;  
4 I look forward to hearing... [interpose]

5 FIRST DEPUTY MAYOR SHORRIS: Okay.

6 COUNCIL MEMBER LEVINE: the  
7 Administration... [interpose]

8 FIRST DEPUTY MAYOR SHORRIS: Right, we  
9 can try and get back to you, Councilman... [crosstalk]

10 COUNCIL MEMBER LEVINE: Okay. Thank you.

11 FIRST DEPUTY MAYOR SHORRIS: I... I don't  
12 have that; I'm sorry.

13 [background comments]

14 CO-CHAIRPERSON KALLOS: Council Member  
15 Greenfield.

16 COUNCIL MEMBER GREENFIELD: Thank you,  
17 Chairs and thank the Administration for attending  
18 today and for your forthright testimony.

19 I just wanna sort of clarify, sort of  
20 from a 30,000-ft. view. So basically what you're  
21 saying is -- and I have no problem accepting anything  
22 you're saying today, I'll take it at face value; I  
23 just wanna try to make sure we're all on the same  
24 page. What you're saying is that there was a process  
25 in terms of lifting a deed restriction; the process



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3 was followed; you were very clear as the First Deputy  
4 Mayor about what you wanted to happen, which was that  
5 you wanted to make sure that there would be a nursing  
6 home; not necessarily a not-for-profit, but a for-  
7 profit nursing home [inaudible] 200 beds; you had  
8 told your staff to make sure that happened; that did  
9 not happen, so that was essentially the screw up,  
10 right; that you wanted something to happen, you're  
11 the First Deputy Mayor and you effectively run the  
12 City day to day; as you said, you're the COO; you  
13 said, let's make sure this nursing home stays a  
14 nursing home, it'll be a for-profit nursing home;  
15 that didn't happen; that was a screw up.

16 FIRST DEPUTY MAYOR SHORRIS: I... I... I... I...

17 [crosstalk]

18 COUNCIL MEMBER GREENFIELD: Pretty fair  
19 summary, for those watching at home?

20 FIRST DEPUTY MAYOR SHORRIS: Yes, that's  
21 what we wanted to happen...

22 COUNCIL MEMBER GREENFIELD: Okay.

23 FIRST DEPUTY MAYOR SHORRIS: and it  
24 didn't happen.

25 COUNCIL MEMBER GREENFIELD: Very good.

But here's what I don't really understand, 'cause I

3 read your testimony, I've heard your testimony, I've  
4 looked at the report; I don't understand honestly why  
5 you're to blame; you're saying it was your fault; why  
6 are you to blame as the Deputy Mayor? You told your  
7 staff, go out and do something; your staff didn't do  
8 something, so it seems to me like it wasn't you who  
9 was at fault; it was someone on your team somewhere,  
10 whether it was your own staff or your agency or some  
11 other agency that didn't do what they were supposed  
12 to do. Is that fair as well?

13 FIRST DEPUTY MAYOR SHORRIS: Well just to  
14 take that point for that second, look, I believe  
15 fundamentally accountability lies at the top  
16 **[inaudible]**... [crosstalk]

17 COUNCIL MEMBER GREENFIELD: I understand  
18 that, but there's accountability and there's blame;  
19 those are two different things, right, so you're  
20 accountable..

21 FIRST DEPUTY MAYOR SHORRIS: Yeah.

22 COUNCIL MEMBER GREENFIELD: but I think  
23 it's fair to say that you're not to blame; is that  
24 correct?

25 FIRST DEPUTY MAYOR SHORRIS: I... I...

2 COUNCIL MEMBER GREENFIELD: You did what  
3 you thought you were doing was correct, which is, you  
4 told your very competent staff, go out and make sure  
5 this becomes a nursing home and it didn't happen, so  
6 that wasn't your doing; correct?

7 FIRST DEPUTY MAYOR SHORRIS: In that  
8 narrow regard, yes, but those are people I picked,  
9 those are agency heads that I'm responsible for..  
10 [crosstalk]

11 COUNCIL MEMBER GREENFIELD: Great. No,  
12 but that's an important point -- you're accountable  
13 but you're not to blame. So the very obvious  
14 question then becomes, as part of any review process,  
15 to make sure something doesn't happen again, you ask  
16 -- who screwed up, who's to blame?

17 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

18 COUNCIL MEMBER GREENFIELD: So within the  
19 Administration, who screwed up, who's to blame, what  
20 was the accountability for those people who screwed  
21 up, and who exactly was to blame and what's gonna  
22 happen to those folks or what did happen to those  
23 folks who ended up letting a 200-bed nursing home and  
24 tens of millions of dollars to the City just  
25 disappear [sic]?

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2 FIRST DEPUTY MAYOR SHORRIS: So Council  
3 Member, this matter has been a subject, as you well  
4 know, to endless amounts of external review by  
5 **[inaudible]**... [crosstalk]

6 COUNCIL MEMBER GREENFIELD: No, I'm fine;  
7 I... I... I... I'm not trying to review hundreds of pages  
8 of reports.

9 FIRST DEPUTY MAYOR SHORRIS: and they..  
10 and they made very clear that there was no misconduct  
11 by any individual anywhere in the government, top to  
12 bottom..

13 COUNCIL MEMBER GREENFIELD: I didn't say  
14 misconduct; I didn't say there's... [crosstalk]

15 FIRST DEPUTY MAYOR SHORRIS: so...

16 COUNCIL MEMBER GREENFIELD: criminal  
17 liability. I wanna just be clear; I'm not saying  
18 that this is something that someone should  
19 necessarily, god forbid, be in any sort of way  
20 criminally implicated, but someone clearly screwed  
21 up. You did your job, you told someone, make sure  
22 that this stays as a nursing home, albeit [sic] a  
23 for-profit, **[inaudible]** didn't happen; that doesn't  
24 magically not happen, somewhere along the way someone  
25 did not listen to you, someone didn't do their job;

2 someone made a mistake; who was that individual or  
3 individuals; are they being held accountable in any  
4 way? It's a simple question and that's a very  
5 important issue I think... [crosstalk]

6 FIRST DEPUTY MAYOR SHORRIS: I... I believe  
7 the reason I am accountable and in some respects to  
8 blame -- so I just wanna be clear on this -- is that  
9 I'm accountable not only for my own personal actions,  
10 but for ensuring the government has processes in  
11 place, [background comments]...

12 COUNCIL MEMBER GREENFIELD: I get it.

13 FIRST DEPUTY MAYOR SHORRIS: take policy  
14 and implement them... [interpose]

15 COUNCIL MEMBER GREENFIELD: and I...

16 FIRST DEPUTY MAYOR SHORRIS: we did not  
17 have such a policy, a process in place; that is  
18 fundamentally what the failure here is. My diagnosis  
19 of what needs to happen here is that we need a much  
20 more formalized **[inaudible]** make sure it happens...

21 [crosstalk]

22 COUNCIL MEMBER GREENFIELD: That's...  
23 You're answering a different question. You're  
24 answering a different question, which is, what are  
25 you going to do to change your process; I'm asking

2 you a simple question -- who screwed up in your team  
3 and how are they being held accountable?

4 FIRST DEPUTY MAYOR SHORRIS: I am hold..  
5 I... I **[inaudible]**... [crosstalk]

6 COUNCIL MEMBER GREENFIELD: There were no  
7 screw ups, nobody screwed up, so just... when you went  
8 and you gave a directive... [crosstalk]

9 FIRST DEPUTY MAYOR SHORRIS: The system...

10 COUNCIL MEMBER GREENFIELD: as a First  
11 Deputy Mayor; that didn't happen, but nobody screwed  
12 up?

13 FIRST DEPUTY MAYOR SHORRIS: The system  
14 was flawed and didn't yield the result **[inaudible]**...

15 COUNCIL MEMBER GREENFIELD: So there was  
16 nobody who was responsible for that?

17 FIRST DEPUTY MAYOR SHORRIS: All of us,  
18 Council Member; there were many people involved in  
19 this; this is... unfortunately it took a village and  
20 there were a lot of people engaged in this.

21 COUNCIL MEMBER GREENFIELD: Alright,  
22 you're not answering my question, so I'm gonna move  
23 on to just the final point that I'm a little bit  
24 confused about. The... [interpose]

25 FIRST DEPUTY MAYOR SHORRIS: Yes, sir.

2 COUNCIL MEMBER GREENFIELD: DOI said in  
3 their report: "The Allure Group indicated to several  
4 DCAS employees it was considering a sale to a private  
5 developer for luxury condominiums, yet there appears  
6 to have been attempts to conceal some of the details  
7 of the sale." I mean that seems like that might be a  
8 pretty big screw up, right, I mean so I'm gonna help  
9 you zero in perhaps on who screwed up. So some folks  
10 at DCAS knew that this was going to be a private  
11 developer who's gonna create luxury condominiums;  
12 what happened to those folks; are you aware that  
13 there were folks who had this information and  
14 apparently they didn't share it with you; are they  
15 still working for DCAS; have they been fired; have  
16 they been disciplined; did they lose a vacation day  
17 or two?

18 FIRST DEPUTY MAYOR SHORRIS: The process  
19 of review, and I think those reports make clear, both  
20 the Comptroller and the DOI report, which looked not  
21 only for criminal behavior, but actually for  
22 malfeasance or other forms of behavior that are  
23 problematic -- they are allowed to report on failures  
24 of management [bell] as well as criminal action --  
25 did not find anything actionable by any individual in

2 that case. What they found was systemic problems in  
3 the execution of this kind of policy; that's what we  
4 fix.

5 COUNCIL MEMBER GREENFIELD: So to be  
6 clear -- final question... [crosstalk]

7 CO-CHAIRPERSON KALLOS: Thank you...

8 COUNCIL MEMBER GREENFIELD: no one was  
9 disciplined as a result of anything that happened  
10 here at Rivington?

11 FIRST DEPUTY MAYOR SHORRIS: That's  
12 correct.

13 COUNCIL MEMBER GREENFIELD: Thank you.

14 CO-CHAIRPERSON KALLOS: And just to  
15 follow up on Council Member Greenfield's questioning,  
16 did you give instructions to your chief of staff,  
17 Dominic Williams, with regard to your wishes for  
18 Rivington?

19 FIRST DEPUTY MAYOR SHORRIS: I do not  
20 recall the explicitness, but I'm sure he was in the  
21 meetings that we had on the matter.

22 CO-CHAIRPERSON KALLOS: Did you give  
23 instructions to Sarah Samis about your intentions for  
24 Rivington...? [crosstalk]



2 FIRST DEPUTY MAYOR SHORRIS: I would say  
3 the same thing; she was involved in those same  
4 decision-making..

5 CO-CHAIRPERSON KALLOS: And to your  
6 knowledge, Sarah Samis never gave those instructions  
7 to DCAS?

8 FIRST DEPUTY MAYOR SHORRIS: I believe  
9 she did, but I do not have individual specific  
10 evidence one way or the other.

11 CO-CHAIRPERSON KALLOS: Next up is  
12 Council Member Dickens, followed by Lander, followed  
13 by Rosenthal; followed by Torres.

14 COUNCIL MEMBER DICKENS: Good morning and  
15 thank you, Chairs and thank you, Deputy Mayor  
16 Shorris. Unlike my esteemed colleague, I do feel  
17 that you and your office is to take responsibility  
18 for what happened, so I do feel that it is your  
19 responsibility, even if it was somebody else in the  
20 your office, so I differ with that. However, your  
21 testimony extensively and repetitively states that  
22 your lack of knowledge about the lifting of the deed  
23 restrictions in order to facilitate the sale was not  
24 in your purview; you did not know for several months,  
25 etc. Over my 11 years having served in this august

3 body, the local council members are always apprised  
4 of proposed deed restrictions, because of the impact  
5 upon the community, which usually were placed  
6 oftentimes for the protection of the community or at  
7 the request of the community. What happened this  
8 time that the local council member was not kept  
9 apprised; did not know until it was already done, and  
10 also, on Page 4 of your testimony you state that  
11 you're implementing changes and actions in which that  
12 this kind of decision will not be done in the future.  
13 Exactly what does that mean? So it's two parts to my  
14 question.

15 FIRST DEPUTY MAYOR SHORRIS: So sure. On  
16 the first issue -- the awareness of a council member  
17 on **[inaudible]**... [crosstalk]

18 COUNCIL MEMBER DICKENS: I am sorry, I  
19 can't hear you, **[inaudible]**... [crosstalk]

20 FIRST DEPUTY MAYOR SHORRIS: I'm sorry.  
21 I'm sorry, Council Member. On the first issue that  
22 you raised -- the awareness of the council member --  
23 that, I believe was one of two or three problems that  
24 we understand were the key to this happening -- a  
25 failure to engage the community and the local elected  
officials sufficiently; a failure to engage the

3 policy goals of the Administration and implement them  
4 with sufficient rigor; those were at least two  
5 elements that our reform package, that you mentioned,  
6 are going to address; that's why I feel confident  
7 this can't reoccur.

8 On the issue of engaging the council  
9 member and the community; the **[inaudible]** provisions  
10 associated with this particular kind of activity I  
11 believe were not sufficient; they needed to be  
12 longer, deeper, broader, and earlier so that people  
13 could be engaged in this long before any action was  
14 taken by the City. The procedural changes we are  
15 proposing would do exactly that -- Council's bill may  
16 also have changes that would help in that regard as  
17 well and we're very closely aligned on the substance  
18 to those.

19 In terms of the other changes we are  
20 making on the second element -- making sure our  
21 policy goals are reflected in our actions, which  
22 didn't happen here. Part of what we need to do is to  
23 have a much more structured approach to making  
24 decisions on this; not let them happen middle-level  
25 in agencies, with some level of information  
communication back and forth on an episodic basis,

3 but instead to say no. If you wanna change the  
4 nature of a deed restriction or left it, it has to go  
5 through a formal review process inside the agency,  
6 but then also has to come to a group of individuals  
7 outside that agency, including the Law Department,  
8 the Office of Management and Budget, the Deputy Mayor  
9 for Housing and Economic Development -- as the  
10 Speaker mentioned, the housing being a priority --  
11 but more broadly, because of their familiarity with  
12 the market place, as well as my office, so that there  
13 is a broad array of policy discussion about these  
14 sites in the Administration even before it goes out  
15 to the community. So both of those are gaps we have  
16 identified here and both of those need to be  
17 addressed and that's the heart of the exact changes  
18 we are proposing and will be implementing.

18 COUNCIL MEMBER DICKENS: Thank you so  
19 much. I'd like to reserve to come back for the  
20 second round.

21 CHAIRPERSON GENTILE: Thank you,  
22 Councilman Dickens. Before we go, I just have to go  
23 to the next **[inaudible]**. You continue talking about  
24 policy and changing policy and changing policy, but  
25 what you're talking about is changing policy for deed

2 restrictions; you're saying when we're making  
3 decisions on this in the future -- you're talking  
4 about changing policy for deed restrictions; we  
5 haven't heard anything this morning about you  
6 changing policy about communicating with the  
7 agencies; that's the bigger issue here about the  
8 management style in communicating with agencies.

9 FIRST DEPUTY MAYOR SHORRIS: Yeah and  
10 again, I just wanna be clear; most of what I'm  
11 talking about is changes in process; that is distinct  
12 from policy; I actually think our policy goals here  
13 were good policy goals; I think our execution of them  
14 was flawed. As a general matter, as I've mentioned  
15 again, I think the record speaks for itself; we  
16 execute on our policy goals in the Administration  
17 extremely effectively; the record I think  
18 demonstrates that in agency after agency. Does it  
19 mean there are not cases where we have made a  
20 mistake? This was a case where we made a mistake; we  
21 did not execute our policy goal correctly. The  
22 answer to that is to put in place a process around  
23 this policy that will ensure it will be implemented  
24 effectively in the future; that's what we're doing.

2 CHAIRPERSON GENTILE: Next up is Council  
3 Member Brad Lander.

4 COUNCIL MEMBER LANDER: Thank you  
5 Mr. Chair. Mr. Deputy Mayor, I actually wanna  
6 explore a different angle of this issue also related  
7 to policy change, but regarding protections for  
8 seniors, and by extension, the families of seniors in  
9 assisted living facilities and nursing homes..

10 FIRST DEPUTY MAYOR SHORRIS: Uhm-hm.

11 COUNCIL MEMBER LANDER: while Rivington  
12 has a special issue of the deed restriction, I think  
13 there's ways in which it's part of a larger pattern  
14 that includes the CABS Nursing Home in Bed-Stuy and  
15 the Prospect Park Assisted Senior Living Residence in  
16 my district; in all three cases, developers purchased  
17 the assisted living facilities or nursing homes with  
18 the clear intent of displacing vulnerable seniors and  
19 then selling off the buildings to profit as condos;  
20 in some ways no different from the broader pattern of  
21 harassment and displacement in gentrifying  
22 communities or communities with rising real estate  
23 values, though in this case it requires I think even  
24 lower moral values and more willingness to lie and  
25 exploit and people. Unfortunately, our seniors

3 actually have fewer protections than rent-regulated  
4 tenants, which I think would surprise most people; we  
5 protect tenants from that kind of harassment and  
6 displacement through State Law, not City Law, but  
7 here you can be evicted in 90 days, basically, with  
8 almost no notice, on the quiet, behind-the-scenes  
9 actions of the State Board of Health, with even less  
10 notice than we're talking about here by far, and that  
11 meant 130 people in my district got displaced and I  
12 really believe some of them died as a result. We  
13 could have stronger protections in place in State Law  
14 for residents of senior and assisted living  
15 facilities just like we do for tenants, but we don't,  
16 and I think we don't because it's only recently that  
17 real estate values are so hot and gentrification's so  
18 hot that people would engage in such evil acts;  
19 before we didn't really need regulation -- I don't  
20 know what that says about the human species, but.  
21 Now the City doesn't have the ability to put those  
22 rules in place, but of course, on rent regulations  
23 the Administration has been very aggressive in  
24 Albany, pushing for stronger policy to protect our  
25 tenants from this. So I guess I wanna ask here, is  
the Administration considering or would you consider,

2 as one learning from this and the broader pattern,  
3 advocating in Albany for stronger protections for  
4 seniors in assisted living facilities and nursing  
5 homes to give them some of the same kinds of  
6 protections from displacement that we protect  
7 regular, every other tenant with, or **[inaudible]**...  
8 [crosstalk]

9 FIRST DEPUTY MAYOR SHORRIS: I think  
10 that's an excellent diagnosis. Frankly, Council  
11 Member, the underlying issue here -- market  
12 conditions have changed and I think the only other  
13 addition I'd make to your point is, that not only  
14 have market conditions on real estate changed, but  
15 the nature of the health care industry and the  
16 reimbursement structure in health care has changed,  
17 so both, the nursing homes become less profitable and  
18 the foregoing opportunity on the real estate becomes  
19 greater, so you're basically begging people to do  
20 this and they are doing it, and I believe it is, as  
21 Council Member Chin pointed out, it's a loss for  
22 individual communities and the city as a whole; we  
23 have -- the demographics are very clear on the growth  
24 of the senior population in the years to come. Now I  
25 don't understand exactly what the City's leverage



3 points here on this are, although I think, frankly,  
4 it's worth exploring when we have to **[inaudible]** with  
5 Council, with the City Council on that, whether we  
6 have any leverage into this, but there is certainly a  
7 State legislative agenda question here, and the  
8 protection of these units from an effect of  
9 gentrification, as it were, of senior housing, and  
10 you know we have a substantial commitment to increase  
11 senior housing, but if it's getting lost, just as  
12 much as we're adding because of this kind of  
13 flipping, we'd be prepared to use what tools we have  
14 -- failed in this case -- I believe we'll have a much  
15 stronger focus on it in this narrow case, but that's  
16 only on deed restriction; the ones you're talking  
17 about had nothing to do with deed restrictions. So  
18 we should look, see what tools we have, but I would  
19 absolutely agree with you; a broader State agenda  
20 here would be very welcome.

21 COUNCIL MEMBER LANDER: Thank you; I  
22 appreciate that; I do think it's something we have to  
23 look at. In the case of Prospect Park Residence,  
24 there was a J-51 tax break in place, so they just  
25 waited for that to expire; wasn't a deed restriction,  
the J-51 expired and they were able to just throw all

2 those 130 people out. And I will say, in that case,  
3 at least, it's clear to me -- I mean that was a place  
4 where people were paying top dollar and mostly  
5 private; they were not losing money there; there are  
6 other cases I'm sure it's true where it's harder to  
7 operate these facilities, but in that case, it was  
8 just a payday of the condo conversion; there was no  
9 way to compete with what you could get for that. So  
10 I thank you for saying that and we would look forward  
11 to working with you. I mean there are obviously  
12 things about this process to change at the City  
13 level, but this is gonna require State legislative  
14 change and it's an important one, so thank you.

15 FIRST DEPUTY MAYOR SHORRIS: Fair point.

16 CO-CHAIRPERSON KALLOS: I will direct...

17 [crosstalk]

18 COUNCIL MEMBER LANDER: Thank you

19 **[inaudible]**.

20 CO-CHAIRPERSON KALLOS: members to please  
21 provide questions relating to Rivington and our final  
22 two questions will come from Rosenthal and Torres  
23 before Council Member Gentile and I wrap up.

24 COUNCIL MEMBER ROSENTHAL: Thank you so  
25 much Chair, and Council Member Lander, I appreciate

3 your disparaging remarks on the human species, but  
4 watch yourself.

5 Thank you all for coming to testify  
6 today, taking the time and preparing as you have.

7 Can I just start with some basics? How many deeds  
8 are there in the City today that have restrictions on  
9 them?

10 FIRST DEPUTY MAYOR SHORRIS: I don't have  
11 the exact count, Council Member; for particular  
12 reasons some of... [crosstalk]

13 COUNCIL MEMBER ROSENTHAL: Thousands?  
14 Hundreds?

15 FIRST DEPUTY MAYOR SHORRIS: In excess of  
16 a thousand is my..

17 COUNCIL MEMBER ROSENTHAL: A thousand  
18 plus?

19 FIRST DEPUTY MAYOR SHORRIS: Yeah.

20 COUNCIL MEMBER ROSENTHAL: And is anyone  
21 checking that the restrictions are being followed?

22 FIRST DEPUTY MAYOR SHORRIS: So we don't  
23 have, I believe, enough structure around that issue;  
24 there is -- part of the.. when I mentioned about the  
25 Buildings Department getting involved, just to create  
better enforcement around some of that -- many of

3 them are related to housing issues and are HPD-  
4 oriented, where they have a pretty rigorous process;  
5 relatively few of them are in DCAS, but we are gonna  
6 have to have a more rigorous process on adherence to  
7 them; they're a little bit self-enforcing, because on  
8 transfer the deed restriction is applied as a legal  
9 document in transfer of the property, so there's some  
10 amount of self-enforcement with it, but I think it's  
11 a fair question, and I look forward actually to  
12 Corporation Counsel and Commissioners' views on that;  
13 they may have more thoughtful responses in the next  
14 round.

15 COUNCIL MEMBER ROSENTHAL: Okay. I guess  
16 -- and you're getting to my -- I guess sort of my  
17 last question of -- if you could talk a little bit  
18 about the procedures that you've put in place and  
19 what you feel -- how you'd like to move forward on  
20 Margaret Chin's bill to implement those as well. But  
21 I'm gonna ask you to take into account one other  
22 thing -- I was really struck by the whole City time  
23 experience that -- as Chair of the Contracts  
24 Committee I've studied, you know what happened in  
25 City time and the thing that I found remarkable was  
when, apparently -- I wasn't in government at the

3 time -- when there was a hint of a problem, the City  
4 decided -- you know, sort of said, I'm taking  
5 responsibility for this -- Mark Page, who was the  
6 Budget Director at the time, is gonna look -- you  
7 know, is really gonna follow this, and my reaction to  
8 that is always -- no, no, no, don't do that; Mark's  
9 busy, he's doing other stuff; what you need to do is  
10 have triggers in place that can catch this stuff,  
11 'cause Mark's never gonna catch it. You need people  
12 who, yes, understand the Administration's guiding  
13 philosophy, but also that you find some sort of  
14 trigger that is systematic, sort of, that catches  
15 this kind of possible bungle. I mean I would go so  
16 far as to say, look at the DOE contract that I  
17 applaud this Administration for pulling back on, when  
18 the DOE, you know, very, you know, matter-of-factly  
19 was about to pass -- you know, say yes to a \$1.1  
20 billion dollar DOE contract; thank goodness for you  
21 guys, first time ever, pull back, asked the PEP to  
22 pull back on a vote they took, and now we learn that  
23 the value of the contract, once we really look at it,  
24 is \$600 million, and that's \$500 million for our  
25 children. And I gotta tell you -- I actually am  
sorry I was on the phone when I was coming in -- I'm

3 hearing about the same type of stuff at the SCA,  
4 where you know, hundreds of millions of dollars,  
5 because no one's really paying attention to the  
6 details. So I guess my question is, I hear your  
7 guiding philosophy; I am grateful for it, but have... I  
8 don't know, and maybe it's a question for the MOCS  
9 Director, but how do you get at it so you can have a  
10 trigger at the lowest level? They do it in the  
11 private sector; I don't know what the trick is.

12 FIRST DEPUTY MAYOR SHORRIS: Well I'm not  
13 even sure they always are successful at the private  
14 sector; I think Wells Fargo's checks and balances  
15 weren't so great either, but... But look, you know, you  
16 put your finger on the key issue here, right; we have  
17 a lot of processes in the government, no one person  
18 or persons -- although to Council Member Greenfield's  
19 point, I am accountable, I am not literally the  
20 implementing entity on all these, so our job is to  
21 set up processes, checks and balances that will make  
22 sure stuff doesn't happen like this again. We don't  
23 often know about them; sometimes you don't know until  
24 something goes awry and that's when you move to fix  
25 it. I wish we had 100% foresight and knew everything  
that could ever go wrong and had them -- [bell] and

3 in this case we had an actor, a potentially bad  
4 actor, trying to deceive the City and our checks and  
5 balances weren't sufficient to catch that, so the  
6 process changes -- which I won't take you through,  
7 'cause I hear bells ringing -- but are designed to  
8 put in place structural responses to this so this  
9 kind of error can't happen again; that's the only way  
10 we're gonna survive; if it's based on individuals  
11 intervening in every step of a process at the top,  
12 that's not a good use of executive time; what is the  
13 right use is making sure we have processes in place  
14 so this can't happen again.

14 [background comment]

15 CO-CHAIRPERSON KALLOS: Council Member  
16 Torres.

17 COUNCIL MEMBER TORRES: Thank you  
18 Mr. Chairperson. Thank you Deputy Mayor for being  
19 here; I can only imagine it's a challenging time for  
20 you and your team.

21 I'm gonna state something obvious, but it  
22 seems to me that when the City removes both the use  
23 and user restrictions on a property, particularly a  
24 property in a hot real estate market, it seems to me  
25 that the City would inevitably run the risk of the

2 property converting to luxury housing, and so given  
3 that risk, why would it ever be in the public  
4 interest to remove both the use and user restrictions  
5 -- I could understand the need to modify a  
6 restriction or remove one of them, but why would it  
7 ever be in the public interest to remove both of  
8 them?

9 FIRST DEPUTY MAYOR SHORRIS: I think it  
10 would be extremely rare and was clearly not in the  
11 public interest in this case, for sure.  
12 Prospectively speaking, I think it'd be very rare,  
13 because of exactly the concern you mentioned; that's  
14 why I mentioned earlier, our bias going forward is  
15 gonna be to remove very few deed restrictions on  
16 these kinds of properties. Amending them potentially  
17 to reflect some new condition, possibly, but even  
18 that should only take place after we've had the  
19 policy conversation, both in the Administration and  
20 with the community in a much more engaged basis.

21 COUNCIL MEMBER TORRES: Well can we have...  
22 is the City open to an absolute rule against the  
23 removal of both the use and user restrictions or...

24 FIRST DEPUTY MAYOR SHORRIS: Well I just  
25 also wanna be clear; my understanding is there's a



3 wide variety of these deed restrictions, some of them  
4 are so narrow it's amazing, some of them say you can  
5 only play softball on the park; you can't play  
6 soccer; there's literally a deed restriction that  
7 says that. That one I -- who knows what the public  
8 interest here is, but that's not a gentrification or  
9 you know, a loss of affordable housing issue, so many  
10 of them are very, very minor and so I wouldn't  
11 necessarily wanna say we'd never remove, I don't know  
12 if that makes sense; sometimes it makes sense, but as  
13 a general matter, anything that has a substantial  
14 impact on one of our policy goals -- health care,  
15 housing, supportive seniors -- and so on, should be  
16 subject to very high levels of scrutiny before we or  
17 an engaged community would accept it.

18 COUNCIL MEMBER TORRES: But I have a  
19 question about scrutiny, 'cause it seems to me the  
20 process of public input review and notice varies  
21 widely, depending on the nature of the deed  
22 restrictions, right; there are some deed restrictions  
23 that are subject to review by a handful of employees  
24 in an agency and then there are others that can only  
25 be lifted and modified after review by the community  
board and the borough president and the City Planning

3 Commission and the ULURP process, and so given those  
4 egregious disparities in the review process, why not  
5 subject all of it to ULURP; why not promote  
6 uniformity and consistency and public review of deed  
7 restrictions?

8 FIRST DEPUTY MAYOR SHORRIS: Well I think  
9 the issue is; the ones now that are subject to ULURP  
10 are deed restrictions that were imposed as a result  
11 of a ULURP; that's the only reason right now they  
12 were going to ULURP. The other question you're  
13 raising is; should they all be subject to ULURP and  
14 this where I wanna hearken back to my sort of silly  
15 example, but a real example -- some of them are very,  
16 very small and whether a full ULURP process, which is  
17 substantial in time and resources and commitment by  
18 everybody here to make happen, and frankly, very  
19 costly for the applicant, whether that's the right  
20 process for every one of these -- and as I mentioned,  
21 again, I think you may have a list or someone on  
22 staff has a list of some of them; they're really  
23 extremely minor in nature; that's the reason why no  
24 administration really ever paid attention to deed  
25 restrictions, 'cause they're mostly fairly modest,  
particularly the DCAS ones. However, the goal of

3 ULURP engagement, which is to get the community much  
4 more engaged, get the elected officials much more  
5 engaged, to have a full policy discussion about it;  
6 those are laudable goals. ULURP is narrowly a land  
7 use conversation; here we really wanna have a broad  
8 policy conversation when it's a big deal like this;  
9 not on these ministerial [sic] ones. We need a  
10 process that does that; I think that's part of the  
11 goal of the Council Members' bill; I think that's  
12 part of the goal of our proposed reform, is to get  
13 that stuff out there so everybody understands what  
14 this really is and isn't and how to get engaged and  
15 have time to get engaged; we need that in the  
16 government, the community needs that in the  
17 community; I'm not sure, personally, that ULURP is  
18 always the best way to do that, but I know that's a  
19 conversation **[inaudible]**... [crosstalk]

20 COUNCIL MEMBER TORRES: And so we... I'm  
21 sorry; we in the Council believe that. One more  
22 point about uniformity. My understanding is that  
23 HPD, EDC and DCAS...

24 FIRST DEPUTY MAYOR SHORRIS: Correct.

25 COUNCIL MEMBER TORRES: have distinct  
processes of...

2 FIRST DEPUTY MAYOR SHORRIS: Right.

3 COUNCIL MEMBER TORRES: of... of lifting  
4 and modifying deed restrictions; is the City going to  
5 attempt to create a uniformed procedure?

6 FIRST DEPUTY MAYOR SHORRIS: Well I think  
7 what we're gonna probably do is have a more parallel  
8 procedure. In other words, some of the changes we're  
9 making here will be to make this more like the  
10 process used in those other two agencies where they  
11 have external review outside the agency itself so  
12 they can have a conversation about policy impacts,  
13 financial implications; we didn't have that for this,  
14 for a DCAS-related deed restriction; we need that;  
15 that's part of the changes we're proposing.

16 COUNCIL MEMBER TORRES: And what would  
17 that external review look like?

18 FIRST DEPUTY MAYOR SHORRIS: External to  
19 the agency in this case, meaning **[inaudible]**...  
20 [crosstalk]

21 COUNCIL MEMBER TORRES: It's a Deputy  
22 Mayor Review; what...

23 FIRST DEPUTY MAYOR SHORRIS: two deputy  
24 mayors, the Office of Management and Budget...

25 COUNCIL MEMBER TORRES: Okay.

2 FIRST DEPUTY MAYOR SHORRIS: the Law  
3 Department, an extensive external to the agency  
4 review. [bell]

5 COUNCIL MEMBER TORRES: Okay. Thank you  
6 very much.

7 FIRST DEPUTY MAYOR SHORRIS: Thank you.

8 CO-CHAIRPERSON KALLOS: Chair Gentile and  
9 I will wrap up with some final questions and then  
10 we'll take a -- we only have the Deputy Mayor for two  
11 and a half hours, so we're running towards the end of  
12 it, so would... [interpose, background comments] My  
13 Chair yields.

14 COUNCIL MEMBER DICKENS: Thank you so  
15 much; just rather quickly. Deputy Mayor, let me ask  
16 you; is it that public health law allowed for the  
17 disposal of 45 Rivington to a direct buyer without  
18 going through the ULURP process; is that really what  
19 occurred here, so that we really understand what's  
20 happening? Public Law 2861; did that allow for the  
21 disposal of the deed restrictions without going  
22 through the ULURP process? And if so, are there many  
23 other deeds that are open to being circumvented like  
24 that?

2 FIRST DEPUTY MAYOR SHORRIS: Council

3 Member, I'm not gonna tell you -- I actually know the  
4 law you're referring to specifically -- what I do  
5 know generally is that adjustments in the delivery of  
6 health care services, whether it's closing hospital  
7 beds or closing nursing home beds, are subject, I  
8 believe, generally to review by the State Public  
9 Health and Health Policy Committee, I think it's  
10 called PHHPC; that's where those, and that's what  
11 Council Member Chin was referring to is, where was  
12 the review of this particular closure of 200 beds. I  
13 don't know and I don't know what Allure told the  
14 State about what their plans were and I think that's  
15 part of the reason it's subject to an investigation  
16 by the Attorney General of the State. The ULURP  
17 action is a separate question from the State action,  
18 obviously. The ULURP action, right now, is triggered  
19 when a deed restriction that was applied through a  
20 ULURP action is to be amended; that requires a ULURP  
21 review 'cause it came from ULURP; it goes back to  
22 ULURP. The rest of them do not and obviously, as I  
23 mentioned to Council Member Torres, I'm not sure that  
24 ULURP for all of these makes sense, but I do know  
25 that the City Planning Commission, which would have

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2 to proffer to you, I think a change in ULURP is  
3 considering the question and I'm sure they'll come  
4 back with a recommendation on it.

5 COUNCIL MEMBER DICKENS: Alright, because  
6 right now doesn't that Public Health Law allow for  
7 DCAS to dispose of if... [interpose]

8 CHAIRPERSON GENTILE: Council Member, we...

9 COUNCIL MEMBER DICKENS: without going  
10 through the ULURP? That's my direct question.

11 FIRST DEPUTY MAYOR SHORRIS: Okay, I... I'm  
12 not... [interpose]

13 CHAIRPERSON GENTILE: **[inaudible]**...

14 FIRST DEPUTY MAYOR SHORRIS: I'm not  
15 sufficiently knowledgeable of the State Public Health  
16 Law on this matter, but that may be the one that  
17 triggers the State Health review, but I don't think  
18 **[inaudible]**... [crosstalk]

19 CHAIRPERSON GENTILE: Council Member, the  
20 next panel may be more instructive **[inaudible]**...  
21 [crosstalk]

22 CO-CHAIRPERSON KALLOS: Well...

23 COUNCIL MEMBER DICKENS: He's the only  
24 one that **[inaudible]**... [crosstalk]

25

2 CO-CHAIRPERSON KALLOS: in... in... in  
3 wrapping up, I'll just pose some final questions;  
4 turn it over to Chair Gentile and then we will let  
5 you go. I wanna... thanks to those who are submitting  
6 questions over Twitter, including those from our  
7 friends in the **[inaudible]** adjacent to council member  
8 dais. To follow up on Council Member Torres'  
9 question -- did you ever instruct DCAS to lift only  
10 one deed restriction for not-for-profit versus both?  
11 Yes or no?

12 FIRST DEPUTY MAYOR SHORRIS: I did not  
13 have any discussions with DCAS particularly on the  
14 nature of the action they were taking; I discussed --  
15 I wanted to discuss with my staff the policy goal we  
16 wanted for this site and then have it be executed.

17 CO-CHAIRPERSON KALLOS: So just as for  
18 yes or no; was there ever a clear and unequivocal  
19 instruction to DCAS -- you may lift one deed  
20 restriction for not-for-profit; not both?

21 FIRST DEPUTY MAYOR SHORRIS: I did not  
22 have such a discussion.

23 CO-CHAIRPERSON KALLOS: Okay. With  
24 regard to follow-up questions for [bell] Commissioner  
25



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2 Cumberbatch; did you ever discuss her leaving with  
3 Dominic Williams or Sarah Samis?

4 FIRST DEPUTY MAYOR SHORRIS: I... I... I  
5 would have had no reason to discuss it with Sarah  
6 Samis; I'm sure I would've discussed it with Dominic,  
7 as he is the Chief of Staff.

8 CO-CHAIRPERSON KALLOS: And so on  
9 December 15th, Samis told Williams that both deed  
10 restrictions were lifted and then on December 16th  
11 you and Williams received a report from Cumberbatch  
12 flagging the lowdown, asking about lifting of  
13 Rivington House deed restrictions and that "DCAS  
14 coordinated a press response with the Mayor's  
15 Office"; the same flag was included in DCAS' weekly  
16 report to the Mayor's Office of Intergovernmental  
17 Affairs and the Mayor's Press Office on December 18,  
18 2015. Do you recall this?

19 FIRST DEPUTY MAYOR SHORRIS: No, I was  
20 not aware of the public reports in December of 2015.

21 CO-CHAIRPERSON KALLOS: Did anyone from  
22 the Administration ask Cumberbatch to leave or offer...  
23 Did anyone ask you to leave? Yes or no?

24 FIRST DEPUTY MAYOR SHORRIS: I...  
25 [crosstalk]

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2 CO-CHAIRPERSON KALLOS: Anyone in the  
3 Administration.

4 FIRST DEPUTY MAYOR SHORRIS: I know I  
5 speak for other people in the Administration; she had  
6 a position that she found at HHC and I approved her  
7 move.

8 CO-CHAIRPERSON KALLOS: So did Dominic  
9 Williams, Sarah Samis or anyone else under your  
10 direction suggest that she leave?

11 FIRST DEPUTY MAYOR SHORRIS: No one could  
12 have that discussion with the Commissioner but me or  
13 the Mayor.

14 CO-CHAIRPERSON KALLOS: And so you or the  
15 Mayor have not had that conversation with her about  
16 suggesting she leave DCAS?

17 FIRST DEPUTY MAYOR SHORRIS: The Mayor, I  
18 don't believe so, and I told you, I approved her  
19 leaving to go to HHC.

20 CO-CHAIRPERSON KALLOS: And again, you  
21 approved this leave without... and you did not consult  
22 Dominic Williams about her leaving and moving to HHC?

23 FIRST DEPUTY MAYOR SHORRIS: As I  
24 mentioned, Council Member, I'm sure I talked to  
25 Dominic about it; he's Chief of Staff... [crosstalk]

2 CO-CHAIRPERSON KALLOS: And Dominic  
3 Williams never brought this to your attention?

4 FIRST DEPUTY MAYOR SHORRIS: Brought what  
5 to my attention?

6 CO-CHAIRPERSON KALLOS: The fact that the  
7 deed restrictions were lifted from Rivington...  
8 [interpose]

9 FIRST DEPUTY MAYOR SHORRIS: No. No one  
10 brought the matter to my attention till public  
11 reports in February of 2016.

12 CHAIRPERSON GENTILE: First Deputy Mayor,  
13 you spoke a lot today about the new policy as to deed  
14 restrictions, and I get it, I get it, but I'm still  
15 concerned about the communication gap problem that  
16 seems to be prevalent. Let me just illustrate here  
17 -- on September 2nd, 2014 there was a call from your  
18 staff -- I believe it was Sarah Samis -- to the DCAS  
19 Chief of Staff in which it is asked during that call:  
20 "Are there any other steps required to remove the  
21 deed restrictions on Rivington House, assuming  
22 VillageCare pays the appraisal amount?" As a result  
23 of that conversation, DCAS Chief of Staff e-mailed  
24 their General Counsel that same day and said to the  
25 General Counsel, "Looks like there is movement on the

2 Rivington House issue." And then, the DCAS Chief of  
3 Staff goes on to ask the General Counsel, "Do we need  
4 to file something with the Comptroller?" And then  
5 the DCAS General Counsel then forwards the e-mail to  
6 DCAS Asset Management and it's at that point at the  
7 Asset Management that they began their nine-step  
8 process to remove the deed restrictions. Can you  
9 see, First Deputy Mayor, how the deed restriction  
10 removal process had already left the station, as far  
11 as DCAS is concerned because there was no  
12 communication from you or your staff about what your  
13 intent was?

14 FIRST DEPUTY MAYOR SHORRIS: Well I'm not  
15 prepared to agree on the notion that there was no  
16 communication **[inaudible]**... [crosstalk]

17 CHAIRPERSON GENTILE: I'm sorry?

18 FIRST DEPUTY MAYOR SHORRIS: I am not  
19 prepared to accept the notion that there was no  
20 communication; I'm not ready to say that. But what I  
21 can say is this; our focus was on making sure that  
22 Rivington House would stay as a nursing home, whether  
23 for-profit or not-for-profit. For-profit would've  
24 required an adjustment to their deed restriction; the  
25 notion that DCAS would be engaging in a process

2 associated with the execution of that would not have  
3 been surprising, and the fact that there's lots of  
4 internal communication within the agency I assume is  
5 what goes on all day long, but if the goal here was  
6 maintain it as a nursing home use, that's what I  
7 believed the decision had been made; I made that  
8 decision and I assumed it was being executed. Those  
9 internal conversations among various players in  
10 middle levels of the agency, I assume was just part  
11 of executing that... [crosstalk]

12 CHAIRPERSON GENTILE: But DCAS was  
13 operating on a different track; they were operating  
14 on a track of removing the deed restrictions, while  
15 you were saying to others that it should stay a  
16 nursing home... [crosstalk]

17 FIRST DEPUTY MAYOR SHORRIS: Well...

18 CHAIRPERSON GENTILE: as a nonprofit  
19 **[inaudible]**... [crosstalk]

20 FIRST DEPUTY MAYOR SHORRIS: remember, in  
21 July... in July of that same year I did... I did directly  
22 instruct the Commissioner of DCAS not to take any  
23 action on the deed restrictions. In September we  
24 revisited the issue, because the nursing home  
25 continue to have financial stress and near

2 bankruptcy, so we did revisit the issue and think  
3 about what else we should be doing. But I think all  
4 you're raising, again, Council Member, is the need to  
5 have a more structured approach to these issues; this  
6 was...

7 CHAIRPERSON GENTILE: That's **[inaudible]**...  
8 that's exactly right.

9 FIRST DEPUTY MAYOR SHORRIS: this was  
10 clearly a gap and we needed to have a process in  
11 place so that can't happen again; that's what we've  
12 done.

13 CHAIRPERSON GENTILE: In addition to the  
14 structure as to deed restrictions, what testimony can  
15 you point to today, or give now that fixes the  
16 communication gap across all issues and across all  
17 agencies **[inaudible]**... [crosstalk]

18 FIRST DEPUTY MAYOR SHORRIS: I don't  
19 believe we have a gap in communication... [crosstalk]

20 CHAIRPERSON GENTILE: You don't believe  
21 there's a communication gap?

22 FIRST DEPUTY MAYOR SHORRIS: I think the  
23 record of execution against our policy goals is  
24 excellent and I feel very proud of what we've  
25

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2 accomplished and that's as a result of actually  
3 having superior communication... [interpose]

4 CHAIRPERSON GENTILE: But...

5 FIRST DEPUTY MAYOR SHORRIS: There are  
6 gaps, there are mistakes that happen; this was one,  
7 it won't happen again.

8 CHAIRPERSON GENTILE: Well but again,  
9 from December to February, when your staff found out  
10 about Rivington blowing up -- December 15th to  
11 February of 2016, when your staff found out that  
12 Rivington was blowing up, CAU knew Rivington was  
13 blowing up, the Borough President knew, Council  
14 Member Chin knew; they never discussed that with you  
15 at the same time that Stacey Cumberbatch was looking  
16 to leave DCAS and go somewhere else? Seems there's a  
17 communication gap there also.

18 FIRST DEPUTY MAYOR SHORRIS: Those are  
19 two unrelated issues, **[inaudible]**... [crosstalk]

20 CHAIRPERSON GENTILE: Unrelated?

21 FIRST DEPUTY MAYOR SHORRIS: basic number  
22 of **[inaudible]**... [crosstalk]

23 CHAIRPERSON GENTILE: But DCAS was  
24 directly involved in what happened with Rivington and  
25 the Commissioner is looking to leave and they don't

2 tell you about the issue of Rivington blowing up at  
3 the same time you know that Stacey Cumberbatch is  
4 looking to leave?

5 FIRST DEPUTY MAYOR SHORRIS: All I can  
6 tell you, Council Member is I was not aware of the  
7 issue associated with Rivington House until February  
8 of 2016. The fact that some of the staff was aware  
9 and was perhaps working through the issue and trying  
10 to understand what was going on or trying to evaluate  
11 what City options there might be, that's sort of what  
12 our staff often does. In this case, the issue was  
13 not raised to my attention, so my conversations as to  
14 other actions in the Administration were unconnected  
15 to this.

16 CHAIRPERSON GENTILE: Well certainly we  
17 can go on with this, because there are other  
18 examples, but I think you understand our frustration  
19 here and our frustration here is to work in the best  
20 interests of the City of New York and that's really  
21 the reason we're here today, to do that. So without  
22 any further questions -- I think there's one more  
23 from...

24 CO-CHAIRPERSON KALLOS: Just for the  
25 record, so that the public knows why couldn't we have



3 you for longer than two and a half hours this  
4 morning?

5 FIRST DEPUTY MAYOR SHORRIS: As I  
6 understand, there was an agreement made between the  
7 Administration and the Council as to the time I would  
8 testify and that's the time we agreed on that I would  
9 testify; that's all I know.

10 CO-CHAIRPERSON KALLOS: Do you have  
11 anywhere else you need to be today that was the  
12 reason for that agreement?

13 FIRST DEPUTY MAYOR SHORRIS: I have  
14 appointments scheduled throughout the rest of the  
15 day.

16 CO-CHAIRPERSON KALLOS: Just to get it on  
17 the record, I think what was represented to us was  
18 that you have to attend the Conference of Mayors in  
19 Oklahoma.

20 FIRST DEPUTY MAYOR SHORRIS: No, I am not  
21 attending Conference of Mayors... the Mayor is  
22 attending the Conference of Mayors; he's actually the  
23 Mayor.

24 CO-CHAIRPERSON KALLOS: Okay, that is  
25 actually quite disturbing and we will deal with that  
later, but [background comments] I... I was under the

3 impression that you had to be in Oklahoma and that is  
4 the only reason why I agreed to only two and a half  
5 hours, so we will deal with that later, and we will  
6 actually just... hold on one moment. [background  
7 comments] Just because this is an example of yet  
8 another communication problem, so I've just con...  
9 [background comments] I have just conferred with our  
10 staff; they have told me that is in fact the  
11 representation that has been made... can you just share  
12 how that miscommunication may have happened?

13 FIRST DEPUTY MAYOR SHORRIS: I have no  
14 idea, Council Member. When the Mayor leaves town I  
15 am Acting Mayor, so if he's leaving town, I become  
16 Acting Mayor as soon as he gets on the plane, so I  
17 definitely don't leave town when that happens.

18 CO-CHAIRPERSON KALLOS: I will be hard-  
19 pressed to ever agree to a limit on any other person  
20 from the Administration ever again. I will pass it  
21 back to my co...

22 CHAIRPERSON GENTILE: Mr. Deputy Mayor,  
23 thank you for being here today; we still have other  
24 members of the Administration to question, but in the  
25 interim we'll take a 10-minute break and then come  
back with the other members of the Administration.

2 [gavel]

3 [background comments]

4 [pause]

5 [background comments]

6 [gavel]

7 CHAIRPERSON GENTILE: This is the  
8 continuation of the Government Ops and Oversight  
9 Investigations hearing that began earlier this  
10 morning; we are continuing with a new panel of  
11 witnesses. I think we're gonna ask them to be sworn  
12 in again; is that right? Okay, so can we do that  
13 now?

14 COMMITTEE COUNSEL: Will you please raise  
15 your right hand? Do you affirm to tell the truth,  
16 the whole truth and nothing but the truth in your  
17 testimony before the committees and to respond  
18 honestly to council member questions? Thank you.

19 CHAIRPERSON GENTILE: We'll start with  
20 the questioning of Corporation Counsel Zachary Carter  
21 and we'll start with my Chair, Co-Chair. [background  
22 comments] Oh... Oh yes, that's fine. Okay. Let me  
23 just make an observation and then I'll hand it over.

24 Mr. Carter, the reason we have you here  
25 is obviously because of what happened with the deed..

2 with the redacting of the documents that were  
3 requested by the Department of Investigation, and the  
4 only observation I have and is something that struck  
5 me as very odd, is that in my years as a prosecutor I  
6 very often in cases would redact material that I  
7 would hand over to the defense in those situations,  
8 but I've never seen a situation where one party  
9 redacts information given to another party and both  
10 of them are on the same time. So did that strike  
11 you, the fact that you're both in the Administration,  
12 you're both on the administration level, you're both  
13 in the same part of the City government and so you  
14 could be I guess classified on the same team and did  
15 it strike you as odd that you're redacting material  
16 that you're handing over to someone who is within  
17 that realm of the same team?

18 [background comments]

19 CO-CHAIRPERSON KALLOS: Mic..

20 ZACHARY CARTER: Can you hear me now?

21 Okay. We're obviously part of the same City  
22 government, but we serve different functions, and  
23 more importantly, as you know, there were several  
24 agencies that all had separate investigations into  
25 the Rivington transaction -- there was the United

2 States Attorney for the Southern District of New  
3 York, there was the Comptroller of the City of New  
4 York, there's the Attorney General of the State of  
5 New York, and there was DOI. There is different  
6 levels of information sharing, depending on what  
7 function each agency served, and with respect to the  
8 Department of Investigation, they were provided the  
9 broadest amount of information of those entities that  
10 had us under investigation, because there are certain  
11 privileges that the City of New York has, like any  
12 client, individual or institution has that guard  
13 against the dissemination of information that is  
14 otherwise protected as confidential. We shared even  
15 attorney-client privilege information, or information  
16 that would otherwise be protected by the attorney-  
17 client privilege to the Department of Investigation  
18 on the understanding -- which they readily agreed to,  
19 'cause they recognized the limitations -- on the  
20 understanding that they could receive privileged  
21 material, but they could not waive the privilege and  
22 share that privileged material with third parties.  
23 That's the reason why they -- first of all, they  
24 received information that was privileged and  
25 otherwise they received the production of documents

3 -- and this is standard practice, and as an attorney,  
4 you would know this -- when particularly there is a  
5 request for documents that are a part of a large  
6 trove of documents, or a large body of documents, and  
7 particularly in this age when the principal mode of  
8 communication has become e-mail and e-mail is housed  
9 in massive databases with literally, I mean millions  
10 of pages of documents and particularly in an  
11 administration this size, we're really talking about  
12 documents in that magnitude. The way documents are  
13 produced is by way of word searches; you start with  
14 an investigative body, like the Department of  
15 Investigation, serving you with a written list of  
16 documents or subject matter areas in which there are  
17 documents with which they are interested that will  
18 typically have the names of persons, both City  
19 officials and employees that they're interested in,  
20 transactions they're interested in; subject matter,  
21 and those written requests generate the kinds of  
22 words that you -- and I'm sure that both you and  
23 probably, if you have children, your middle-aged or  
24 elementary school kids are more familiar with than us  
25 -- anyone who's done a Google search understands the  
process of using words to narrow down the range

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3 within millions or hundreds of thousands of documents  
4 of documents that are likely to be relevant in an  
5 investigation. [inaudible]... [crosstalk]

6 CHAIRPERSON GENTILE: Okay. I... I... and...  
7 and...

8 ZACHARY CARTER: [inaudible]... just one  
9 more thing...

10 CHAIRPERSON GENTILE: Yeah.

11 ZACHARY CARTER: And when those documents  
12 are produced, particularly when you're talking about  
13 both e-mails or memorandum and reports, very often a  
14 clearly relevant passage from a document will be  
15 embedded in a document that has, you know, bullet  
16 points on completely unrelated matters, and it is  
17 standard practice -- accepted by the U.S. Attorney  
18 for the Southern District of New York in our  
19 production, the Comptroller of the City of New York,  
20 the State Attorney General, and every court that I'm  
21 aware of and as you know, I've been a United States  
22 attorney and I've served as a judge -- that you  
23 produce those documents and you redact the irrelevant  
24 portions of those documents.

25 CHAIRPERSON GENTILE: So it is... So it's  
your testimony then, that's the portion of the

2 production that you redacted that you gave..

3 [crosstalk]

4 ZACHARY CARTER: Correct.

5 CHAIRPERSON GENTILE: to DOI?

6 ZACHARY CARTER: That's correct.

7 CHAIRPERSON GENTILE: You gave them the  
8 confidential information, but redacted what you felt  
9 was the nonrelevant..

10 ZACHARY CARTER: Nonresponsive. That's  
11 correct.

12 CHAIRPERSON GENTILE: Non... non...

13 [interpose]

14 ZACHARY CARTER: And at the end of the  
15 day -- just to fast forward to late July of this year  
16 -- after their report had already been released and  
17 after they had, unfortunately, publicly made the  
18 claim that our redactions may have concealed  
19 information that was relevant to the investigation,  
20 we made a determination, and in order to provide them  
21 a means of verifying that there was no information  
22 withheld, we made a determination to provide a full  
23 set of unredacted documents so they could  
24 independently review those documents and determine  
25 for themselves whether or not any of the redactions



2 masked responsive information. We provided that on  
3 July 27th and we have not had a response since.

4 CHAIRPERSON GENTILE: So ultimately you  
5 did give the documents in an unredacted form?

6 ZACHARY CARTER: That is correct.

7 CHAIRPERSON GENTILE: Councilman Kallos,  
8 any follow-up?

9 CO-CHAIRPERSON KALLOS: Thank you to  
10 those who remain on the panel for being willing to  
11 engage in more than two and a half hours of  
12 examination and for working with the City Council on  
13 countless items, whether it's judgments and claims or  
14 limiting the number of provisionals, but actually  
15 having a strong partnership and open-minded  
16 communication. Going to go into some pretty tough  
17 questions in hopes of trying to get a better sense of  
18 what happened.

19 Mr. Carter, you're the Corporation  
20 Counsel and so in that way, who is your client?

21 ZACHARY CARTER: The City of New York.

22 CO-CHAIRPERSON KALLOS: And so is the  
23 Mayor of the City of New York also a client or do you  
24 have a duty to the City of New York over the Mayor?

25

2 ZACHARY CARTER: I have a duty to the  
3 City of New York separate and apart from a duty to  
4 the Mayor personally.

5 CO-CHAIRPERSON KALLOS: Okay, so you work  
6 for the City; not the Mayor?

7 ZACHARY CARTER: I work for the City of  
8 New York, but the Chief Executive Office of the City  
9 of New York is the Mayor.

10 CO-CHAIRPERSON KALLOS: Did you get a  
11 conflict waiver from Mayor de Blasio indicating waive  
12 of any potential client... Did you get a conflict of  
13 interest waiver from the Mayor of the City of New  
14 York for himself as well as for the City?

15 ZACHARY CARTER: There is no conflict  
16 waiver that would be required in this situation.

17 CO-CHAIRPERSON KALLOS: In the course of  
18 your investigation as you were reviewing documents,  
19 did you at any point believe that the interest of the  
20 Mayor or the Mayor's Office or the First Deputy  
21 Mayor's Office or one of the agencies might be  
22 contrary to that of the City?

23 ZACHARY CARTER: There is always the  
24 possibility that when an investigation is being  
25 conducted into the activities of an institution or

2 company that as, obviously, hierarchy of leadership  
3 and employees, that given the matter under  
4 investigation it may turn out that one or more  
5 person's interest will diverge from that of the  
6 institution, there's always that theoretical  
7 possibility; we did not... [crosstalk]

8 CO-CHAIRPERSON KALLOS: And what did..

9 ZACHARY CARTER: I'm sorry.

10 CO-CHAIRPERSON KALLOS: Yeah.

11 ZACHARY CARTER: But there was nothing  
12 that came up in this course of this investigation  
13 that indicated that that was clearly the case.

14 CO-CHAIRPERSON KALLOS: And what is the  
15 Law Department's official procedure for handling a  
16 document or other evidence that implicates wrongdoing  
17 on the part of a commissioner of an agency, a city  
18 employee or even the Mayor?

19 ZACHARY CARTER: If there is a document  
20 or if there is any evidence, even by way of an oral  
21 communication that would indicate that any official  
22 of the City government was maybe engaged in  
23 misconduct, that information would be turned over to  
24 the Department of Investigation.

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2 CO-CHAIRPERSON KALLOS: And do you have  
3 an official written policy on that or is that just  
4 **[inaudible]**... [crosstalk]

5 ZACHARY CARTER: That's the... That's the  
6 law.

7 CO-CHAIRPERSON KALLOS: Okay. And as you  
8 I think have already alluded to Chapter 17, Section  
9 397, so has authority ever been delegated to the  
10 Department of Investigation with regards to this  
11 investigation, to have unrestricted access to these  
12 documents?

13 ZACHARY CARTER: I'm not sure I  
14 understand your question. You talked about a  
15 delegation; what do you mean by that?

16 CO-CHAIRPERSON KALLOS: So the Charter  
17 gives DOI the sole responsibility of investigations  
18 in these cases and you just said that if you found  
19 evidence or a document in this case you would turn it  
20 over to DOI to do their piece, so... [interpose]

21 ZACHARY CARTER: Right, every agency  
22 head, every officer of government under the Charter  
23 that establish the Department of Investigation has a  
24 responsibility, when information comes into their  
25 possession that implicates wrongdoing by someone who

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3 is an official or employee of government, to report  
4 that information to the Department of Investigation;  
5 that's everyone's responsibility in government.

6 CO-CHAIRPERSON KALLOS: So I guess the  
7 question is, if that is the responsibility; why was  
8 the Law Department involved as an intermediary versus  
9 just allowing the DOI access to the documents  
10 themselves without redaction?

11 ZACHARY CARTER: The Charter tasks the  
12 Corporation Counsel with a responsibility for being  
13 the chief lawyer for the City. The City of New York,  
14 like any corporation, whether it's public, private,  
15 municipal or otherwise, has legal rights and  
16 interests that have to be protected and those rights  
17 and interests, the protection of those legal rights  
18 is the sole responsibility of the Corporation Counsel  
19 and the Law Department; that's separate and apart  
20 from the investigative responsibilities of the  
21 Department of Investigation. What the Charter and  
22 the Executive Orders that have amplified the Charter  
23 provide for the Department of Investigation is access  
24 to all, all information necessary for them to fulfill  
25 the functions that are within the scope of the  
responsibilities provided to them under Section 1 of

3 the Charter provision that establishes the Department  
4 of Investigation. So they are entitled to have  
5 access to all information necessary for them to  
6 fulfill their responsibilities in any specific matter  
7 or investigation.

8 CO-CHAIRPERSON KALLOS: It sounds like we  
9 have a meeting of the minds here. So why was their  
10 access to what they deemed necessary blocked; why  
11 were they not able to access the City Hall computers  
12 or servers and in one case; why were they provided  
13 990 of 1,000 documents produced marked "nonrelevant",  
14 even though those documents were generated by a term  
15 and custodial name search provided by DOI?

16 ZACHARY CARTER: Well first of all, I  
17 question your premise. This investigation started --  
18 First of all, understand this just to put this in  
19 context -- this is an investigation undertaken by the  
20 Department of Investigation at the direction of the  
21 Mayor issued through the First Deputy Mayor, alright.  
22 So this is an investigation pursuant to the Mayor's  
23 Charter authority that he directed the Department of  
24 Investigation to undertake. Needless to say, it was  
25 my responsibility as Corporation Counsel to provide  
total cooperation with that investigation, so we

3 start there. But it's also our responsibility to  
4 make sure that information or documents that contain  
5 information that may be protected by privilege are  
6 not carelessly disclosed, number one, and number two,  
7 particularly because there were multiple  
8 investigations underway, we had to make sure that  
9 information that was not responsive to the request  
10 from the Department of Investigation were not  
11 carelessly disclosed or disseminated. This is, for  
12 anyone who has practiced law in an area that involves  
13 requests for information that's contained in massive  
14 databases, knows it's standard practice, standard  
15 practice in Federal courts, standard practice in  
16 response to grand jury subpoenas, standard practice  
17 in response to requests for information from the U.S.  
18 Attorney or the Comptroller's Office or the FBI; this  
19 is standard practice.

20 CO-CHAIRPERSON KALLOS: But it is not  
21 standard practice for the Department of Investigation  
22 where the First Deputy Mayor, according to his  
23 testimony and according to your testimony, has  
24 ordered an investigation. So when the person who is  
25 running the show, running the City, says I wanna know  
what happened -- so you believe you can assert

2 privilege for documents that belong to the Mayor,  
3 that belong to the people against the very person  
4 who'd like to get to the bottom of it? Everything  
5 you've cited is in relation to an external party, a  
6 federal or state or other law enforcement authority;  
7 in this case, we're talking about an internal  
8 investigation that was at the request of the First  
9 Deputy Mayor.

10 ZACHARY CARTER: We did not assert  
11 privilege as against the Department of Investigation;  
12 what we did though was handle the production of the  
13 documents so that A., they could have access to  
14 privileged information, you know full, unfettered  
15 access to information that would otherwise be  
16 privileged if it were being proffered to third  
17 parties, because they, as part of their  
18 responsibility, sometimes have the right and  
19 prerogative to share information with third parties  
20 and so we had to make sure that we proved the  
21 information to them in a form where that could not  
22 carelessly occur. But with respect to redactions,  
23 our obligation was to provide, in our cooperation  
24 with them -- as is, again, consistent with standard  
25 practice -- only the information they requested. It



2 is, as a practical matter, often the case,  
3 particularly when you are producing voluminous  
4 records that are maintained in electronic form; there  
5 will be responsive documents that are buried in a  
6 mass of clearly nonresponsive documents, and in those  
7 cases we do not provide anything more than what is  
8 responsive, and the physical way that we accomplished  
9 that is by redacting the material that's  
10 nonresponsive... [crosstalk]

11 CO-CHAIRPERSON KALLOS: So there's a  
12 bunch -- I'm a lawyer, Rory's a lawyer, Vinnie's a --  
13 we've got a lot of lawyers sitting here; a lot of us  
14 have dealt with both civil and criminal [background  
15 comment] litigation and I think in all the questions  
16 you're talking about is in that case versus internal  
17 investigations, so let's just... Did you ever receive  
18 instructions from the Mayor or the First Deputy Mayor  
19 with regard that you should redact or review the  
20 documents before turning it over to the DOI?

21 ZACHARY CARTER: The Corporation Counsel  
22 who is the chief lawyer for the City would not be  
23 receiving instructions from the non-lawyer mayor and  
24 the non-lawyer first deputy as to how to handle the  
25

3 production of documents in the context of a legal  
4 request for their production.

5 CO-CHAIRPERSON KALLOS: And did you go  
6 over the production of those documents, what  
7 documents were being produced, with the First Deputy  
8 Mayor or the Mayor or any of their agents who were  
9 assigned?

10 ZACHARY CARTER: Oh absolutely not; that  
11 would be inappropriate for a variety of reasons, not  
12 the least of which because of the ongoing  
13 investigations -- again, multiple investigations by  
14 the United States Attorney, by the Comptroller and by  
15 DOI. The integrity of those investigations required  
16 that we not share the details of the information that  
17 we were gathering with the Mayor, with the First  
18 Deputy Mayor or anyone else who may have had any... in  
19 their positions.

20 CO-CHAIRPERSON KALLOS: Our friends at  
21 *Politico* reported that you claimed that deliberative  
22 process was privileged; is that accurate?

23 ZACHARY CARTER: That is inaccurate in  
24 this sense: when... part of the process of producing  
25 documents in a situation like this is that when you  
believe that a document may be subject to some legal

3 privilege, you create what's called a privilege log  
4 and that privilege log is not designed to conceal  
5 things; it is actually designed to reveal things. So  
6 let's assume for the moment that there was, early on,  
7 in the earliest days of the investigation, a document  
8 that was identified as being subject to the  
9 deliberative process privilege; that is, internal  
10 communications about a process that you would  
11 ordinarily assert privilege about; you put that on  
12 your privilege log and you provide that to the person  
13 who requested it; once they see that you've described  
14 a document of a certain sort and you've delivered a  
15 process privilege, they pick up the phone and they  
16 say, well what about this document and do you think  
17 you should be asserting deliberative process  
18 privilege? We came quickly, at the earliest point in  
19 this investigation to the conclusion, I personally  
20 came to the conclusion, that because this  
21 investigation was an investigation into deliberative  
22 processes, that the assertion of deliberative process  
23 privilege was inappropriate and so we did not assert  
24 it. So there no documents withheld from the  
25 Department of Investigation on the basis of  
deliberative process privilege.

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2 CO-CHAIRPERSON KALLOS: There was a legal  
3 assessment referred to in some of the electronic  
4 mail; we have not received that document; would you  
5 produce that document -- have you produced that  
6 document and would you produce that document, a  
7 legal... [crosstalk]

8 ZACHARY CARTER: What document are you  
9 talking about?

10 CO-CHAIRPERSON KALLOS: A legal  
11 assessment as to the deed restrictions at Rivington.

12 [background comments]

13 ZACHARY CARTER: Alright, if you have a  
14 base number for that -- do you have any other  
15 description of that document? We're not aware of any  
16 such document.

17 CO-CHAIRPERSON KALLOS: Once we find a  
18 better descriptor, will you agree to turn that over  
19 so we can share that with our members as well as the  
20 public?

21 [background comments]

22 ZACHARY CARTER: Alright. If you provide  
23 us the request and the descriptor, we will review  
24 that. If you're asking for, and again, you're an  
25 attorney, a document that reflects the legal advice

3 that was given by counsel to the City, obviously that  
4 implicates privilege, but we will review that and we  
5 think we'll be able to get you the information you  
6 need.

7 CO-CHAIRPERSON KALLOS: With regards to  
8 your -- I think you continue to give an analogy of an  
9 individual or corporation versus an external party,  
10 but in this case it was an internal investigation and  
11 I'm concerned. So within the Law Department which  
12 you manage, you have 500 or so attorneys; I imagine  
13 people make mistakes or do things wrong; have you  
14 ever had occasion in your time as Corporate Counsel  
15 for one of your employees to make a mistake, do  
16 something wrong that required investigation?

17 ZACHARY CARTER: Yes, that happens... yes,  
18 that happens from time to time.

19 CO-CHAIRPERSON KALLOS: And in those  
20 cases, did you as the Corporate Counsel just go in,  
21 look at their e-mails; look at their documents or did  
22 you engage a process where they were able to redact  
23 things and only let you see certain documents?

24 ZACHARY CARTER: Well if you're talking  
25 about -- it really depends on whether you're talking  
about issues of performance, if you're talking about

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2 EEO -- sometimes these investigations are formal;  
3 sometimes they are informal; they don't involve --  
4 they involve... most will [sic]... [crosstalk]

5 CO-CHAIRPERSON KALLOS: Have you had an  
6 occasion to access employees'... [crosstalk]

7 ZACHARY CARTER: More often than not...  
8 More often than not, Mr. Chair, when we're conducting  
9 an investigation with respect to our own employees  
10 and if they implicate communications that are housed  
11 on our server, we have access to that information.

12 CO-CHAIRPERSON KALLOS: And so you will  
13 just go into your Law Department employee's e-mails  
14 and their files and review them on your own without  
15 having to go through records requests, redactions or  
16 those types of **[inaudible]**... [crosstalk]

17 ZACHARY CARTER: Well actually, I'm...  
18 actually I'm glad you raised that; we have the --  
19 just because you have power and authority, it doesn't  
20 mean that you exercise -- let me finish -- every  
21 ounce of it that you have, every time that you have  
22 it just because you have it. If, for instance, there  
23 was some concern that an employee had engaged in some  
24 misconduct over this very discreet kind, does it mean  
25 that we're going to go into that person's e-mails and

3 read every single one of them, even when those  
4 e-mails are clearly not relevant to the thing that  
5 you suspect that the employee may have done? Of  
6 course not. You could, but you wouldn't do it just  
7 because you can, it would be inappropriate.

8 CO-CHAIRPERSON KALLOS: If you have that  
9 level of access with your own employees, would you  
10 agree that the DOI's relationship to other agencies  
11 is similar to yours within your agency and that they  
12 should have the same level of access as they have  
13 with every other investigation they've done?

14 ZACHARY CARTER: Simple answer is no; for  
15 this reason... [interpose]

16 CO-CHAIRPERSON KALLOS: However, once  
17 Mark Peters threatened to go to court on this, the  
18 Law Department has changed its answer and has granted  
19 them unrestricted access to... [interpose]

20 ZACHARY CARTER: No, that... the... the re... I  
21 actually told you and just said, the reason why we  
22 provided the information we provided -- we provided  
23 it to them in unredacted form just so it would be  
24 verified that when we provided that information to  
25 them in redacted form we had held nothing back. And  
again, we provided that information in unredacted

3 form on July 27th of... actually, I think a week  
4 earlier than that, in mid July of this year and we  
5 have had no response, not any indication that their  
6 review of those 5,000 documents that were provided to  
7 them in unredacted form yielded any indication that  
8 the Law Department had held anything back that was  
9 responsive.

10 CO-CHAIRPERSON KALLOS: I think that  
11 remains to be seen; I've already warned the public  
12 and the press that I fully expect DOI and the  
13 Comptroller to have more information coming. Along  
14 those lines, in addition to being an attorney like  
15 yourself, I'm also a software developer; there is a  
16 reason I'm interested in having access to the  
17 servers, which is, when somebody says they didn't  
18 read an e-mail, you can actually see whether they  
19 read it; when somebody says they didn't read a memo,  
20 you can actually see whether or not the document is  
21 downloaded. Did you grant that level of access to  
22 DOI; did you yourself find whether or not the  
23 statements people have made under oath today and in  
24 various investigations were accurate?

25 ZACHARY CARTER: We use the standard  
methods that are used in searches of electronic



3 databases to provide every single relevant document  
4 that was requested by the Department of  
5 Investigation. Indeed, the Department of  
6 Investigation, when it is searching databases, uses  
7 search terms; otherwise they would be in the position  
8 of reading millions of documents in order to find 10  
9 or 15 or even 100; that's the way these searches are  
10 done; it is standard practice. And frankly, the fact  
11 that a practice that is standard in these kinds of  
12 investigations has been characterized as something  
13 sinister that imputes the integrity of the  
14 extraordinary lawyers that work for the Law  
15 Department, representing the interests of the City  
16 each and every day is something that I deeply resent.

17 CO-CHAIRPERSON KALLOS: If I were the  
18 Mayor or the First Deputy Mayor and I ordered an  
19 investigation by my chief inspector internally and  
20 that person did not have unfettered access, I would  
21 be very concerned about anyone getting in-between  
22 that.

23 I am now going to ask; will the Law  
24 Department turn over read records; download records  
25 for e-mails that have been the subject of today's  
26 conversation so that the City Council may determine

2 whether or not the e-mails were actually read, when  
3 they were read, whether the attachments were  
4 downloaded, and when they were downloaded and how  
5 many times? Those are all pieces of information that  
6 exist on the server that would not be provided  
7 through a document search, but would be provided if  
8 you allowed the DOI access to the servers or even me.

9 ZACHARY CARTER: You? [background  
10 laughter] Well you're not DOI...

11 CO-CHAIRPERSON KALLOS: True. But we..  
12 [crosstalk]

13 ZACHARY CARTER: alright, uh and as you..  
14 and as you've pointed out, DOI has special  
15 responsibilities and obligations under the Charter,  
16 but let's leave that aside, 'cause I think you were  
17 being a bit facetious. But with respect to DOI, in  
18 July, pursuant to an agreement we reached with them,  
19 we gave them unfettered access to databases on which  
20 they ran search terms that -- we don't know what they  
21 were, but they had unfettered access to certain  
22 e-mail boxes that they requested, and I assume that  
23 given the fact that they had that access to those  
24 databases that they've already conducted the kind of  
25

3 search that you've just described, so that's already  
4 been done.

5 CO-CHAIRPERSON KALLOS: Would the  
6 Administration -- we do not have the First Deputy  
7 Mayor here, but I do have you here; it appears that  
8 you are the conduit of documents; would you provide  
9 to the City Council, without us having to bode out a  
10 subpoena, the read records for the e-mails in  
11 question today as well as the download records for  
12 those attachments?

13 [background comments]

14 ZACHARY CARTER: Right. Well that's a  
15 good point. First of all, if you're talking about an  
16 indication whether or not a document has been opened  
17 in e-mail, the fact that it has been opened, as I'm  
18 sure you know, because I'm sure you get voluminous  
19 e-mails, doesn't mean that the document's been read,  
20 it just means it's been opened.

21 CO-CHAIRPERSON KALLOS: I would love to  
22 just see whether or not they were downloaded; it's  
23 one thing to say, I opened the e-mail but I didn't  
24 read it; it's another to say, I opened the e-mail,  
25 managed to download the attached document without  
reading it and then went on to, after downloading the

3 document maybe once, twice or multiple times, still  
4 didn't read it, but at least that would give us a  
5 little bit of color of how many times the documents  
6 were opened and downloaded and read... [crosstalk]

7 ZACHARY CARTER: We will take your  
8 request under advisement; we have already provided  
9 the access that the Department of Investigation had  
10 requested with respect to certain e-mail accounts  
11 that they identified so that they can conduct the  
12 very kinds of searches you just described. And so,  
13 let's just leave it at that for now.

14 CO-CHAIRPERSON KALLOS: Thank you. I'd  
15 like to recognize Council Member Lancman, Chin and  
16 Torres for questions for Zachary Carter and then we  
17 will do another round for [background comment]  
18 Commissioner Camilo, but I would like to turn it over  
19 to my **[inaudible]**... [crosstalk]

20 CHAIRPERSON GENTILE: Just quickly before  
21 you do that. I just wanna clarify for the record,  
22 because we haven't heard this from the Administration  
23 before; we know of the State and the City  
24 investigations into this matter, but is it correct  
25 that you're saying now that there's also a U.S.  
Attorney investigation into this matter?

2 ZACHARY CARTER: I'm just surprised  
3 you're hearing this for the first time. Yes, there  
4 has been for a very long time, and I think it's a  
5 matter of public record, an investigation into this  
6 matter by the U.S. Attorney for the Southern District  
7 of New York.

8 CHAIRPERSON GENTILE: Okay, it was just...  
9 it was told to us in a different way. Okay, great.  
10 Thank you. And we're also joined by Councilman Andy  
11 Cohen, and we'll go to Councilman Rory Lancman.

12 COUNCIL MEMBER LANCMAN: Good afternoon.

13 ZACHARY CARTER: **[inaudible]**, afternoon.

14 COUNCIL MEMBER LANCMAN: I don't say this  
15 lightly, but the understanding that you have of your  
16 office and your responsibilities I find to be  
17 completely add odds with what I understand your  
18 responsibilities are; in particular, what is a plain  
19 violation of two executive orders by the Mayor which  
20 specifically, specifically removes the Law Department  
21 from interposing its view of what documents and  
22 information are necessary for the Department of  
23 Investigation to conduct a proper investigation.

24 So let's start with those executive  
25 orders -- Executive Order 16: The Commissioner of the

3 Department of Investigation should have authority to  
4 examine, copy or remove any documents prepared,  
5 maintained or held by any agency except those  
6 documents which may not be so disclosed according to  
7 law. Every officer or employee of the City shall  
8 cooperate fully with the Commissioner and the  
9 Inspectors General. Interference with or obstruction  
10 of an investigation conducted by the Commissioner or  
11 Inspector General shall constitute cause for removal  
12 from office or employment or other appropriate  
13 penalty.

14 Drilling down on the specific  
15 circumstance that occurred in the Rivington  
16 investigation -- Executive Order 105: The Inspector  
17 General shall be informed and have unrestricted  
18 access to all regular meetings of agency executives  
19 and managerial staff and to all records and documents  
20 maintained by each agency, unrestricted access.

21 Nonetheless, in the course of the Rivington  
22 investigation the Department of Investigation was  
23 compelled to title a section of its report "Lack of  
24 Cooperation during the Investigation," and then  
25 enumerating several instances where, in their term,  
contrary to Executive Order 16 and 105, they were

3 denied the unrestricted access which is required by  
4 the Executive Orders. We've been dancing around the  
5 subject, but it has to be made plain that the analogy  
6 of your protecting the City's interests from some  
7 outside investigatory agency, whether it's U.S.  
8 Attorney's Office, the D.A.'s Office, the Attorney  
9 General -- it's hard to keep track -- is  
10 inappropriate; this is a City entity, the Department  
11 of Investigation, charged generally -- and in this  
12 case, specifically, with investigating what happened  
13 with Rivington. The analogy that you make or  
14 suggest, it doesn't fit; a better analogy would be --  
15 a corporation finds that there's been some wrongdoing  
16 within the corporation; they charged their general  
17 counsel or they hire outside counsel to conduct a  
18 thorough investigation. It's inconceivable in that  
19 scenario that some other lawyer or some other  
20 department within that corporation would put itself  
21 in-between the investigatory efforts of the firm that  
22 was hired or the general counsel; that's the analogy  
23 here; it's what struck many of us as shocking, and  
24 the Mayor's own Commissioner of Investigation or the  
25 Department -- 'cause the Commissioner had to recuse  
himself because of his prior political relationship

2 with the Mayor -- itself called the Law Department  
3 and by extension, the rest of the Administration, to  
4 task. So I don't understand what authority you're  
5 asserting to interfere and deny the "unrestricted  
6 access" which the Mayor's Executive Order requires.  
7 Can you identify that authority?

8 ZACHARY CARTER: Oh absolutely, and  
9 actually, to some extent you've already read it.  
10 First of all, the Executive Order cannot invest in  
11 the Department of Investigation or any other  
12 institution more authority than is granted by the  
13 Charter. The Executive Order amplifies that  
14 authority and clarifies that authority; it doesn't  
15 confer any new or broader authority. The Charter  
16 gives access to the Department of Investigation of  
17 every scrap of information they need to fulfill their  
18 responsibilities to conduct investigations under the  
19 Charter. Right? But the key word "if necessary" to  
20 fulfill their responsibilities within the scope of  
21 their authority and that is a determination that is  
22 made investigation to investigation. **[inaudible]**...

23 [crosstalk]

24 COUNCIL MEMBER LANCMAN: **[inaudible]** I  
25 have... I have to... I have to interject here...



3 ZACHARY CARTER: **[inaudible]**

4 COUNCIL MEMBER LANCMAN: because the  
5 determination as to who is going to determine  
6 relevancy and scope and appropriateness was decided  
7 through these Executive Orders to be in the hands of  
8 the Department of Investigation... [crosstalk]

9 ZACHARY CARTER: Correct.

10 COUNCIL MEMBER LANCMAN: so it's not... the  
11 phrase "unrestricted access" and the rest of the  
12 language of the Executive Order takes from the Law  
13 Department what in the ordinary course of some  
14 external investigation would be your responsibility  
15 to determine relevancy, privilege and all the other  
16 things that we lawyers love to argue about, takes it  
17 out of your hands... [crosstalk]

18 ZACHARY CARTER: Actually...

19 COUNCIL MEMBER LANCMAN: and puts it in  
20 the Department of Investigation... [crosstalk]

21 ZACHARY CARTER: that is, in my view, not  
22 true, and what you're conflating are two things that  
23 are different, even though the difference is somewhat  
24 subtle and intangible, but it's an important  
25 difference and it's the difference between who  
determines what's relevant; there is no question that

3 the sole determinant of what is relevant and  
4 responsive is the Department of Investigation; they  
5 declared what they considered to be relevant and  
6 responsive when they served on the Council for the  
7 Mayor their first request for documents; it is very  
8 specific; it is well-done; it lays out all the things  
9 they need. What we're now talking about -- and  
10 lawyers quibble about these things and negotiate  
11 these things out in the course of these kinds of  
12 investigations and requests for production of  
13 documents all the time -- is the manner of  
14 production, not what will be produced, but the manner  
15 of it. The standard way this is done -- and you are  
16 a practicing lawyer, so I know you know this -- the  
17 standard way this is done is the way it was done and  
18 that is that, they gave us a roadmap of what they  
19 considered to be relevant materials and we applied  
20 the kind of search term technology to these databases  
21 that it was calculated to produce that, and after the  
22 fact, because of the claims that they made in that  
23 section of the report that you have cited, in order  
24 to provide publicly -- and we actually did this with  
25 a press release, as you'll recall on July 27th of  
this year -- in order to make it clear publicly that

2 nothing had been withheld by way of responsive  
3 documents, we gave them unredacted... [crosstalk]

4 COUNCIL MEMBER LANCMAN: But... But...

5 ZACHARY CARTER: unredacted... [crosstalk]

6 COUNCIL MEMBER LANCMAN: Right, but if...

7 ZACHARY CARTER: versions of all the  
8 documents that had been provided... [crosstalk]

9 COUNCIL MEMBER LANCMAN: if the  
10 Department of Investigation, when it enumerated the  
11 various ways in which you did not cooperate during  
12 the investigation, one of those was that -- calling  
13 material in the documents not responsive, and in one  
14 such production from the Law Department -- DOI  
15 received approximately 1,000 documents, approximately  
16 990 of which were blank pages containing the letters  
17 not responsive... [crosstalk]

18 ZACHARY CARTER: Absolutely.

19 COUNCIL MEMBER LANCMAN: Now that would  
20 be appropriate and usual and standard practice as  
21 between two adversarial parties, but contrary to what  
22 I'm understanding you're saying or what I'm hearing,  
23 you're making a determination as to what's relevant  
24 and responsive and what I'm saying is, the plain  
25 reading of the Executive Order is that it'll be up to

3 the Department of Investigation to make that  
4 determination, and we wouldn't be here except for the  
5 fact that the Department of Investigation was  
6 troubled by your determination of certain things as  
7 being nonresponsive, so... [interpose]

8 ZACHARY CARTER: That's... Actually, that  
9 is absolutely and unequivocally not true, and maybe I  
10 haven't stated this clearly enough. The Department  
11 of Investigation, before we provided the unredacted,  
12 the 5,000 pages of unredacted documents, made a claim  
13 speculating that there may have been -- masked by our  
14 redactions that were labeled NR (nonresponsive) --  
15 there may have been responsive material withheld.  
16 That is absolutely, positively, unequivocally not  
17 true; we've now provided the unredacted documents and  
18 there has been no claim that anything was held back.

19 COUNCIL MEMBER LANCMAN: DOI was not  
20 correct when DOI wrote in one such production  
21 [background comments] -- DOI received approximately  
22 1,000 documents, approximately 990 of which were  
23 blank pages containing the letters NR for not  
24 responsive?

25 ZACHARY CARTER: Yeah... well [inaudible]...  
[crosstalk]

2 COUNCIL MEMBER LANCMAN: [inaudible]

3 ZACHARY CARTER: Can I describe to you  
4 what that document was? It was a directory of --  
5 what, healthcare facilities -- and... it's a directory;  
6 it's like a phone book...

7 COUNCIL MEMBER LANCMAN: Uhm-hm.

8 ZACHARY CARTER: of healthcare  
9 facilities, and Rivington was mentioned in only,  
10 what, 10 pages? [background comments] Oh, it was  
11 mentioned... mentioned five times in this 1,000-page  
12 document... [crosstalk]

13 COUNCIL MEMBER LANCMAN: But...

14 ZACHARY CARTER: and so consequently... and  
15 here's... listen, nothing's perfect; when you are  
16 trying to respond quickly, as quickly as you can to a  
17 request for documents contained in a massive  
18 database, there are some things that get done  
19 mechanically, alright. If we had it to do all over  
20 again, if it's basically a phone directory, we might  
21 have sent it over and said, oh by the way, just so  
22 you don't waste your time, [background comments]  
23 right, reading 1,000 pages unnecessary because we  
24 know your time is valuable, we'll give you this and

2 we're gonna tab the pages and say, Rivington is  
3 referred to on these five pages... [interpose]

4 COUNCIL MEMBER LANCMAN: I get it, but...

5 ZACHARY CARTER: instead, as is done in  
6 the course of a massive document, it was done in the  
7 way it is typically done, and that is that you apply  
8 some clerical person, you know under the supervision  
9 of a lawyer, that's identified where the responsive  
10 materials are and they blanked out the rest; we  
11 could've done the opposite and you know that... that...  
12 that... [crosstalk]

13 COUNCIL MEMBER LANCMAN: No, well...

14 ZACHARY CARTER: for that particular  
15 document, it would've saved us some  
16 mischaracterizations of what we've done... [crosstalk]

17 COUNCIL MEMBER LANCMAN: But... But  
18 respectfully, and this is my... respectively, and this  
19 is my point...

20 ZACHARY CARTER: Yeah.

21 COUNCIL MEMBER LANCMAN: you should not  
22 have done that; you should not have engaged in this  
23 exercise where you made a determination; whether or  
24 not Rivington's mentioned five times or ten times or  
25 three times is enough to satisfy the Department of

3 Investigation's demand for responsive documents. The  
4 Executive Order -- look, you and I are used to how  
5 the balances of the discovery process have been  
6 determined in a civil proceeding or in a criminal  
7 proceeding, and the arguments that you're making, the  
8 explanations that you're giving are perfectly  
9 appropriate and correct in those proceedings; my  
10 point is, in a Department of Investigation  
11 investigation, certainly within the executive agency,  
12 those balances have been struck differently and  
13 that's what the Executive Order represents; there's  
14 nothing in the Federal Rules of Civil Procedure or  
15 Criminal Procedure that comes remotely close to what  
16 we read in the Executive Order. And so you're  
17 applying a standard that doesn't fit these  
18 investigations; that's why the Department of  
19 Investigation **[inaudible]**... [crosstalk]

20 ZACHARY CARTER: I... I under... I  
21 understand... I understand that's your view; I believe  
22 that that is not a fair reading of the law is in  
23 context... [crosstalk]

24 COUNCIL MEMBER LANCMAN: I'm gonna...

25 ZACHARY CARTER: because the context, the  
broader context is the Charter; the Executive Order

3 are the Mayor's rules; they are not law, they are the  
4 rules that amplify and explain and clarify the  
5 certain provisions on authorities that are created by  
6 the Charter and I think you should agree with me that  
7 while the Department of Investigation is entitled to  
8 access all information, and I mean all necessary to  
9 conduct an investigation, they're not entitled to  
10 have information that's not necessary to conduct its  
11 investigation. Having broad authority is not the  
12 same as having unlimited authority and I understand  
13 you cited too the Federal Code and the Constitution  
14 and other bodies of law that govern the dissemination  
15 of information pursuant to requests or demands in  
16 other contexts, and I understand that there are  
17 things that distinguishes them, and I understand that  
18 the Executive Order issued under Koch, and not  
19 amended thereafter, significantly, provides a  
20 substantial, a substantial amount of latitude and  
21 access to the Department of Investigation; where I  
22 differ is that there's an important distinction  
23 between having unlimited access and having necessary  
24 access; it is the broadest possible access that  
25 permits DOI to do its job, but it is not without  
limitation; it's [inaudible]... [crosstalk]



3 COUNCIL MEMBER LANCMAN: [inaudible]...

4 ZACHARY CARTER: there's a limitation of  
5 relevance.

6 COUNCIL MEMBER LANCMAN: Alright. Let me  
7 conclude by saying, the description of how the Law  
8 Department made determinations about what to produce  
9 or not produce is indistinguishable from the process  
10 of an ordinary civil litigation with adversaries and  
11 that your view of the Department of Investigation's  
12 authority and the interpretation of the Executive  
13 Orders is, for all practical purposes, to eviscerate  
14 the effect of these orders; that is why the  
15 Department of Investigation itself, not the Council,  
16 the Department of Investigation itself was disturbed  
17 enough to include it in its report and why -- after I  
18 wrote a letter to the Department of Investigation --  
19 they threatened to take the Administration or you to  
20 court to enforce its rights to this material. And I  
21 would urge you, going forward, to really reconsider a  
22 position that has the effect of eviscerating these  
23 Executive Orders, which were designed to give a  
24 quick, expeditious and transparent authority and  
25 accounting and investigation of potential wrongdoing

2 within the Administration by the Administration.

3 Thank you.

4 CO-CHAIRPERSON KALLOS: I just wanna  
5 follow up on Council Member Lancman's questions. Are  
6 the words "unrestricted" and "necessary" synonyms?

7 ZACHARY CARTER: Are the words  
8 "unrestricted" and "necessary" synonymous? No..

9 [crosstalk]

10 CO-CHAIRPERSON KALLOS: Yeah.

11 ZACHARY CARTER: no, they're not.

12 CO-CHAIRPERSON KALLOS: What is the  
13 definition of unrestricted?

14 ZACHARY CARTER: Well unrestricted is  
15 modified by necessary..

16 CO-CHAIRPERSON KALLOS: I'm just asking  
17 about..

18 ZACHARY CARTER: The definition of  
19 unrestricted in a vacuum is meaningless.

20 Unrestricted means that unrestricted access, the  
21 purpose of which is to.. [crosstalk]

22 CO-CHAIRPERSON KALLOS: I'm just asking  
23 about the definition of unrestricted.

24

25

3 ZACHARY CARTER: But you've asked me to  
4 define it; I have to define it in my terms, alright,  
5 not yours; mine, right, so... so... so... [crosstalk]

6 CO-CHAIRPERSON KALLOS: Okay, I... I will  
7 read the dictionary definition back you though.

8 ZACHARY CARTER: Okay. Unrestricted  
9 access, the purpose of getting unrestricted access is  
10 not to have access for access sake; it is for the  
11 purpose of having access to all conceivably relevant  
12 information that permits the Department of  
13 Investigation to conduct its investigations and to  
14 issue reports so that the City can take corrective  
15 actions when their investigation discloses that there  
16 is a problem with operational or policy with respect  
17 to misconduct or performance or incompetency; it is  
18 all the information that they need to do their jobs.  
19 Depending on the nature of the investigation, that  
20 will determine the breadth of the information they  
21 need to accomplish that purpose.

22 CO-CHAIRPERSON KALLOS: And again, just  
23 in a vacuum, the definition of unrestricted. If you  
24 want, I can read it into the record. So from  
25 Dictionary.com: it's an adjective -- limited to  
persons authorized to use of information, documents,

3 etc. so classified. So unrestricted would be the  
4 opposite of that and in this case, according to DOI,  
5 [background comments] Rory Lancman, myself and  
6 others, your behavior did not provide unrestricted  
7 access and I guess just -- what were you trying to  
8 hide?

9 ZACHARY CARTER: When a lawyer,  
10 fulfilling his or her responsibilities to protect the  
11 interests of their client acts in accordance with the  
12 norms of practice, acts in accordance with the norms  
13 of the rules of professional responsibility, and  
14 protects their client's interest by evoking privilege  
15 or by making a production in a way that provides  
16 responsive material and responsive material only, I  
17 expect that lawyers understand, broadly understand  
18 that that's not hiding or obstructing or interfering  
19 or failing to cooperate; that's just doing your job  
20 as a lawyer and I'm proud to do that job, I'm proud  
21 of my staff that does that job for the citizens of  
22 this city each and every day and I think the proof is  
23 in the pudding. The Department of Investigation and  
24 every other entity that has been investigating the  
25 Rivington transaction has had access to every

2 conceivable document or other piece of information  
3 necessary to get to the bottom of what happened here.

4 CO-CHAIRPERSON KALLOS: And so between  
5 the Comptroller and the DOI and the City Council, we  
6 have had more access to documents and we will not be  
7 surprised by something else coming out from the U.S.  
8 Attorney General or the New York State Attorney  
9 General?

10 ZACHARY CARTER: Well that's conjecture,  
11 but, you know, that's... it is what it is.

12 CO-CHAIRPERSON KALLOS: Well I'm asking  
13 whether or not documents have been produced for the  
14 Attorney General versus the other bodies that have  
15 already done it; does the U.S. Attorney [background  
16 comment] or the Attorney General have documents that  
17 were produced relating to a subpoena that were not  
18 provided to the DOI, Comptroller or City Council?

19 ZACHARY CARTER: DOI got the broadest  
20 production, and quite frankly, by way of  
21 illustration, in our conversations with the U.S.  
22 Attorney's Office, and I don't think anyone would  
23 characterize the Southern District U.S. Attorney's  
24 Office to be a shy and passive actor in the  
25 performance of their responsibility; it has been in

3 working out how can we provide all the information  
4 they needed without there being overburdened by  
5 nonresponsive, clearly irrelevant information; that's  
6 how professionals do their job. That's how  
7 professionals do their job, it's not standing on  
8 ceremony for the sake of standing on ceremony to  
9 establish your unlimited authority; it's just getting  
10 the job done and getting the information necessary to  
11 do that job and no more information than is necessary  
12 to get the job done.

13 CHAIRPERSON GENTILE: Okay, we will go  
14 now to Council Member Margaret Chin.

15 COUNCIL MEMBER CHIN: Thank you, Chair.  
16 Mr. Carter, I asked this question earlier to the  
17 Deputy mayor -- the Corporation Counsel, you  
18 represent the City's interests; in this case, there  
19 was an injustice done to our community, so I wanted  
20 to ask you; what are you doing in terms of looking at  
21 legally; can we do something to take Rivington House  
22 back, whether we can do eminent domain, whether we  
23 can take some legal action against the provider who  
24 has misled the City?

25 ZACHARY CARTER: We are exploring every  
legal option available to try to do what we can to,

3 even if not reverse, but to block the impact of what  
4 occurred here, which no one, obviously, at least in  
5 retrospect, would want to have occurred with respect  
6 to the disposition of this property. But there are  
7 limits, legal limits to what we can accomplish. So  
8 in this particular case, once the deed restrictions  
9 were lifted in exchange for the payment of the fee  
10 that was provided under the long-standing protocol,  
11 that the Asset Management Division of DCAS used in  
12 conducting its business, unless there is evidence of  
13 fraud as that's legally define; not in this  
14 colloquial sense; we know that there were statements  
15 that were made; we have suspicion that, deliberately,  
16 that lulled a lot of people -- the community, certain  
17 actors in City Hall, the union, and State  
18 authorities, State Health authorities into a false  
19 sense that no matter what happens, this is still  
20 going to be operated as a nursing home. Having that  
21 sense and being able to prove fraud as a matter of  
22 law is different. There is information that the Law  
23 Department has not had access to because we don't  
24 have what's called compulsory process against third  
25 parties, so communications between, Allure -- that is  
the purchaser from VillageCare -- and Slate -- the

3 purchaser from Allure -- were unavailable to us and  
4 those would be critical in determining whether or not  
5 -- for instance, at the time that Mr. Landau was  
6 representing to everybody who would listen that he  
7 was going to continue to operate this as a nursing  
8 home -- whether or not he was already planning to  
9 sell, right. Now, the Mayor of the City of New York  
10 commissioned and directed the Department of  
11 Investigation to undertake an investigation into that  
12 because they do have that power over third parties;  
13 they can get access, presumably, I hope by now have  
14 gotten access to any communications between Allure  
15 and Slate. To date they've provided no work product  
16 to us that would help us determine whether or not we  
17 have any legal recourse against anyone who was  
18 involved in this transaction. Fortunately, the  
19 Comptroller's Office has shared some information in  
20 that regard and we're beginning to analyze that.

21 COUNCIL MEMBER CHIN: So are you also  
22 waiting for the State Attorney General's Office...

23 ZACHARY CARTER: Yes.

24 COUNCIL MEMBER CHIN: so maybe they can  
25 uncover something that can help you **[inaudible]**...

[crosstalk]



2 ZACHARY CARTER: Yes and we have had.. and  
3 we have had continuing discussions with the State  
4 Attorney General's Office and when they are in a  
5 position to share information that their  
6 investigation has unearthed, they intend to share  
7 that with us, because they understand that in terms  
8 of statutes of limitations and the like that it's an  
9 urgent matter for us and so they have committed to  
10 providing us information as soon as they can.

11 COUNCIL MEMBER CHIN: So then you are  
12 actively pursuing, continuing to pursue if there's a  
13 legal way that you can.. [crosstalk]

14 ZACHARY CARTER: We will make every  
15 effort to pursue any legal recourse that we have, but  
16 I am not going to make a promise that we'll be  
17 successful, but we're gonna make every effort that we  
18 can; to use every legal means we can to make this  
19 right.

20 COUNCIL MEMBER CHIN: I hope we can count  
21 on you on that, okay...? [crosstalk]

22 ZACHARY CARTER: Yes, you... you can.

23 COUNCIL MEMBER CHIN: And the other part  
24 is that, what about taking it back, eminent domain?  
25 Because what they're gonna do to that building is not

3 of interest to the community; it's not gonna be  
4 public good.

5 ZACHARY CARTER: Well we will explore all  
6 legal and practical options.

7 COUNCIL MEMBER CHIN: So we just wanna  
8 count on you to do that, to pursue every avenue to  
9 make sure that we can get this building back to the  
10 community and to right this wrong. Thank you.

11 CHAIRPERSON GENTILE: Thank you Council  
12 Member; we'll go to Council Member Ritchie Torres.

13 COUNCIL MEMBER TORRES: Thank you. I  
14 have a quick follow up to Council Member Lancman's  
15 question, and I actually agree with you, 'cause the  
16 word "necessary" does modify "unrestricted access."  
17 But you acknowledge that DOI has unrestricted access  
18 to all documents necessary for its investigation; is  
19 that a correct...

20 ZACHARY CARTER: That is absolutely  
21 correct and... [crosstalk]

22 COUNCIL MEMBER TORRES: So who... who...

23 ZACHARY CARTER: and that's a very crisp  
24 and complete statement -- unrestricted access to all  
25 documents necessary to **[inaudible]**... [crosstalk]

2 COUNCIL MEMBER TORRES: So I'll concede  
3 the point about "necessary" as a modifier...

4 ZACHARY CARTER: Yes.

5 COUNCIL MEMBER TORRES: but who gets to  
6 make the determination about necessity; is it the Law  
7 Department or DOI...? [crosstalk]

8 ZACHARY CARTER: Uh... The determination of  
9 relevance clearly belongs to the Department of  
10 Investigation; they determine the parameters of their  
11 investigation and what information that they need.

12 In terms of manner of production, manner of  
13 production is not prescribed in either the Charter or  
14 the Executive Order; that's the kind of thing that  
15 lawyers, that professionals work out; they do it in  
16 civil litigation, they do it when there are grand  
17 jury investigations, they do it in all kinds of  
18 inquiries; that's the manner of production, that is,  
19 if there are millions of documents in a database and  
20 we're looking for maybe, maximum, 5-6,000 documents;  
21 the question is -- how are we gonna get that to you?  
22 That is something that lawyers discuss and negotiate  
23 every day of the week as we are sitting here now;  
24 that's standard practice.

2 COUNCIL MEMBER TORRES: And I don't wanna  
3 dwell on this, but you know, DOI did allege... did  
4 state in its report that it was hindered by the Law  
5 Department, which impeded DOI's access to documents  
6 and computers, and understanding ordinary English as  
7 I do, that leaves me to believe that you did not  
8 provide them with unrestricted access...

9 ZACHARY CARTER: That's what they say;  
10 that is not true.. [crosstalk]

11 COUNCIL MEMBER TORRES: Right. But  
12 that's their determination and so why not defer to  
13 that determination?

14 ZACHARY CARTER: Well if you're asking  
15 why we didn't take the path of least resistance and  
16 eliminate having to sit here before you because I  
17 decided that it was more important to just cave in  
18 than to fulfill my responsibilities as a chief lawyer  
19 for the City of New York; no, we elected to behave in  
20 accordance with our professional responsibilities...  
21 [interpose]

22 COUNCIL MEMBER TORRES: Okay.

23 ZACHARY CARTER: to the City, to engage  
24 in the standard practices that -- again, as I've said  
25 repeatedly -- the standard practices that lawyers

3 engage in when they are responding to requests and  
4 demands for information in connection with  
5 investigations; we provided, by means that are  
6 recognized, again, by Federal courts, U.S. Attorneys,  
7 grand juries -- and I have substantial experience in  
8 these areas, as you know...

9 COUNCIL MEMBER TORRES: I have none, so  
10 I've... yeah... [sic]

11 ZACHARY CARTER: right -- that's how  
12 these searches are done and again, proof's in the  
13 pudding; we decided in order to meet these, you know,  
14 inappropriate claims that speculated that we had some  
15 ill motive in redacting documents; in order to make  
16 sure that the public understood that it its Law  
17 Department was not concealing responsive documents or  
18 relevant evidence, we took the step of providing all  
19 these documents in unredacted form; we did that now  
20 almost three months ago and we've heard nothing from  
21 the Department of Investigation, and I didn't expect  
22 otherwise.

23 COUNCIL MEMBER TORRES: But it sounds to  
24 me like if you deem information unnecessary, then  
25 it's within your... in fact, you're giving me the

1 COMMITTEE ON OVERSIGHT AND INVESTIGATIONS, JOINTLY  
2 WITH THE COMMITTEE ON GOVERNMENTAL OPERATIONS 222

3 impression you have an obligation not to provide that  
4 information to DOI **[inaudible]**.

5 ZACHARY CARTER: What we have an  
6 affirmative obligation to provide is access to all  
7 information that's necessary for them to conduct  
8 their investigation, but they determine, they  
9 determine what's necessary and they did it by serving  
10 a written request for documents at the earliest part  
11 of this investigation; it is highly specific; it  
12 gives, in substantial detail a description of all the  
13 kinds of documents **[inaudible]**... [crosstalk]

14 COUNCIL MEMBER TORRES: They can't update  
15 that request?

16 ZACHARY CARTER: Sorry?

17 COUNCIL MEMBER TORRES: They can't update  
18 that request?

19 ZACHARY CARTER: They can update the  
20 request and they... and they... and they have from time  
21 to time... [crosstalk]

22 COUNCIL MEMBER TORRES: Okay, to request  
23 more information?

24 ZACHARY CARTER: orally and **[inaudible]**...  
25 [crosstalk]

3 COUNCIL MEMBER TORRES: But it just... it  
4 sounds to me like the Law Department is making its  
5 own determination about what information is necessary  
6 for the investigation... [crosstalk]

7 ZACHARY CARTER: No. The Law Department  
8 is not making a determination about what; it's making  
9 a determination about how; that is, you can have all  
10 -- if you're the Commissioner of Department of  
11 Investigation, you tell me what you want; I'll give  
12 it to you, but let's assume that we were back in the  
13 days before -- I can't imagine this now -- computers  
14 and e-mail and we're talking about good old fashioned  
15 paper; you can ask me to give you all the documents  
16 that fit a particular description, but don't tell me  
17 it has to be in a black box and a pink bow; that's  
18 not necessary for you to fulfill your  
19 responsibilities. It's a difference between the  
20 manner of production and what is being produced. We  
21 did everything necessary to provide every piece of  
22 information that was necessary, that they deemed  
23 necessary -- they define what's necessary and what's  
24 relevant -- that they deemed necessary, based on what  
25 description they gave us of the documents they  
needed. We used the standard practice in applying

2 search terms, even retained a vendor -- because at  
3 the end of the day, when you initially apply the  
4 search terms you get 300,000 documents -- to do all  
5 the administrative work necessary to prepare those  
6 documents for production and to go through those  
7 things, once you've got that first cut, to make sure  
8 that you have found every conceivable document that's  
9 responsive to their requests by their definitions,  
10 alright; that was all done.

11 COUNCIL MEMBER TORRES: So the  
12 distinction between what and how, you have the right,  
13 the Law Department, to dictate how; is that... am I...  
14 you drew a distinction about what information to  
15 which you're seeking access and how that information...  
16 the manner of production... am I... Did I understand your  
17 correctly or... [crosstalk]

18 ZACHARY CARTER: That... That... Let me put  
19 it this way; I don't think the draw... the line [sic]...  
20 [crosstalk]

21 COUNCIL MEMBER TORRES: You drew a  
22 distinction earlier.

23 ZACHARY CARTER: but... yes, but listen...

24 COUNCIL MEMBER TORRES: Yeah.  
25



2 ZACHARY CARTER: that is the right  
3 distinction...

4 COUNCIL MEMBER TORRES: Right.

5 ZACHARY CARTER: there's sometimes gonna  
6 be overlap, but **[inaudible]**... [crosstalk]

7 COUNCIL MEMBER TORRES: I think... it  
8 sounds like DOI...

9 ZACHARY CARTER: but we will always err  
10 on the side of doing whatever is necessary to provide  
11 information that they, that is the Department of  
12 Investigation, deem to be relevant on their terms and  
13 by their definitions; the only question is not  
14 whether we do that, but how do we do it.

15 COUNCIL MEMBER TORRES: What if DOI were  
16 to determine that how you did it interferes with  
17 their ability to conduct the investigation?

18 ZACHARY CARTER: That is something that  
19 has to be determined on a case by case basis.

20 COUNCIL MEMBER TORRES: But who makes  
21 that determination; is it DOI or is that the Law  
22 Department; it sounds like the Law Department  
23 **[inaudible]**... [crosstalk]

24

25

2 ZACHARY CARTER: So, it sounds... it sound...  
3 in every situation that I've been involved in, and  
4 I've been doing this for 40 years...

5 COUNCIL MEMBER TORRES: Yeah.

6 ZACHARY CARTER: that is the kind of  
7 thing that, under most circumstances, professionals  
8 work out together; that's how that's done and when  
9 you're trying to figure out -- once you agree that  
10 one person, that is, one entity **[inaudible]**...

11 [crosstalk]

12 COUNCIL MEMBER TORRES: So it sounds like  
13 it's a negotiation between DOI and the Law  
14 Department; **[inaudible]**... [crosstalk]

15 ZACHARY CARTER: In terms of how; not  
16 whether... [crosstalk]

17 COUNCIL MEMBER TORRES: In terms of how.

18 ZACHARY CARTER: not what [sic]...

19 COUNCIL MEMBER TORRES: but which can  
20 overlap with what?

21 ZACHARY CARTER: There are situations  
22 conceptually where it can overlap...

23 COUNCIL MEMBER TORRES: 'Kay [sic].

24 ZACHARY CARTER: this was not one of  
25 those situations.

2 COUNCIL MEMBER TORRES: So the  
3 negotiation; is that unique to the Law Department;  
4 can DCAS negotiate the manner in which information is  
5 provided to DOI; is this...

6 ZACHARY CARTER: If...

7 COUNCIL MEMBER TORRES: Is this unique to  
8 the Law Department or is it true of every agency,  
9 including those at the heart of the investigation...?  
10 [crosstalk]

11 ZACHARY CARTER: Is... First of all... First  
12 of all, we... First of all, we represent all the  
13 agencies...

14 COUNCIL MEMBER TORRES: 'Kay.

15 ZACHARY CARTER: of City government, so  
16 it would never be DCAS vis-à-vis [sic] DOI without  
17 the involvement, or seldom without the involvement of  
18 the Law Department.

19 COUNCIL MEMBER TORRES: Okay, it just  
20 seems that as a layperson -- and I'm not a lawyer; I  
21 will confess -- that the agency at the receiving end  
22 of the investigation can dictate the manner in which  
23 information is provided to the investigators; I'm not  
24 clear that that's what the Charter intended, but  
25 you're the lawyer, I'm not; I respect that, uhm...

2 ZACHARY CARTER: I think the bottom line  
3 is that there is no doubt that the entity that has  
4 the prerogative to dictate what is necessary, what is  
5 relevant is the Department of Investigation; that we  
6 do not challenge **[inaudible]**... [crosstalk]

7 COUNCIL MEMBER TORRES: I just feel like  
8 that distinction you're drawing is blur in the real  
9 world and... but I **[inaudible]**... [crosstalk]

10 ZACHARY CARTER: Let me put it this way;  
11 I don't know many lawyers who can pretend not to  
12 understand -- you're not a lawyer...

13 COUNCIL MEMBER TORRES: I'm not a lawyer.

14 ZACHARY CARTER: lawyers understand  
15 **[inaudible]**... [crosstalk]

16 COUNCIL MEMBER TORRES: I'm a lawmaker,  
17 but not a lawyer.

18 ZACHARY CARTER: lawyers who are engaged  
19 in litigation know that this is how it's done every  
20 day of the week; there's nothing unusual about how  
21 this was handled.

22 COUNCIL MEMBER TORRES: My understanding  
23 is that under the Charter the Mayor is only  
24 authorized to sell property at the highest marketable  
25 price; am I... am I correctly representing the law or...

2 ZACHARY CARTER: It is... it's a bit more  
3 complicated than that, but the general principle is  
4 one that is... a principle that's embedded in the State  
5 Constitution and it's... [background comment] oh, also  
6 in the Charter...

7 COUNCIL MEMBER TORRES: In the Charter.

8 ZACHARY CARTER: that is; you have to,  
9 when you dispose of property, get the highest value  
10 for that property. [background comments]

11 COUNCIL MEMBER TORRES: And I know  
12 there's a provision in both... I guess I... I gather that  
13 there's a provision in State Law and the Charter that  
14 requires... that only authorizes the Mayor to sell when  
15 he extracts the highest value; is that...

16 ZACHARY CARTER: That is correct.

17 COUNCIL MEMBER TORRES: Is there a  
18 comparable provision in either State Law or the  
19 Charter regarding the lifting of deed restrictions  
20 or?

21 ZACHARY CARTER: No.

22 COUNCIL MEMBER TORRES: So the Mayor is  
23 under no obligation to... Let's assume for a moment  
24 that the Mayor... I mean obviously, and you were misled  
25 [sic] and I get that, but if the Mayor wanted to sell

3 or the Administration wanted to sell... or lift the  
4 deed restriction without any fee; you could  
5 theoretically do that?

6 [background comments]

7 ZACHARY CARTER: If there's a public  
8 purpose you can. And so let's take this... Well let's  
9 think about it... [crosstalk]

10 COUNCIL MEMBER TORRES: Yeah, alright.

11 ZACHARY CARTER: alright, because this is  
12 not just hypothetical, because this has happened  
13 historically from time to time. As you'll recall  
14 from Deputy Mayor Shorris' testimony, the particular,  
15 the original owner here, VillageCare, was facing  
16 financial difficulties; it is not unusual for  
17 entities, particularly struggling not-for-profits who  
18 have obtained property from the City, who are engaged  
19 in important public benefit works, sometimes in  
20 partnership with the City; it's not unusual for them  
21 sometimes to want to, after they've held the property  
22 for a substantial period of time, want to sell those  
23 properties so they can reinvest in the good works  
24 that they do, and that could, under some  
25 circumstances, and as the Deputy Mayor said, they  
would be extraordinarily rare; it would not be

3 irrational under some unique circumstances to say  
4 this entity, which is an iconic social services not-  
5 for-profit, is doing such great works and so can be  
6 so reliably depended upon to continue to do those  
7 good works that maybe the broader public interests  
8 would be in the disposition of that property at  
9 market rates because we know that -- or and, frankly,  
10 we could write it up so you can secure some guarantee  
11 that there will be alternative public benefit uses to  
12 which the proceeds of that sale would be put. But  
13 again, that would be very rare. So I just say that  
14 to illustrate the point that it would not be  
15 inconceivable that the lifting of deed restrictions  
16 in exchange for no fee could serve a public purpose.  
17 But as the Deputy Mayor pointed out, that would be  
18 extremely rare.

19 COUNCIL MEMBER TORRES: I cannot imagine  
20 a case where you could not enshrine a public benefit  
21 or purpose in either a use or user restriction.

22 ZACHARY CARTER: I'm sorry; could you  
23 repeat that?

24 COUNCIL MEMBER TORRES: Like if there was  
25 a public purpose intended for -- [background comment]  
yes. Okay, fine. Okay, that.. Okay.

2 CHAIRPERSON GENTILE: We'll finish up  
3 here with Councilman Andy Cohen as far as what we  
4 have with this witness. I'm sorry, and then Ben.

5 COUNCIL MEMBER COHEN: Thank you very  
6 much, Chair. I'll be brief. I just wanted to follow  
7 up also on Council Member Lancman's line of  
8 questioning, 'cause maybe I just don't understand..  
9 like, do you view the relationship between DOI and  
10 the agencies as adversarial?

11 ZACHARY CARTER: It's not... it's not  
12 adversarial; I mean, it is of a kind with the  
13 compliance function that is embedded in lots of the  
14 best private companies; that is, it is a function  
15 that is necessary to unearth instances of misconduct  
16 or worse, or failures of performance or operational  
17 deficiencies, and in the course of that an entity  
18 that performs a compliance functions... [interpose]

19 COUNCIL MEMBER COHEN: But...

20 ZACHARY CARTER: as DOI does, will need  
21 information from the subdivision of the institution  
22 that it has under investigation.

23 COUNCIL MEMBER COHEN: But it's internal  
24 in nature; it's not a third party or it's not --  
25 you're invoking the rules of discovery in adversarial



3 proceedings, but really, DOI's function, as I  
4 understand it, is internal investigations, making  
5 sure like that we keep our own house in order and yet  
6 you're describing rules from adversarial proceedings,  
7 so I'm a little.. [crosstalk]

8 ZACHARY CARTER: Well actually, it's a  
9 bit more complicated than that, because the  
10 Department of Investigation does and frankly, has an  
11 obligation to, partner with for instance law  
12 enforcement authorities, prosecutor authority if its  
13 investigations unearth wrongdoing. And so  
14 information provided to the Department of  
15 Investigation, under some circumstances, will be and  
16 has to be shared, which is why, even from the point  
17 of view of those investigative agencies, lawyers have  
18 to make sure that information provided to the  
19 Department of Investigation is properly labeled and  
20 properly identified as subject to privilege when  
21 that's appropriate. For instance, the U.S.  
22 Attorney's Office, and I've been in this spot, as you  
23 know, there's information they don't want, they don't  
24 want privileged information because it will taint  
25 legal proceedings going forward if they get it  
inadvertently, so they want a privileged law, they

3 want something that lets them know, red flag here,  
4 this may be privileged information, and DOI is in a  
5 unique position, because even though they are part of  
6 City government, there are times when they have an  
7 obligation to cooperate with third party external  
8 authorities.

9 COUNCIL MEMBER COHEN: I think that is a  
10 fair enough distinction and example of privilege.  
11 But I just also wanted to follow up on -- Council  
12 Member Chin had a question -- hypothetically, if  
13 there is grounds for like an action of rescission or  
14 something, are we concerned about state of  
15 limitations while we're investigating and thinking  
16 and cogitating; like, is it possible that we could  
17 lose a remedy to recover this property or at least  
18 recover the deed restriction?

19 ZACHARY CARTER: We are very concerned  
20 about that, which is why we have urgently and  
21 insistently requested from any entity, including the  
22 Department of Investigation, that has access to  
23 information that we do not legally have access to, to  
24 please, as soon as possible, provide us any  
25 information they have unearthed in their

2 investigations that could support a claim of civil  
3 fraud against any party.

4 COUNCIL MEMBER COHEN: Do you intend to  
5 file a notice of claim to preserve our rights in any  
6 event [sic], just to make sure if we have a claim?

7 ZACHARY CARTER: We don't have to file a  
8 notice of claim.

9 COUNCIL MEMBER COHEN: We don't?

10 ZACHARY CARTER: No.

11 COUNCIL MEMBER COHEN: Okay. Thank you.

12 ZACHARY CARTER: Yeah.

13 CO-CHAIRPERSON KALLOS: Just to wrap up,  
14 our friends over at the dais in the *Fourth Estate* at  
15 *The Daily News* point out that according to coverage,  
16 that the -- with regard to your answer on  
17 deliberative process -- that the document in  
18 question, July 23rd, 2014 memo was not provided to  
19 DOI until after DOI provided you with a copy of the  
20 document they received from another source; is *The*  
21 *Daily News* recitation of those facts and my  
22 recitation of *The Daily News* accurate?

23 ZACHARY CARTER: No, it is not. And we  
24 specifically addressed that in the press release of  
25 July 27th of 2016 -- the Department of Investigation

3 raised a question with respect to two documents that  
4 they claimed not to have received until they had  
5 requested them; in both instances we were able to  
6 direct them to their own records that established  
7 that those allegations were untrue.

8 CO-CHAIRPERSON KALLOS: And you had  
9 provided those documents unredacted?

10 ZACHARY CARTER: Yes.

11 CO-CHAIRPERSON KALLOS: If you can send  
12 that to our attention, we'd be interested, as would  
13 the *Fourth Estate* at *The Daily News*. Some of the  
14 lawyers up on the dais have had questions, further  
15 questions around unrestricted access. If a law  
16 enforcement agency -- 'cause that's been the analogy  
17 you've been using versus internal investigation --  
18 were to show up with a warrant to take a computer or  
19 take a box of documents or seize a filing cabinet,  
20 would you provide it to them without reviewing those  
21 materials, but just hand over those assets, whatever  
22 was listed in the warrant?

23 ZACHARY CARTER: If there was a warrant,  
24 certainly we would provide those. I mean the warrant  
25 is issued under an order from... a judicially  
enforceable order from the court; that's what a

3 warrant is, but even warrants, as you know, are  
4 subject to challenge, alright, and that is, again,  
5 the important principle here. There's a different  
6 between broad, the broadest possible access to  
7 information to permit an entity like the Department  
8 of Investigation to do its job, but there's a  
9 different between broad and unlimited, even federal  
10 district court judges, I've known lots of them, whose  
11 -- imagine their powers to be pretty, pretty broad --  
12 none of them think their powers are unlimited.

13 CO-CHAIRPERSON KALLOS: Depends if you're  
14 in the FISA Court, but that being said, I think just  
15 there's some concern here that based on the  
16 interaction and everything surrounding here, in  
17 future situations where the DOI should be able to do  
18 things internally with unrestricted access, that they  
19 might be better served to secure warrants, which  
20 would then make it a third party situation versus an  
21 internal investigation; I don't wanna go into it any  
22 further, it's been belabored.

23 I wanted to ask a question, 'cause we do  
24 have your real estate person here, and Councilman  
25 Torres did ask a question about value. So it was  
supposed to close on July 23rd, which was within --

2 less than a year of the initial appraisal that was  
3 done, and so how often do you conduct an appraisal  
4 before a closing, as a matter of course?

5 ZACHARY CARTER: I think that's a  
6 question for the DCAS Commissioner. [background  
7 comments] It's not a legal question. [background  
8 comments]

9 CO-CHAIRPERSON KALLOS: Okay, so I guess  
10 -- the question we just had was -- when you were  
11 closing the property, did you notice that an  
12 appraisal had not been conducted since July of the  
13 previous year?

14 [background comments]

15 ZACHARY CARTER: There's no legal  
16 requirement for an updated reappraisal on the lifting  
17 of a deed restriction.

18 CO-CHAIRPERSON KALLOS: Okay, so when you  
19 were doing the closing, you don't review any of the  
20 documents; make sure the appraisals were done  
21 properly; you're just there to literally just rubber  
22 stamp the documents and act as a closing attorney?

23 ZACHARY CARTER: Well to act as a closing  
24 attorney, I don't like the term rubber stamp.

3 CO-CHAIRPERSON KALLOS: I guess there are  
4 certain -- do you make sure that there's an appraisal  
5 and that the appraisal is valid?

6 [background comments]

7 MR. CUSHMAN: At the time of the closing,  
8 no, we would not; we would look at whether there's an  
9 authorization for it and whether the document  
10 **[inaudible]** was appropriate, but we don't go back  
11 over each and every step at that point in time.

12 CO-CHAIRPERSON KALLOS: So you reviewed  
13 the mayoral authorization documents and any  
14 additional items that you reviewed?

15 [background comments]

16 MR. CUSHMAN: I did not, no; I was not  
17 the closing attorney.

18 CO-CHAIRPERSON KALLOS: Okay.

19 MR. CUSHMAN: But an attorney at the New  
20 York State Law Department would have reviewed the  
21 closing documents and conducted the closing, yeah.

22 CO-CHAIRPERSON KALLOS: Around this whole  
23 situation there was some question around  
24 subordination; in your legal opinion, based on  
25 reviewing the documents, had VillageCare not been  
able to continue, had they gone under, or had Allure

3 Group gone under or defaulted in any way; what rights  
4 would the City have had? Would the City have been  
5 able to step in and... [crosstalk]

6 MR. CUSHMAN: I don't think I understand  
7 the question; I mean are you asking if the deed  
8 restrictions had not been lifted and had they gone  
9 under?

10 CO-CHAIRPERSON KALLOS: Irrespective of  
11 the deed restriction and irrespective of the lien  
12 with HHC there has been discussion around  
13 subordination and other terms, did the City have any  
14 additional rights if the owner of the property  
15 defaulted on the property?

16 ZACHARY CARTER: Well -- and Mr. Cushman  
17 can add, if there's anything to add -- as I  
18 understand it, there was a request to consider  
19 whether or not there should be a subordination  
20 provision permitted in connection with the sale, and  
21 that was allegedly so that they could obtain  
22 financing they claimed to be necessary for the sale  
23 because they believed it would be difficult to find a  
24 lender in the absence of a subordination clause, and  
25 that subordination clause would've specifically  
provided that in the event of default the lender



2 could take the property free and clear of the deed  
3 restrictions; that was not approved.

4 CO-CHAIRPERSON KALLOS: Thank you; I  
5 think that wraps up our questions for the Law  
6 Department; we thank you for bearing with us for  
7 quite a while and just wanna thank you for answering  
8 all of these existing questions.. [crosstalk]

9 ZACHARY CARTER: It's my pleasure.

10 CO-CHAIRPERSON KALLOS: and you are free  
11 to go, however, our understanding is you wish to  
12 remain with Commissioner Camilo, so we now have  
13 questions for Commissioner Camilo; members will also  
14 have questions. We are joined by State Senator Dan  
15 Squadron, who's in the audience; we also have  
16 Manhattan Borough President Gale Brewer, who's been  
17 waiting patiently in our committee room for quite  
18 some time -- turn it over to my Co-Chair, Vinnie  
19 Gentile.

20 CHAIRPERSON GENTILE: Thank you,  
21 Mr. Chair. Commissioner Camilo, thank you for being  
22 here all this time. I'm actually gonna start off by  
23 asking you some questions concerning your role as  
24 Director of the Mayor's Office of Contract Services,  
25 okay, otherwise known as MOCS; right..

2 LISETTE CAMILO: Yeah.

3 CHAIRPERSON GENTILE: and then I will  
4 turn it over to Councilman Kallos, who will ask you  
5 some questions in your new role as the Commissioner  
6 of DCAS. So let's start out.

7 As you know, the Mayor's Office of  
8 Contract Services, the process that they go through  
9 in matters of this type is that MOCS confirms that  
10 DCAS has published in the City Record the notice  
11 of the hearing; once you add the hearing to the  
12 calendar and then there is a general notification  
13 that goes out and then after the hearing, MOCS signs  
14 off on what's known as a Mayor's authorization  
15 document. Am I correct about that process; right?

16 LISETTE CAMILO: Correct.

17 CHAIRPERSON GENTILE: Okay. Now in this  
18 regard, and particularly at the time of the removal  
19 of the deed restrictions on Rivington, you, as  
20 Director of MOCS, delegated the signing of the  
21 Mayor's authorization document to your general  
22 counsel. Is that correct?

23 LISETTE CAMILO: The Executive Order that  
24 establishes MOCS specifically authorizes for  
25

3 delegations to a number of individuals; one of which  
4 is the general counsel, yes.

5 CHAIRPERSON GENTILE: Yeah. Okay,  
6 general counsel is one of several, including yourself  
7 as director, but in this case you delegated that  
8 signing, at least in this matter, to your general  
9 counsel?

10 LISETTE CAMILO: Pursuant to the ability  
11 as given to me by the Executive Order, yes.

12 CHAIRPERSON GENTILE: Right. Is there a  
13 particular reason you did not wanna deal with this  
14 matter?

15 LISETTE CAMILO: It was actually the  
16 process, longstanding process of the office for such  
17 matters to be delegated to the general counsel.

18 CHAIRPERSON GENTILE: So that was an  
19 ongoing basis?

20 LISETTE CAMILO: Yes.

21 CHAIRPERSON GENTILE: So the general  
22 counsel then had full authority to sign this  
23 document?

24 LISETTE CAMILO: Yes.  
25

3 CHAIRPERSON GENTILE: The untethered  
4 authority to sign a document that would lift a deed  
5 restriction?

6 LISETTE CAMILO: He had authority to sign  
7 the mayoral authorization document, yes.

8 CHAIRPERSON GENTILE: And so then the  
9 general counsel signs the mayoral authorization  
10 document and that document says, it states in the  
11 document, that the Mayor hereby authorizes the  
12 Department of Citywide Administrative Services to  
13 modify the deed. So that's right on the  
14 authorization document itself that the Mayor hereby  
15 authorized the Department of Citywide Administrative  
16 Services to modify the deed. So with that statement  
17 in that document, it's clear that MOCS has the  
18 authority to grant the mayoral approvals with regard  
19 to real estate?

20 LISETTE CAMILO: The general counsel had  
21 the authority to sign the mayoral authorization  
22 document, yes, as derived from the authority within  
23 the Executive Order that delegates that power to  
24 MOCS.

25 CHAIRPERSON GENTILE: Okay. So that  
authority to grant those mayoral approvals is clear;

2 was in the realm... within the jurisdiction of MOCS;  
3 correct?

4 LISETTE CAMILO: As had been for many  
5 years...

6 CHAIRPERSON GENTILE: Right.

7 LISETTE CAMILO: within the Public  
8 Hearings Unit.

9 CHAIRPERSON GENTILE: Right. And just as  
10 an aside, the Mayor's reform proposals for deed  
11 modifications now include the statement that the  
12 process will no longer reflect that MOCS has the  
13 authority to grant mayoral approvals with regard to  
14 real estate. Am I correct about that?

15 LISETTE CAMILO: MOCS will not sign the  
16 mayoral authorization documents if any deed  
17 modifications are going to proceed; that will be done  
18 by City Hall, by the First Deputy Mayor or the Mayor.

19 CHAIRPERSON GENTILE: Right. Okay. So  
20 at least up to the time of Rivington, with the  
21 authority that MOCS had to grant the mayor approvals  
22 with regard to real estate, don't you believe that  
23 MOCS had a responsibility to the Mayor before putting  
24 his imprimatur on this document and a fiduciary  
25 responsibility to the people of the City of New York

3 to determine whether or not this transaction was  
4 truly in the best interest of the City?

5 LISETTE CAMILO: I think that as the  
6 First Deputy Mayor described the processing developed  
7 for many years, both within DCAS and at MOCS, as they  
8 best conform to the office functions. So at MOCS,  
9 primarily, we ensured that procedural step had been  
10 taken as required. These steps, the public notice  
11 and the public hearing were very important procedural  
12 steps to ensure public engagement and theory and  
13 transparency; therefore, certifying that those two  
14 things occurred -- notice and hearing -- were the  
15 primary duty of the office and they did.

16 CHAIRPERSON GENTILE: And we understand  
17 the steps and the steps that you took, but my  
18 question is; don't you feel any respon... well MOCS has  
19 a responsibility to ask any questions before it  
20 commits the Mayor to this document and commits the  
21 citizens and the residents that live around Rivington  
22 to this statement that in effect lifted the deed  
23 restriction?

24 LISETTE CAMILO: I think that the focus  
25 of the office, in terms of the best interest of the  
City, is that the procedure and the processes were

3 followed; that's why that function lived within the  
4 office, within the Public Hearings Unit. And just  
5 generally, within the office itself, when it talks  
6 about or it works on procurement issues, we certify  
7 that procedural requisites generally are fulfilled,  
8 all of which go to the best interests of the City  
9 generally.

10 CHAIRPERSON GENTILE: But other than  
11 following the process and just signing the paperwork  
12 which has that affirmation in it, MOCS is signing the  
13 paperwork that has that affirmation in it that this  
14 is being done in the best interest of the City. With  
15 that signature from MOCS, whoever it is -- the  
16 general counsel, you; whoever is signing it for MOCS,  
17 you don't feel that you have any fiduciary  
18 responsibility to the Mayor or any fiduciary  
19 responsibility to the citizens of this city,  
20 particularly those that live around Rivington, in  
21 this case?

22 LISETTE CAMILO: So I wanna stress that,  
23 first of all, following processes and procedures are  
24 always in the best interest of the City, so  
25 certifying that that happened, it would not be  
inconceivable or, they're not opposing ideas; so

3 certifying that the process was followed and that  
4 being in the best interest of the City were one and  
5 the same.

6 CHAIRPERSON GENTILE: So you're saying  
7 that because the process was followed here, the  
8 removal of the restrictions of the deed in Rivington  
9 were in the best interest of the City?

10 LISETTE CAMILO: In MOCS' role,  
11 generally, to ensure that compliance with a process  
12 that those things happen, we're affirming that  
13 following those processes are in the best interest of  
14 the City; the office is not set up to do additional  
15 inquiries, etc. So the new process now removes that  
16 determination of substantive review from any doubt  
17 and places it squarely on a multi-agency stakeholder  
18 committee that will thoroughly review and ask those  
19 questions and removes that doubt about who is making  
20 that judgment.

21 CHAIRPERSON GENTILE: So might this  
22 document had better, at the time -- you're saying  
23 it's changed now -- but might this document, if  
24 there's no evaluation or checking on the part of MOCS  
25 before they sign that affirmation, that the  
affirmation would have better reflected the fact that



2 the submitting agency or entity believed it was in  
3 the best interest of the City?

4 LISETTE CAMILO: MOCS generally, in these  
5 transactions, relied on the submitting agency to do  
6 the substantive work and analysis, so I would agree,  
7 yes.

8 CHAIRPERSON GENTILE: So then now, as  
9 your role as DCAS Commissioner, then you do believe  
10 that DCAS has a judgment role to fill here in  
11 deciding the best interests of the City?

12 LISETTE CAMILO: So going forward..  
13 [interpose]

14 CHAIRPERSON GENTILE: Well let's talk  
15 about at that time.

16 LISETTE CAMILO: At that time the agency  
17 was following a process that outlined the different  
18 steps that would be needed to have taken place in  
19 order to execute the transaction.

20 CHAIRPERSON GENTILE: I understand that,  
21 but beyond the process, you just said that you  
22 thought that DCAS had that role; not MOCS. Okay,  
23 granted... [crosstalk]

24 LISETTE CAMILO: Right.  
25

2 CHAIRPERSON GENTILE: So then now you  
3 believe, as Commissioner, that -- and you weren't the  
4 Commissioner at the time, but you believe as  
5 Commissioner that DCAS had that judgment role to  
6 fulfill back then in deciding the best interests of  
7 the City?

8 LISETTE CAMILO: So the process as it  
9 developed within DCAS was clearly flawed and while I  
10 was at MOCS, I believed that there was an analysis or  
11 a thorough vetting or a very determined analysis on  
12 the overall substantive issues; the process itself,  
13 as developed over 20 years ago, clearly demonstrates  
14 that it was a -- and as I later find out as I'm  
15 learning about the DCAS process -- was a very  
16 formulaic approach that gave very little discretion  
17 to the folks working on this issue. So in practice,  
18 the agency took the transaction and went down a  
19 number of steps and as those steps were fulfilled  
20 they moved forward on putting forward or modifying  
21 whatever transaction was before them.

22 CHAIRPERSON GENTILE: And you're saying  
23 that that shouldn't have been the case; that you were  
24 under the impression, as Director of MOCS, that there  
25 was some analysis, some evaluation being done over at

2 DCAS, whether or not this procedure, whether or not  
3 this action was in the best interest of the City?

4 LISETTE CAMILO: I think that when I was  
5 at MOCS, all of the substantive work happened at  
6 DCAS... [interpose]

7 CHAIRPERSON GENTILE: Right.

8 LISETTE CAMILO: so within DCAS, because  
9 the process was so formulaic and gave very little  
10 discretion -- and we've all acknowledged and agree  
11 that it was a flawed process, that did not allow for  
12 deliberate consideration of other policies other than  
13 -- did they hold on to the restriction for more than  
14 10 years; were they willing to pay the 25% of the  
15 valued cost -- once those things were ticked off,  
16 that process, it went through, which is why we've  
17 changed the process thoroughly to create an  
18 infrastructure where the analysis is a much thorough  
19 and deliberate one, outside of DCAS, to really have  
20 that institutionalized communication through the  
21 different agencies with the policy expertise and  
22 stakeholders going forward, and certainly with added  
23 notification and community input that was lacking in  
24 the previous process.

3 CHAIRPERSON GENTILE: Okay. So in  
4 effect, the fact is that somebody -- in your opinion,  
5 as Director of MOCS, somebody evaluated the statement  
6 that you affirm that MOCS affirmed by signing the  
7 authorization document that this is being done in the  
8 best interest of the City and unbeknownst to you at  
9 the time, it was a formulaic process that was  
10 happening at DCAS, but in effect what you're saying  
11 is, it should've been done at DCAS, because when you  
12 got the documents you just signed off on it with that  
13 understanding, so I guess my question to you now is  
14 that, in essence, is it fair to say that DCAS did not  
15 fulfill its role?

16 LISETTE CAMILO: That's actually -- if I  
17 said anything different -- I'll state what I said in  
18 terms of the best interests of the City at MOCS, when  
19 MOCS was signing the mayoral authorization documents,  
20 we were certifying that it was in the best interest  
21 of the City that those two pieces that we worked on  
22 -- the notice and the hearing -- had taken place,  
23 'cause following processes is always good for the  
24 City. With respect to any substantive work on the  
25 evaluation of whether or not an appraisal was done or  
any of the steps that had to have been taken, all of

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2 that was taken care of by the previous agency, by  
3 DCAS, and because it was a flawed process that had a  
4 formulaic approach that developed over many years  
5 ago, the outcome left very little discretion and it  
6 was very lacking, which is [inaudible]... [crosstalk]

7 CHAIRPERSON GENTILE: I.e., they did not  
8 fulfill their role that you thought that they were  
9 doing, but didn't fulfill that role in evaluating the  
10 pros and cons of the actions that that nine-stop  
11 process was taking them through.

12 LISETTE CAMILO: We've all acknowledged  
13 that that process did not take into account all of  
14 the facts that we think should have been taken into  
15 account.

16 CHAIRPERSON GENTILE: Councilman.

17 CO-CHAIRPERSON KALLOS: Thank you,  
18 Commissioner; I'd like to start follow-up on your  
19 time at the Mayor's Office of Contract Services. So  
20 while Rivington was happening, you were Director over  
21 at the Mayor's Office of Contract Services; is that  
22 correct?

23 LISETTE CAMILO: Yes.

24 CO-CHAIRPERSON KALLOS: And there was a  
25 hearing; what was the hearing on; what was publicly

3 noticed for the hearing? Was the hearing noticed as  
4 Rivington? Was it noticed as VillageCare; what was  
5 it noticed?

6 LISETTE CAMILO: It was noticed as the  
7 street address, which is Forsyth Street address.

8 CO-CHAIRPERSON KALLOS: And do you know  
9 if that building, the VillageCare, used the Forsyth  
10 address as their mailing address or their public  
11 address?

12 LISETTE CAMILO: I do not know that.

13 CO-CHAIRPERSON KALLOS: Please let the  
14 record reflect that people knew it as Rivington, or  
15 otherwise we'd be talking about Forsyth. Who did you  
16 notify; did you notify Manhattan Borough President  
17 Gale Brewer, Council Member Chin; Community Board 3;  
18 did you send them specific invitations to the MOCS  
19 hearing?

20 LISETTE CAMILO: Personally, I did not do  
21 that.

22 CO-CHAIRPERSON KALLOS: Did you cause  
23 your office to do so?

24 LISETTE CAMILO: The process that is  
25 required to fulfill these modifications or

3 restriction removals only requires a one-day notice  
4 in the City Record and that was complied with.

5 CO-CHAIRPERSON KALLOS: Were any  
6 notifications provided to the interested parties?

7 LISETTE CAMILO: The old process did not  
8 require that and the new process that we're trying to  
9 incorporate and finalize acknowledges the lack of  
10 public notice, community notice and input and bakes  
11 in an enhanced public notice requirement going  
12 forward at multiple points within the new deed  
13 modifications requirement, which include not only at  
14 the front end; when DCAS receives a new request for a  
15 deed modification, that will require notification  
16 both to the community board, council member and  
17 borough president, as well as a much more thorough  
18 and robust notification requirement on the public  
19 hearing; again, seven consecutive days as compared to  
20 the one day that was required under the old process,  
21 and again, a specific notice to go to the borough  
22 president, council member and community board. In  
23 addition, public hearings will now be required to  
24 take place within the community board of the property  
25 affected, so I think that we're very much aligned and  
we acknowledge that in the Rivington transaction,

2 while the agency fulfilled the requirements of the  
3 old process, we agree that community notification and  
4 engagement was lacking and we tried to address that  
5 by baking in and formally creating an infrastructure  
6 where that is certain and so that won't happen again.

7 CO-CHAIRPERSON KALLOS: I've been advised  
8 by our new Governmental Operations counsel, who I  
9 haven't had a chance to welcome, Bradley Reid, that  
10 the City Record notice actually didn't even have an  
11 address; it had a block and lot address. Do you  
12 happen to know the block and lot address for where  
13 your office is?

14 LISETTE CAMILO: I do not.

15 CO-CHAIRPERSON KALLOS: Okay, so I would  
16 just assume that it is not something that anyone  
17 might recognize... [crosstalk]

18 LISETTE CAMILO: And I think we  
19 acknowledge that the..

20 CO-CHAIRPERSON KALLOS: Yeah.

21 LISETTE CAMILO: the notice is  
22 **[inaudible]**... [crosstalk]

23 CO-CHAIRPERSON KALLOS: And I guess one  
24 concern that we've brought up again and again today  
25 -- myself, Co-Chair Gentile and others -- that we're



3 concerned that the focus is just on these  
4 restrictions, so will the same types of changes that  
5 you're making for deed restrictions be for other  
6 items? So for instance, I have a park in my district  
7 that's been privatized; should that -- and Parks has  
8 indicated that they'd like to move forward with  
9 continuing to privatize it, even though there is a  
10 mayoral directive towards parks equity and giving  
11 parks to people and investing in parks -- my  
12 nightmare would be that it goes to MOCS, there's a  
13 MOCS hearing; I don't know about it, 'cause I don't  
14 know the block and lot; I tried looking it up; will I  
15 get a notice about the intention of the City to move  
16 forward or to engage in that lease? There's also  
17 another place in Holmes Towers where the City might  
18 want to do a lease with a developer that I'm working  
19 closely with Council Member Torres, so whether it's  
20 giving away NYCHA land for luxury development or  
21 giving away park land for somebody to have a tennis  
22 club where it's open to the public if you have \$180  
23 an hour. How will the process be for those other  
24 items?  
25

2 LISETTE CAMILO: I can only speak for the  
3 property that DCAS manages. So in particular, we've  
4 put up together a lot of thought... [crosstalk]

5 CO-CHAIRPERSON KALLOS: Now with regard  
6 to DCAS; I'm just speaking with regards to the MOCS  
7 process, to the extent that that may have changed  
8 before you left.

9 LISETTE CAMILO: I can't say that... We did  
10 not change the notification processes prior to my  
11 departure. Most, if not all, of those notification  
12 requirements are related to a Charter provision or an  
13 admin code provision.

14 CO-CHAIRPERSON KALLOS: So I guess, if  
15 you had a park in your neighborhood, would you want  
16 your community board and council member or even  
17 anyone who's objected at a community board meeting or  
18 what not to receive a notice that hey, we're having a  
19 hearing so that folks can show up to it; would you  
20 support notifications to folks who have made their  
21 voices heard?

22 LISETTE CAMILO: I think as this example  
23 of Rivington shows, property notice is something that  
24 is good for communities, for the public and when it  
25

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3 comes to this transaction in particular, we're paying  
4 very close attention and we're acting on those.

5 CO-CHAIRPERSON KALLOS: When you -- At  
6 any point did First Deputy Mayor Shorris, Dominic  
7 Williams or Sarah Samis ever ask you about the  
8 mayoral authorization document process around deed  
9 restrictions?

10 LISETTE CAMILO: When I was at MOCS or...

11 CO-CHAIRPERSON KALLOS: Yeah.

12 LISETTE CAMILO: No.

13 CO-CHAIRPERSON KALLOS: Did they ask  
14 anyone around you were you aware of the Rivington  
15 deed restrictions while you were at MOCS?

16 LISETTE CAMILO: No.

17 CO-CHAIRPERSON KALLOS: And no one asked  
18 you or anyone you know of to check in with the First  
19 Deputy Mayor before you signed off on the mayoral  
20 authorization document?

21 LISETTE CAMILO: Not to my knowledge.

22 CO-CHAIRPERSON KALLOS: And they didn't  
23 ask the general counsel -- in terms of... [crosstalk]

24 LISETTE CAMILO: Not to my knowledge.  
25

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3 CO-CHAIRPERSON KALLOS: the structure of  
4 MOCS, you were the director; was there anyone above  
5 you within MOCS?

6 LISETTE CAMILO: No.

7 CO-CHAIRPERSON KALLOS: If the First  
8 Deputy Mayor had intended or his staffer or one of  
9 his staffers had intended for MOCS to check in ahead  
10 of giving an authorization, would that have gone to  
11 you or who else could it have gone to?

12 LISETTE CAMILO: I am in constant  
13 communication with the First Deputy Mayor, so we talk  
14 about many things; he definitely could reach out  
15 directly, and his staff would communicate with  
16 members of my staff as well.

17 CO-CHAIRPERSON KALLOS: Okay, but just...  
18 for the record, at no point did you explain to the  
19 First Deputy Mayor's or any of his staff that the  
20 Mayor's Office of Contract Services would not sign a  
21 mayoral authorization document with regards to  
22 Rivington?

23 LISETTE CAMILO: I'm sorry; could you  
24 repeat the question?

25 CO-CHAIRPERSON KALLOS: I had trouble as  
I was asking -- it's a long hearing on this side too.

2 At no point during the pro... So just to be clear,  
3 you've never communicated to First Deputy Mayor  
4 Shorris or any of his staff that the Mayor's Office  
5 of Contract Services would check in before signing a  
6 deed restriction on Rivington, before authorizing?

7 LISETTE CAMILO: Mayor's Office of  
8 Contract Services never had any conversation with any  
9 deed restriction modification mayoral authorization  
10 document...

11 CO-CHAIRPERSON KALLOS: Okay. And then...

12 LISETTE CAMILO: to my knowledge.

13 CO-CHAIRPERSON KALLOS: does the Mayor's  
14 Office of Contract Services have the discretion,  
15 after going through a hearing and other items, to  
16 just not sign a mayoral authorization document or  
17 would you be subject to an Article 78?

18 LISETTE CAMILO: I can't speak in  
19 hypotheticals; to my knowledge, that has never  
20 happened.

21 CO-CHAIRPERSON KALLOS: Okay. Those are  
22 my questions on the mayoral authorization document;  
23 I'd like to move over to transition, but if somebody  
24 would like to -- do you have more authorization  
25 document questions? [background comment]

2 So just moving over to your transition;  
3 did you receive a transition memorandum from the  
4 outgoing DCAS commissioner?

5 LISETTE CAMILO: I received a transition  
6 binder with many pages of information, yes.

7 CO-CHAIRPERSON KALLOS: Was Rivington  
8 included in that transition binder?

9 LISETTE CAMILO: No.

10 CO-CHAIRPERSON KALLOS: Would you be  
11 willing to share that transition binder with the City  
12 Council?

13 LISETTE CAMILO: It has a lot of notes; I  
14 can show it to you; I still reference it once in a  
15 while.

16 CO-CHAIRPERSON KALLOS: To the extent  
17 you're willing to provide a copy -- and I see the  
18 corporate counsel -- could we have access; would you  
19 have any concern with that?

20 ZACHARY CARTER: Okay, we'll take it  
21 under advisement.

22 CO-CHAIRPERSON KALLOS: Thank you. When  
23 did you first hear that they were looking for a  
24 replacement for the Commissioner of DCAS?

2 LISETTE CAMILO: I believe it was at the  
3 end of December; I was in a meeting with the First  
4 Deputy Mayor and he raised it.

5 CO-CHAIRPERSON KALLOS: Do you happen to  
6 remember when; was it the first week, the second  
7 week, before Christmas; after Christmas?

8 LISETTE CAMILO: I believe it was... it was  
9 late December; I can't remember if it was before or  
10 after Christmas.

11 CO-CHAIRPERSON KALLOS: Okay. And did  
12 you know, Commissioner Cumberbatch by chance?

13 LISETTE CAMILO: Sure.

14 CO-CHAIRPERSON KALLOS: And so when the  
15 First Deputy Mayor brought this to your attention,  
16 did you bring it up with the existing commissioner?

17 LISETTE CAMILO: No.

18 CO-CHAIRPERSON KALLOS: And after the  
19 First Deputy Mayor brought this to your attention,  
20 how long did it take for you to say yes, to accept  
21 the position?

22 LISETTE CAMILO: I can't remember, we had  
23 a few conversations, but I can't remember how long

24 **[inaudible]**... [crosstalk]

2 CO-CHAIRPERSON KALLOS: And then in the  
3 intervening time between those conversations did you  
4 speak to other people in the Administration or  
5 without the Administration about whether or not this  
6 was an opportunity to take?

7 LISETTE CAMILO: I can't remember; I  
8 don't believe so.

9 CO-CHAIRPERSON KALLOS: And generally,  
10 when you took the position, when you moved from the  
11 City Council to the Administration side, did you talk  
12 about people about that career move or?

13 LISETTE CAMILO: Sure.

14 CO-CHAIRPERSON KALLOS: But you didn't  
15 have that same type of conversation with other people  
16 before you made that career move?

17 LISETTE CAMILO: I spoke with the First  
18 Deputy Mayor.

19 CO-CHAIRPERSON KALLOS: And did you ask  
20 him why Commissioner Cumberbatch was leaving?

21 LISETTE CAMILO: He offered that she was  
22 leaving for another opportunity.

23 CO-CHAIRPERSON KALLOS: Were you at all  
24 cautious about why she might be leaving?



2 LISETTE CAMILO: No, I was more focused  
3 on whether it would be a good fit for me  
4 professionally; whether it would be a good move for  
5 me in my career trajectory and really considering the  
6 work that the agency does.

7 CO-CHAIRPERSON KALLOS: Did you do any  
8 research about what the agency does?

9 LISETTE CAMILO: Of course.

10 CO-CHAIRPERSON KALLOS: In your research,  
11 did what was happening with Rivington come up?

12 LISETTE CAMILO: No.

13 CO-CHAIRPERSON KALLOS: And when did you  
14 find out about what happened at Rivington?

15 LISETTE CAMILO: I received an e-mail I  
16 think two or three days into the -- my first week --  
17 that had an attachment of a resolution from Community  
18 Board 3.

19 CO-CHAIRPERSON KALLOS: And that was in  
20 January... What... [crosstalk]

21 LISETTE CAMILO: Yes, end of January.

22 CO-CHAIRPERSON KALLOS: What was your  
23 first day?

24 LISETTE CAMILO: I believe it was the  
25 25th of January... [crosstalk]

2 CO-CHAIRPERSON KALLOS: So your first day  
3 was January 25th and then that... between then and the  
4 31st you received the CB3 notice?

5 LISETTE CAMILO: Right, it was like two  
6 or three days.

7 CO-CHAIRPERSON KALLOS: And at what point  
8 did you bring that to the First Deputy Mayor's  
9 attention?

10 LISETTE CAMILO: We spoke about -- I  
11 brought it to his attention in one of our meetings at  
12 the end of February.

13 CO-CHAIRPERSON KALLOS: So you just  
14 started, you get a letter from Community Board 3...

15 LISETTE CAMILO: Uhm-hm.

16 CO-CHAIRPERSON KALLOS: and then you  
17 didn't bring it to the First Deputy Mayor until a  
18 month later?

19 LISETTE CAMILO: So it was my first week;  
20 I was learning a lot about what the agency does -- it  
21 is a very large agency -- and what concerned me and  
22 struck me from the community board resolution was  
23 that they opposed the transaction, so I began to --  
24 it was one of the many things I was asking questions  
25 about, and I was trying to really understand the

3 process, the history of that, but also a number of  
4 other things that we do -- procurement **[inaudible]**,  
5 energy, etc. So as I'm learning this through and  
6 speaking to folks within the agency about all manner  
7 of things, once I learned that there was a subsequent  
8 sale of the property, that a private entity was able  
9 to realize a very high dollar profit, it was  
10 concerning to me, so I raised it to the First Deputy  
11 Mayor, who suggested that I call the Department of  
12 Investigation, which I agreed to that suggestion, and  
13 I did.

14 CO-CHAIRPERSON KALLOS: So you got the  
15 letter from CB3, didn't act on it; you learned about  
16 the sale; that's what caused you to bring it to the  
17 First Deputy Mayor?

18 LISETTE CAMILO: I received the  
19 resolution, I learned about what the process was like  
20 at the agency to remove a deed restriction, I...  
21 [crosstalk]

22 CO-CHAIRPERSON KALLOS: And that process  
23 took about -- I'm just trying to figure... I'm not  
24 trying to interrogate, I'm just trying to learn what  
25 caused you to bring it to the First Deputy Mayor, so  
was it you **[inaudible]** down or... [crosstalk]

2 LISETTE CAMILO: Once... Once we learned  
3 about the sale...

4 CO-CHAIRPERSON KALLOS: Yeah.

5 LISETTE CAMILO: once I learned about the  
6 sale is when... [interpose]

7 CO-CHAIRPERSON KALLOS: Which took how  
8 long to learn?

9 LISETTE CAMILO: It was... I... in fact, I  
10 believe I informed him the same day that I learned  
11 about it, so at the end of February.

12 CO-CHAIRPERSON KALLOS: Okay. And then  
13 when did you contact the Department of Investigation?

14 LISETTE CAMILO: The next day.

15 CO-CHAIRPERSON KALLOS: So that was in  
16 February or was that on March 1st?

17 LISETTE CAMILO: I called them on March  
18 1st, which was a Tuesday I believe, and I spoke with  
19 the First Deputy Mayor on a Monday, the Monday  
20 before, on the 29th.

21 CO-CHAIRPERSON KALLOS: So the First  
22 Deputy Mayor... okay. I think those are some of my  
23 questions; I'd like to give some of my colleagues --  
24 we have -- Do you have any... [background comments,  
25 crosstalk] We have Council Member Chin, followed by

3 Council Member Torres and if there's anything left to  
4 ask, I will continue.

5 COUNCIL MEMBER CHIN: Good afternoon.

6 Commissioner, I saw from your written testimony that  
7 it looked like you are supportive of Int. 1182?

8 LISETTE CAMILO: We definitely support  
9 the goals; we want to be as transparent as possible.  
10 I agree that the public should have access to  
11 information to understand the scope of deed  
12 restrictions. There are a couple of things that we'd  
13 love to talk to you about and work through, because  
14 we don't have a complete accounting of every single  
15 property that has ever been disposed of with a deed  
16 restriction, as the City has been disposing of  
17 properties since the 1950s, and as you can imagine,  
18 recordkeeping hasn't been great, the further back you  
19 go. So we're undertaking an effort to catalog and  
20 put that list together and we'd be absolutely happy  
21 to create a searchable database and make the  
22 information that we have public.

23 COUNCIL MEMBER CHIN: Now do you right  
24 now have a database of how many properties have a  
25 deed restriction in the city?

2 LISETTE CAMILO: So as I mentioned, we do  
3 have information on properties, but we can't state  
4 that we have a fully complete list of all of the  
5 properties that have been sold at auction since the  
6 1950s, for example, that may have had a deed  
7 restriction imposed on it, because recordkeeping  
8 hasn't been -- you know, it's just had to keep track  
9 of all of the transactions going back to so far, but  
10 we do have information on the property that we've  
11 been able to identify -- we have a significant  
12 amount; we just... we can't go back and say with  
13 **[inaudible]**... [crosstalk]

14 COUNCIL MEMBER CHIN: How many do you  
15 have on record?

16 LISETTE CAMILO: So far we've identified  
17 over 1,000 and that work still continues.

18 COUNCIL MEMBER CHIN: Okay. We can  
19 definitely have discussion, in terms of maybe how to  
20 phase it in... [crosstalk]

21 LISETTE CAMILO: Great.

22 COUNCIL MEMBER CHIN: when you get that  
23 information. But does DCAS also have a database of  
24 all the City-owned properties that you manage, that  
25 DCAS manages?

2 LISETTE CAMILO: Yes and in fact it's  
3 available online to through the Open Data Portal.

4 COUNCIL MEMBER CHIN: So people can type  
5 in an address and they find out whether... [crosstalk]

6 LISETTE CAMILO: I believe...

7 COUNCIL MEMBER CHIN: that site is  
8 managed by DCAS and it's a public site?

9 LISETTE CAMILO: It's a public site.

10 COUNCIL MEMBER CHIN: Okay. Did you ever  
11 get an explanation when you became Commissioner why  
12 the DCAS deed restrictions process is different; it's  
13 less strict than HPD or EDC process?

14 LISETTE CAMILO: The process that was  
15 developed was developed in conjunction, I think -- I  
16 believe at the Law Department in 1991, and since that  
17 time, it's just been the practice that the agency has  
18 used to modify deed restrictions; that's a much as I  
19 got.

20 COUNCIL MEMBER CHIN: So there is no  
21 discussion with the other agency in terms of similar  
22 deed restriction; why they have a more...

23 LISETTE CAMILO: Historically, no; what  
24 we've tried to do with the new process is take some  
25 of the factors that are used in their respective

3 processes and incorporate them into the new proposed  
4 process, which is, as the First Deputy Mayor  
5 mentioned, having a body outside of DCAS review the  
6 request and go through the information before the  
7 modification is.. I'm sorry, before a deed restriction  
8 is even modified or listed.

9 COUNCIL MEMBER CHIN: I mean definitely  
10 the old process is full of problems, I mean because  
11 the focus was only on money, and from the  
12 investigation that uncovered that staff who was  
13 involved in this Rivington transaction was very  
14 excited that they were able to get \$16 million from  
15 this transaction, and that is just totally, totally  
16 not in the interest of the City.

17 LISETTE CAMILO: We agree and one of the  
18 things that struck us as we were going through and  
19 picking apart the process was how formulaic and  
20 mechanical it was, and it did not take into account  
21 other factors and values of this Administration;  
22 we're very confident that our proposal really does  
23 create a system that really will thoroughly flush out  
24 both other policies that might be able to be  
25 furthered with a property and a more deliberate



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3 analysis of what truly is in the best interest of the  
4 City outside of money.

5 COUNCIL MEMBER CHIN: Okay. We look  
6 forward to working with you on the legislation.  
7 Thank you... [crosstalk]

8 LISETTE CAMILO: Likewise.

9 CHAIRPERSON GENTILE: Council Member  
10 Torres.

11 COUNCIL MEMBER TORRES: How are you,  
12 Commissioner?

13 LISETTE CAMILO: Good, thanks.

14 COUNCIL MEMBER TORRES: I have a question  
15 about the multi-step process for looking at deed  
16 restrictions, specifically the second step that  
17 refers to the preparation of a land use justification  
18 memo...

19 LISETTE CAMILO: Yes.

20 COUNCIL MEMBER TORRES: and according to  
21 the briefing I have in front of me, it's supposed to  
22 explain why lifting a deed restriction or modifying  
23 it is in the best interests of the City; is that a  
24 correct description...? [crosstalk]

25 LISETTE CAMILO: Are we talking old or  
new?

2 COUNCIL MEMBER TORRES: I think it's a  
3 description of the old process...

4 LISETTE CAMILO: Okay.

5 COUNCIL MEMBER TORRES: of the land.. is  
6 that...

7 LISETTE CAMILO: There is a land use  
8 analysis that the old process required, and typically  
9 in that analysis what historically contained in the  
10 analysis was a description of why the applicant  
11 required the deed modification and essentially it  
12 would be to explain the changed circumstances of the  
13 neighborhood, of the need, etc.; once they were able  
14 to meet that goal that the restriction no longer  
15 furthered, it was deemed good to proceed.

16 COUNCIL MEMBER TORRES: The brief in  
17 front of me also says that there's supposed to be an  
18 explanation of why the restriction is no longer in  
19 the City's best interest; is that...

20 LISETTE CAMILO: I think in the land use  
21 analyses that I've seen...

22 COUNCIL MEMBER TORRES: Yeah.

23 LISETTE CAMILO: equate the restriction  
24 that is contained in the deed with some form of need  
25 when it was first imposed. When the applicant comes

3 forward and described why that need is no longer  
4 required, and the conclusion would be is that it's in  
5 the best interest of the City.

6 COUNCIL MEMBER TORRES: Does the new  
7 process contain some kind of justification of why?

8 LISETTE CAMILO: The new process will  
9 incorporate a number of factors; certainly a  
10 description of why the deed restriction is no longer  
11 necessary, but in addition to the requestor's desire  
12 or future plans, etc., it will also require not only  
13 community outreach and input, which is really  
14 important, given the community impacts that such a  
15 deed restriction change would have, but also a  
16 requirement that any other City agencies be consulted  
17 with to explore alternative uses for the property --  
18 affordable housing, homeless shelter; whatever you  
19 can think of -- in order to be able to present to the  
20 committee a very full picture of what the property  
21 can be used for, if that's an alternative, but also a  
22 much more fully fleshed out justification from the  
23 applicant as to why they need it and any future plans  
24 that they might have, and which they will also be  
25 required to disclose possible future ownership, which  
we would also vet thoroughly.

2 COUNCIL MEMBER TORRES: I had asked the  
3 Deputy Mayor earlier, you know why not have just a  
4 policy requiring at least one deed restriction; it  
5 seems to me, even within the old process, which was  
6 dysfunctional, if the user restriction had remained  
7 in place, there would have never been a conversion.  
8 And so I'm wondering, could you imagine a case where  
9 removing both restrictions, both the use and user  
10 restriction, would serve the best interests of the  
11 City? I can't think of one.

12 LISETTE CAMILO: And honestly, I don't  
13 wanna engage in hypotheticals, because I think that  
14 there could be a good reason to lift completely a  
15 deed restriction, but we don't wanna block ourselves  
16 in to outright prevent that from happening in case  
17 one does come up.

18 COUNCIL MEMBER TORRES: I just can't  
19 think of one and if the City has a priority that it  
20 wishes to advance a public purpose, you could always  
21 modify either the use or the user restriction to  
22 reflect that purpose, but I see no reason to remove  
23 both of them at the same time, but that's the extent  
24 of my questions. Thank you.

3 CHAIRPERSON GENTILE: Thank you, Council  
4 Member. Now Commissioner, I understand you weren't  
5 present through most of this, or all of it, at DCAS,  
6 or at least up to the very end, but you did, I  
7 understand, some thorough review of what occurred  
8 during the whole process with Rivington; am I  
9 correct?

10 LISETTE CAMILO: I really took a lot of  
11 time to understand what the steps were and how they  
12 were executed within the agency.

13 CHAIRPERSON GENTILE: Okay. So let me  
14 refer you then, since we don't have Stacey  
15 Cumberbatch to answer these questions; let me just  
16 take you back and review some of what happened,  
17 particularly on September 2nd of 2014, where DCAS  
18 Chief of Staff gets a call from the First Deputy  
19 Mayor's office and in that call the First Deputy  
20 Mayor's staff member asked the Chief of Staff at  
21 DCAS: Are there any other steps required to remove  
22 the deed restriction on Rivington House, assuming  
23 Village Care pays the appraisal amount? Now as a  
24 result of that conversation there is an apparent  
25 assumption on the part of the Chief of Staff for DCAS  
that that's what the Mayor's Office is interested in

2 doing and so the DCAS Chief of Staff e-mails your  
3 general counsel at DCAS on that very same day and  
4 says to the general counsel: Looks like there is  
5 movement on the Rivington House issue, and then also  
6 says to him: Do we need to file something with the  
7 Comptroller? And then the DCAS general counsel then  
8 forwarded that e-mail to the DCAS Asset Management  
9 Division and based on the phone conversation and  
10 string of e-mails, the DCAS Asset Management Division  
11 that day began the nine-step process to remove the  
12 deed restrictions. So does it seem to you that the  
13 restriction removal process had already left the  
14 station as far as DCAS was concerned?

15           LISETTE CAMILO: I mean I think that what  
16 you've just outlined highlights that the old process  
17 allowed DCAS to engage in the process in a vacuum;  
18 the new process makes sure that that doesn't happen.  
19 There is a formula -- I'm sorry -- there's a  
20 formalized process by which there is -- like a system  
21 created where once the request initially comes in  
22 under the new process, it triggers an outpouring of  
23 notices, both to the public, in order to increase the  
24 transparency and input from the community, but once  
25 we go through the rest of the internal processes, all

3 of that information is required to be presented to  
4 folks within City Hall, not just the First Deputy  
5 Mayor's Office, but a number of other offices within  
6 the City government -- OMB, the Law Department,  
7 Deputy Mayor of Housing and Economic Development --  
8 so the new process really does address your outline  
9 of what transpired highlights that gap, because we'll  
10 no longer be able to remove a deed restriction in a  
11 vacuum. Under the new process they will be required  
12 to present it to multiple outside entities that will  
13 then engage in a thorough, deliberate analysis and  
14 review before any deed modification is [inaudible]..  
15 [crosstalk]

16 CHAIRPERSON GENTILE: That may be true,  
17 but you still will be doing property appraisals and I  
18 think in this case, and you can agree me if you think  
19 so, that this position that DCAS was going down this  
20 track of deed restriction removal was further  
21 cemented when they did the appraisal and then the  
22 appraisal put the cost of lifting both restrictions  
23 at \$16.15 million, which was an amount that DCAS was  
24 giddy over, the staff, because it was by far the  
25 largest amount DCAS ever received for deed  
restriction removal. So would you agree with me that

3 that further cemented their determination to move  
4 forward in the absence of any other direction from  
5 the City?

6 LISETTE CAMILO: No, and I would agree;  
7 the process as developed and executed allowed for  
8 DCAS to pick through the different steps and act in a  
9 vacuum and the appraisal that you highlighted is one  
10 step of the old process which they undertook, as just  
11 going through the steps. So I would agree with that,  
12 that the agency -- and actually, the reports find the  
13 staff followed the procedures that they had been  
14 following for over 20 years.

15 CHAIRPERSON GENTILE: But you're saying  
16 now the process will no longer allow the amount of  
17 the appraisal and the amount of revenue that DCAS can  
18 get for the City to be a driving factor?

19 LISETTE CAMILO: It is a factor; instead  
20 of relying on one appraisal, as the old process  
21 requires, the new process requires two appraisals to  
22 be performed, one by the in-house team and another by  
23 an independent third party contractor, but the result  
24 of both of those appraisers will be then presented  
25 along with a number of other factors and information  
gathered throughout the new process to the four-



3 member committee that will meet to analyze and make  
4 the determination.

5 CHAIRPERSON GENTILE: Well -- and I'll  
6 finish up with this -- but again, then on November  
7 17th, 2014, while all of this is happening; the  
8 appraisal and the movement of the nine-step process  
9 going forward, DCAS meets with Joel Landau and the  
10 Allure Group and DCAS is told that the Allure Group,  
11 Joel Landau, wanted a for-profit nursing home but  
12 still wanted both deed restrictions lifted. He was  
13 gonna do it as a nursing home, but he wanted it for-  
14 profit, but nevertheless, he wanted both deed  
15 restrictions lifted. To your knowledge and your  
16 review of the situation, were there any red flags  
17 that came up at that point among the DCAS staff or  
18 the Commissioner?

19 LISETTE CAMILO: So as I mentioned  
20 before, because the team had been living out these  
21 procedures for many, many years, it was a routine day  
22 to day application **[inaudible]**... [crosstalk]

23 CHAIRPERSON GENTILE: But he's telling  
24 you something there; he's telling you, you know, I'm  
25 gonna keep it -- I'm gonna keep it as a nursing home,  
but you know what, take both of the restrictions off;

3 the restriction that would require me to keep it as a  
4 healthcare facility, I want that off and you know, we  
5 can understand why he needed the nonprofit taken off,  
6 but take the other one off too, even though I'm gonna  
7 keep it as a nursing home. Didn't that raise any red  
8 flags saying, why do you need the second one removed?

9 LISETTE CAMILO: I mean I think we've  
10 all, you know, acknowledged that because the process  
11 developed in such an insulated... it allowed DCAS to  
12 undergo and take all of these steps without  
13 requiring, because it didn't have any requirements to  
14 go outside of the agencies to raise those red flags;  
15 it was normal course of business for them to proceed;  
16 the new process will not allow that to happen.

17 CHAIRPERSON GENTILE: Well will the new  
18 process -- or even here in this process that you --  
19 wouldn't that maybe cause someone at DCAS, the  
20 Commissioner probably, to discuss this with City  
21 Hall, whether it be the First Deputy Mayor, Emma  
22 Wolfe at Intergovernmental -- wouldn't you believe  
23 that this would be a reasonable reaction to a meeting  
24 like this?

25 LISETTE CAMILO: I mean I think, as we've  
all said, no one is happy with this result and 20/20,

3 I think everyone wishes that someone had flagged this  
4 for somebody; unfortunately, that's not what happened  
5 and I think that the new process that we're trying to  
6 develop will make sure that this doesn't happen.

7 CHAIRPERSON GENTILE: Well how does the  
8 new process particularly affect this situation of  
9 communication between the agency and someone at City  
10 Hall?

11 LISETTE CAMILO: So DCAS will be required  
12 to amass all of the information, collect information  
13 from proposed applicant, community input and  
14 feedback, due diligence on each of the applicants to  
15 make sure that what they are saying is true about  
16 what their representations are, information about the  
17 appraisals, information about other City agency  
18 feedback with regard to the potential uses and policy  
19 considerations of the property. DCAS will take all  
20 of that information and present it to the four-member  
21 committee that will analyze all of those issues and  
22 come up with a determination with either to modify  
23 the deed restriction or not.

24 CHAIRPERSON GENTILE: So you're saying  
25 that if DCAS doesn't raise the red flags in this

3 case, the multi-group, committee that's being formed  
4 should raise those red flags?

5 LISETTE CAMILO: Any information that  
6 might raise a red flag will be presented to the  
7 committee; they will have that information available  
8 to them as a part of their analysis with regard to  
9 making a determination on whether to lift the deed  
10 restriction or modify the deed restriction or not.

11 CHAIRPERSON GENTILE: Okay. We have one  
12 or two more questions here from Councilman Kallos.

13 CO-CHAIRPERSON KALLOS: So I wanna thank  
14 our State Senator and Manhattan Borough President for  
15 their continued patience, as well as members of the  
16 public who we know are here to testify; we're gonna  
17 do our best to wrap up before 4:00 for everyone. And  
18 so some additional questions; this is from multiple  
19 of our colleagues in the *Fourth Estate* in the press.  
20 When you discovered the sale, you have indicated in  
21 your testimony that you spoke to First Deputy Mayor  
22 Anthony Shorris; did you speak to anyone else about  
23 what was happening when you learned about it in the  
24 Administration?

25 LISETTE CAMILO: After I learned about  
the subsequent sale?

2 CO-CHAIRPERSON KALLOS: Uhm-hm.

3 LISETTE CAMILO: After I informed the  
4 First Deputy Mayor, as I mentioned, I called the  
5 Department of Investigation the next day upon his  
6 suggestion.

7 CO-CHAIRPERSON KALLOS: And did you touch  
8 base with Dominic Williams; did you touch with Sarah  
9 Samis; did you touch base with Intergovernmental  
10 Affairs; did you let anyone else know about what you  
11 discovered?

12 LISETTE CAMILO: No, not after I called  
13 the Department of Investigation and spoke with the  
14 First Deputy Mayor.

15 CO-CHAIRPERSON KALLOS: Okay. And when  
16 you came in and you learned about Rivington from the  
17 CB3 letter, were any of the staff members at DCAS,  
18 who are now working for you, able to share any  
19 information with you about what had happened?

20 LISETTE CAMILO: I certainly inquired  
21 about, like I mentioned, the process; this particular  
22 deed modification, I wanted to understand what the  
23 deed restriction required, some of the facts  
24 regarding the transaction itself, so I talked to many  
25 people within the staff within many units.

2 CO-CHAIRPERSON KALLOS: And when you  
3 spoke to you Deputy Chief of Staff, Carmine Rivetti,  
4 did he believe that First Deputy Mayor Shorris was  
5 already aware of the issue?

6 LISETTE CAMILO: I don't believe we  
7 talked about whether or not he believed that the  
8 First Deputy Mayor... [interpose]

9 CO-CHAIRPERSON KALLOS: Did he produce  
10 e-mails from your predecessor to First Deputy Mayor  
11 Shorris?

12 LISETTE CAMILO: To me?

13 CO-CHAIRPERSON KALLOS: Yes.

14 LISETTE CAMILO: I don't believe so.

15 CO-CHAIRPERSON KALLOS: So your Deputy  
16 Chief of Staff never showed you the weekly memorandum  
17 that had been sent from your predecessor to...

18 LISETTE CAMILO: I'm not... I'm not sure  
19 that... No, I don't believe so, no.

20 CO-CHAIRPERSON KALLOS: And when -- Do  
21 you interact directly with First Deputy Mayor Shorris  
22 or do you interact with Dominic Williams and Sarah  
23 Samis?

24

25

3 LISETTE CAMILO: I have regular meetings  
4 with the First Deputy Mayor and I have regular calls  
5 or e-mails with the folks on his staff.

6 CO-CHAIRPERSON KALLOS: Were the First  
7 Deputy Mayor staffers Dominic Williams and Sarah  
8 Samis surprised to learn about the sale when you told  
9 them?

10 LISETTE CAMILO: I've never spoken to  
11 Sarah Samis about this; I don't believe I've spoke to  
12 Dominic Williams about this; when I meet with the  
13 First Deputy Mayor, he might've been in the room, but  
14 my conversations have generally been with the First  
15 Deputy Mayor when I first told him about it.

16 CO-CHAIRPERSON KALLOS: And when you  
17 spoke to him; that was the first he'd ever heard of  
18 it?

19 LISETTE CAMILO: The First Deputy Mayor?  
20 That was the first he'd learned that the property had  
21 been sold to the developer.

22 CO-CHAIRPERSON KALLOS: And just to touch  
23 on the appraisals. So there was an initial appraisal  
24 and then they did a follow-up appraisal; that  
25 appraisal came in quite low; do you happen to have

2 the dates of the appraisals and how much those  
3 appraisals were for?

4 LISETTE CAMILO: Which appraisal are you...

5 CO-CHAIRPERSON KALLOS: Of Rivington.

6 LISETTE CAMILO: By whom?

7 CO-CHAIRPERSON KALLOS: By DCAS.

8 LISETTE CAMILO: The...

9 CO-CHAIRPERSON KALLOS: Or if you can  
10 share for us; how the appraisal process works -- who  
11 does it and when was it done; how often is it done?

12 LISETTE CAMILO: So generally DCAS has an  
13 appraisal unit, but because of workload and volume,  
14 at times we also rely on third party independent  
15 appraisals, so it depends on the workload and the  
16 time. So our most recent appraisal of Rivington  
17 established a value of the deed restriction at \$16  
18 million.

19 CO-CHAIRPERSON KALLOS: And do you know  
20 what date that was?

21 LISETTE CAMILO: Believe it was December  
22 2014.

23 CO-CHAIRPERSON KALLOS: December 3rd,  
24 2014, and that was an appraisal of \$64.6 million.

25 LISETTE CAMILO: For the property.



2 CO-CHAIRPERSON KALLOS: And do you have a  
3 response to the Comptroller's report that the value  
4 should have been the difference between operation as  
5 a not-for-profit nursing home versus for-profit or  
6 the difference between for-profit and the property as  
7 a luxury condo versus just a 25% of value?

8 LISETTE CAMILO: I think every one agrees  
9 that the 25% value that's prescribed in the process  
10 is one of the issues that we seek to correct in the  
11 new process. I certainly **[inaudible]**... [crosstalk]

12 CO-CHAIRPERSON KALLOS: Did DCAS have a  
13 longstanding policy of doing an appraisal within six  
14 months prior to lifting a deed restriction?

15 LISETTE CAMILO: The requirement, as I  
16 understand it, is to have a six-month timeframe  
17 before agreeing on a price. So if the agreement of  
18 the price extends beyond six months, then another  
19 appraisal is done.

20 CO-CHAIRPERSON KALLOS: Given that the  
21 closing was supposed to happen in July and was pushed  
22 out to November, in your opinion, should there have  
23 been a third appraisal?

2 LISETTE CAMILO: There are many things  
3 with regard to the process, the old process, in the  
4 way that it happened that I would change.

5 CO-CHAIRPERSON KALLOS: And is that  
6 something you would change?

7 LISETTE CAMILO: Well certainly the time  
8 lapse between closing and the previous appraisal,  
9 because it was a point-in-time analysis; that is  
10 something that we need to consider going forward.

11 CO-CHAIRPERSON KALLOS: And did you use  
12 the DCAS internal appraisal unit or did you outsource  
13 the appraisal to a vendor?

14 LISETTE CAMILO: For that particular  
15 appraisal **[inaudible]**... [crosstalk]

16 CO-CHAIRPERSON KALLOS: For Rivington.

17 LISETTE CAMILO: Yeah, we used an  
18 internal unit to do that appraisal.

19 CO-CHAIRPERSON KALLOS: And the  
20 Comptroller's report indicated that they were using  
21 outdated two year old information; what have you done  
22 to improve their access to information and being able  
23 to actually use current market factors versus older...  
24 [interpose]

3 LISETTE CAMILO: I can't speak to the  
4 Comptroller's assessment, because from what I  
5 understand of appraisals, is that you look at a set  
6 of comps and the appraiser makes determinations not  
7 only the value of certain comparables, but also makes  
8 certain assumptions. I don't know what other  
9 information the Comptroller was looking at to  
10 determine that the comps that our appraiser used was  
11 different or had anything negative about it. I do  
12 know that our appraiser is a State licensed and  
13 registered appraiser; the appraisal itself followed  
14 the uniform appraisal standards. Appraisals aren't  
15 an exact science; you'll ask 10 different appraisers  
16 their opinion and you're likely to get 10 different  
17 answers, so it's not surprising that there are  
18 different values or judgments, and which is why the  
19 new process would require not only one, but two  
20 appraisals to be performed in order for the committee  
21 that is evaluating a proposed deed modification to  
22 really question the assumptions and have a much more  
23 informed deliberative process when undertaking an  
24 analysis on a proposed deed restriction modification.

25 CO-CHAIRPERSON KALLOS: And in your  
review of what... Oh, uhm... so just taking another

2 moment. So we've spoken a lot about management; as  
3 Director of MOCS did you provide to First Deputy  
4 Mayor Anthony Shorris weekly memos?

5 LISETTE CAMILO: I don't believe I did.

6 CO-CHAIRPERSON KALLOS: Were you ever  
7 asked to do so?

8 LISETTE CAMILO: I don't believe I was,  
9 no.

10 CO-CHAIRPERSON KALLOS: Okay. And now as  
11 Commissioner of DCAS do you provide First Deputy  
12 Mayor Shorris a weekly memo?

13 LISETTE CAMILO: Yes.

14 CO-CHAIRPERSON KALLOS: Does he read  
15 them?

16 LISETTE CAMILO: Yes.

17 CO-CHAIRPERSON KALLOS: Does he respond  
18 to them?

19 LISETTE CAMILO: I can't speak to him  
20 having read all of them; I do know that he has read  
21 some and will respond to questions; not ever week,  
22 but certainly on occasion.

23 CO-CHAIRPERSON KALLOS: Do you use those  
24 e-mails and memorandum to seek decisions from him?

25 LISETTE CAMILO: No.

3 CO-CHAIRPERSON KALLOS: And based on the  
4 feedback that you've seen and his testimony today on  
5 the fact that he may or may not rely on them, based  
6 on his own testimony, are you gonna continue to send  
7 your weekly memorandum to First Deputy Mayor Shorris?

8 LISETTE CAMILO: Absolutely, and I think  
9 that there is use -- it's useful to have  
10 documentation of things that happen during the week  
11 or the previous two weeks to give him a flavor of all  
12 of the things that have happened; it's a good  
13 indication of the work that we're doing.

14 CO-CHAIRPERSON KALLOS: And how long does  
15 it take you or your staff to prepare that weekly  
16 memorandum?

17 LISETTE CAMILO: I don't know how long it  
18 takes; I get a final draft every week, so I get it  
19 ever week.

20 CO-CHAIRPERSON KALLOS: How long does it  
21 take you to review the final draft?

22 LISETTE CAMILO: A few minutes.

23 CO-CHAIRPERSON KALLOS: Would you be  
24 willing to share with the Council how long your staff  
25 is spending on these weekly memorandums that may or

2 may not be read that don't involve decision points  
3 that just get sent once a week every week?

4 LISETTE CAMILO: I'm not sure how I would  
5 do that, but.

6 CO-CHAIRPERSON KALLOS: Would you be  
7 willing to ask your staff how long it takes them to  
8 prepare that memorandum?

9 LISETTE CAMILO: Sure.

10 CO-CHAIRPERSON KALLOS: And so just  
11 following up with what may have happened here, based  
12 on your review internally with -- Did you have  
13 unrestricted access to the documents at DCAS?

14 LISETTE CAMILO: I don't believe I asked  
15 for unrestricted access; I asked for information; I  
16 was provided information; that's as far as my  
17 inquiries and attempts to gain documentation went.

18 CO-CHAIRPERSON KALLOS: Did you have to  
19 clear your requests through the **[inaudible]** counsel's  
20 office or were you able to just request it from your  
21 employees?

22 LISETTE CAMILO: I was able to request it  
23 from my employees.

24 CO-CHAIRPERSON KALLOS: And as you  
25 discovered what was happening, so is it your

3 impression that City Hall was involved in the  
4 Rivington process and that First Deputy Mayor  
5 Shorris' office was involved in Rivington initially?

6 LISETTE CAMILO: When I was discussing  
7 with my staff what happened throughout with the  
8 Rivington deed modification, I really focused on the  
9 steps that the agency was taking...

10 CO-CHAIRPERSON KALLOS: Uhm-hm.

11 LISETTE CAMILO: and particularly with  
12 respect to the community notification piece; given  
13 that it came to my attention based on a community  
14 board resolution, I can't recall extensive discussion  
15 on City Hall's involvement; I'm sure it came up, but  
16 I can't recall.

17 CO-CHAIRPERSON KALLOS: In your  
18 conversations with your staff, did any of your staff  
19 ever indicate that they had gotten direction from  
20 your predecessor that they should remove both deed  
21 restrictions?

22 LISETTE CAMILO: Like I said, the focus  
23 of my inquiries really was to learn about the  
24 particular steps and not about... less about what the  
25 dynamic was or instructions, so.

2 CO-CHAIRPERSON KALLOS: So you have no...  
3 you haven't looked into it, even with preparation for  
4 today's hearing; you haven't looked into what may  
5 have happened outside the notification?

6 LISETTE CAMILO: No, I learned how the  
7 agency undertook every step...

8 CO-CHAIRPERSON KALLOS: Uhm-hm.

9 LISETTE CAMILO: and how, now given what  
10 we know, how there was a disconnect between what was  
11 happening on the ground and with the agency and what  
12 City Hall wanted; that's been very clear, and what we  
13 tried to do is, in creating the new process, really  
14 create an infrastructure to address that gap and  
15 we're very confident that the new process will  
16 address those gaps.

17 CO-CHAIRPERSON KALLOS: With regards to  
18 it, so as far as the story seems to go, and you can  
19 correct me if I'm wrong, so City Hall gets involved;  
20 once the property is picked up from Village Care,  
21 City Hall appears to disengage and then at that point  
22 Mr. Landau reaches out to DCAS to request deed  
23 lifting of the two deed restrictions; is that a very  
24 high-level summary of that initial piece?



3 LISETTE CAMILO: I'm sorry, could you  
4 repeat that?

5 CO-CHAIRPERSON KALLOS: City Hall was  
6 engaged for some time; once Village Care was picked  
7 up by Allure Group and City Hall disengaged, after  
8 which point Mr. Landau reached out to DCAS to begin  
9 the deed restriction lifting process.

10 LISETTE CAMILO: I believe that's what  
11 the reports find and what happened in this case.

12 CO-CHAIRPERSON KALLOS: And so I guess in  
13 taking over, have you figure out what happened --  
14 why; when -- the first time Landau asked about  
15 lifting deed restrictions, your predecessor said not  
16 at this time, but in January of 2015 they began  
17 moving the process; do you know if somebody... this was  
18 an internal decision, whether this came from your  
19 predecessor or if this came from City Hall?

20 LISETTE CAMILO: That I don't know. What  
21 I do know is that at some point the staff, when  
22 approached by Mr. Landau, had an entity willing to  
23 pay the \$15 million and go through all of the  
24 required steps, and as they've done many years  
25 before, undertook that duty to go through the steps  
and execute the final transaction.

2 CO-CHAIRPERSON KALLOS: Going to turn it  
3 over to my Co-Chair Vinnie Gentile to wrap it up and  
4 Borough President Brewer and State Senator Squadron  
5 are on deck.

6 CHAIRPERSON GENTILE: Yes, just quickly.  
7 I just couldn't let you leave without asking you; did  
8 you ever investigate why one of your assistant  
9 commissioners at DCAS admitted a reference to the  
10 threat that Joel Landau made about doing luxury  
11 condos with the site and your assistant commissioner  
12 omitted that reference in the biweekly report that he  
13 sent to the Commission?

14 LISETTE CAMILO: Those facts came out in  
15 some of the reports; I haven't had the conversation  
16 directly with the assistant commissioner, but  
17 ultimately, what both reports make very clear is that  
18 there was no evidence of misconduct and **[inaudible]**...  
19 [crosstalk]

20 CHAIRPERSON GENTILE: But there was a  
21 reference... there was a conversation that Joel Landau  
22 had, with this assistant commissioner and others, and  
23 a biweekly report went to Commissioner Cumberbatch  
24 and before it went to Commissioner Cumberbatch, this  
25

3 assistant commissioner deleted the reference to  
4 luxury condos.

5 LISETTE CAMILO: I can't speak to that; I  
6 have not asked him personally; I do know... [crosstalk]

7 CHAIRPERSON GENTILE: Do you plan to? Do  
8 you plan to?

9 LISETTE CAMILO: I mean at this point I  
10 think what I'm focused on is to make sure that the  
11 process itself, which would clearly has many problems  
12 and we're going to have a lot of work to overhaul and  
13 ensure that this doesn't happen again. I will say  
14 that for the particular discussions regarding who  
15 said what to whom, I'm reminded that this matter is  
16 actually still ongoing in investigations, and we've  
17 all been advised to not engage in parallel deep  
18 down, you know, questioning of individuals in order  
19 to preserve the integrity of that.

20 CHAIRPERSON GENTILE: So then are you  
21 telling me then you have not investigated why the  
22 DCAS notice that was put in the City Record  
23 specifically only referred to the property by block  
24 and lot number as opposed to by name or street  
25 address?

2 LISETTE CAMILO: That is actually a  
3 standard DCAS practice, that when deed modifications  
4 are noticed, they're notified with block and lot  
5 number.

6 CHAIRPERSON GENTILE: And so you're  
7 saying every DCAS notice that goes in for that type  
8 of transaction is only listed by block and lot?

9 LISETTE CAMILO: That is my  
10 understanding.

11 CHAIRPERSON GENTILE: That's your  
12 understanding. Is that a practice that you're going  
13 to change?

14 LISETTE CAMILO: We're looking at  
15 changing many things **[inaudible]**... [crosstalk]

16 CHAIRPERSON GENTILE: So that the  
17 community, even the community board, that probably  
18 looks at the City Record, could probably determine  
19 that it was something that they needed to act on, but  
20 block and lot numbers, as we already demonstrated by  
21 asking your block and lot number or somebody's block  
22 and lot number here; you can't tell us what it is;  
23 right? Now did you investigate the -- and you'll  
24 probably tell me no, but did you investigate the fact  
25 that when the documents were sent from DCAS to MOCS

2 the reference to Rivington, aka 45 Rivington Street,  
3 was again purposely, purposely, intentionally deleted  
4 when that document went from DCAS to MOCS?

5 LISETTE CAMILO: Again, that is another  
6 set of inquiries that, because it's subject to an  
7 investigation, I did not go down to that level of  
8 inquiry.

9 CHAIRPERSON GENTILE: Well can you at  
10 least conclude then those actions at least lead one  
11 to the conclusion that DCAS was so intent on getting  
12 the \$16.15 million that they wanted to do the best  
13 they could to meet the bare minimum requirements of  
14 the law, but at the same time throw off the  
15 community, deceive the community, camouflage the  
16 identification of the hearing so that there wouldn't  
17 be a community outcry and therefore they can go ahead  
18 and get their \$16.15 million once the hearing was  
19 over and the Mayor's authorization document signed?

20 LISETTE CAMILO: I don't feel comfortable  
21 characterizing it in that manner; I think that after  
22 speaking to the staff and really learning about the  
23 process, it is very clear that the process, as has  
24 been developed for many years, was followed to the  
25

2 letter, which left the agency to act in a vacuum

3 **[inaudible]**... [crosstalk]

4 CHAIRPERSON GENTILE: Come on,  
5 Commissioner, followed to the letter, but it was  
6 colored and painted all over with camouflage and  
7 subterfuge in terms of notices to the community... no  
8 outreach to Community Board 3..

9 LISETTE CAMILO: None was required and  
10 none **[inaudible]**... [crosstalk]

11 CHAIRPERSON GENTILE: I mean it wasn't  
12 required, but everyone knew that the community was up  
13 in arms, Community Board 3 was up in arms, Council  
14 Member Chin's office was up in arms, the Borough  
15 President Borough's office up in arms, everybody knew  
16 that and the fact that it wasn't required to reach  
17 out to let them know about this hearing is not an  
18 answer that the City can stand on.

19 LISETTE CAMILO: And we agree with that,  
20 that the lack of notice and the lack of transparency  
21 was sadly a hallmark of the old process, which is why  
22 the new process that we've developed really addresses  
23 those gaps in a way that brings it to the forefront,  
24 to make sure that the community has ample notice and  
25 many instances to give us their feedback so that they

2 can be incorporated in whatever decision, and I might  
3 add, as more of these questions came up, and in  
4 particular after the sale, that's why we reached out  
5 to DOI, to make sure that there wasn't anything  
6 untoward going on, but as of this moment I cannot  
7 characterize what happened in that manner...

8 [crosstalk]

9 CHAIRPERSON GENTILE: So well, can you at  
10 least say that in regard to the community, DCAS did  
11 not fulfill its obligation?

12 LISETTE CAMILO: I can't say that because  
13 DCAS fulfilled its obligation by meeting [inaudible]...

14 [crosstalk]

15 CHAIRPERSON GENTILE: Because you're  
16 gonna meet the minimum standards of the law, but in  
17 reality, did DCAS meet its obligations to the  
18 community?

19 LISETTE CAMILO: What I will agree is  
20 that the process as developed was flawed. I agree  
21 that there was very little communication and notice,  
22 which led to this result; the new process will fix  
23 that.

24 CHAIRPERSON GENTILE: 'Kay.  
25

2 CO-CHAIRPERSON KALLOS: Just wanted to  
3 follow up on one item. So I think we've asked a lot  
4 of questions about what happened at DCAS with you as  
5 Commissioner, and so just, have you had a chance to  
6 review the same documents and evidence that the  
7 Comptroller has reviewed, that DOI has reviewed, that  
8 Corporate Counsel has reviewed; that Council Member  
9 Gentile and I have reviewed?

10 LISETTE CAMILO: I'm not sure what you  
11 were provided; I don't believe I've reviewed every  
12 document... [crosstalk]

13 CO-CHAIRPERSON KALLOS: Have you had a  
14 chance to see the e-mails that were sent by your  
15 predecessor to Tony Shorris?

16 LISETTE CAMILO: I've seen some of those  
17 e-mails, yes.

18 CO-CHAIRPERSON KALLOS: Okay. And you've  
19 had a chance to sit down with the individuals who  
20 have been implicated in this situation and understand  
21 the mistakes that they have made?

22 LISETTE CAMILO: I've met with members of  
23 my staff to walk me through the execution of the old  
24 process, which highlighted all of the gaps.



2 CO-CHAIRPERSON KALLOS: And so I guess  
3 I'm just... I would have preferred if you were able to  
4 be a little bit more transparent with us and just  
5 talk about some of the conclusions that you've drawn;  
6 there's value to that. Have you disciplined anyone  
7 or made any changes to people's titles or  
8 responsibilities following what you've learned?

9 LISETTE CAMILO: I've learned, and I've  
10 stated this multiple times; what I came away with,  
11 after my initial discussions with regard to what  
12 happened at Rivington, is that the process itself  
13 allowed DCAS to act in a vacuum, using a process that  
14 was developed over 20 years ago that only focused on  
15 the bottom line; it did not bake into the process  
16 thorough community notification... [crosstalk]

17 CO-CHAIRPERSON KALLOS: So do you think  
18 there's anyone that...

19 LISETTE CAMILO: working with City Hall  
20 and all of the other things that we've mentioned...  
21 [crosstalk]

22 CO-CHAIRPERSON KALLOS: Was it anyone at  
23 DCAS' fault then?

24 LISETTE CAMILO: I believe the fault is  
25 of an old and inadequate process.

2 CO-CHAIRPERSON KALLOS: So but, no one at  
3 DCAS that you have spoken to got instructions from  
4 the First Deputy Mayor or his office not to proceed;  
5 is that correct?

6 LISETTE CAMILO: The staff didn't... The  
7 staff followed a process once they had an actor  
8 willing to pay the money and agreed to the conditions  
9 and go through the process, just as it had every  
10 other deed modification request **[inaudible]**...

11 [crosstalk]

12 CO-CHAIRPERSON KALLOS: Even though they  
13 hadn't previously, so when this first started in July  
14 2014 they didn't, but in January 2015 they did.

15 LISETTE CAMILO: In 2014, when Village  
16 Care reached out to DCAS to request the deed  
17 modifications...

18 CO-CHAIRPERSON KALLOS: Right.

19 LISETTE CAMILO: part of their request  
20 wasn't just to lift the deed restriction; it was also  
21 to ask the City to waive the fee. At that point  
22 there was a deviation from the process; there was  
23 further discussion and at that point the process was  
24 not engaged in and followed... [crosstalk]

3 CO-CHAIRPERSON KALLOS: I guess, what  
4 happened at DCAS that at one point they said no and  
5 then... who changed their mind; what changed at DCAS  
6 that went from a no in July to a yes in January?

7 LISETTE CAMILO: Certainly, at the very  
8 least, you had a participant that was willing to pay  
9 the required amount, had a justification to remove  
10 the -- or had an argument to remove the restriction  
11 and had a willing participant to follow the process.

12 CO-CHAIRPERSON KALLOS: Okay. So thank  
13 you for your time today; thank you for spending much  
14 more time with us than other folks who were here  
15 today. Ultimately there's outstanding issues; we  
16 have requested a number of documents from DCAS and  
17 the Law Department and we look forward to an ongoing  
18 conversation; we look forward to the free exchange of  
19 documents without us having to make further requests;  
20 the City Council enjoys certain rights and privileges  
21 to oversight and access and we look forward to  
22 learning as much as we can, getting to the bottom of  
23 this with whatever outstanding may exist, and I just  
24 wanna thank you for your participation.

25 We'd like to immediately call up  
Manhattan Borough President Gale Brewer and State

2 Senator Daniel Squadron; we understand that the  
3 Borough President has been waiting quite some time  
4 and we appreciate her patience and her advocacy on  
5 this issue.

6 [background comments]

7 Manhattan Borough President Brewer; do  
8 you affirm to speak your mind?

9 BOROUGH PRESIDENT BREWER: I do.

10 [laughter]

11 CO-CHAIRPERSON KALLOS: We're gonna  
12 dispense with the swearing in, if that's alright with  
13 you.

14 BOROUGH PRESIDENT BREWER: Thank you very  
15 much Chairs Kallos and Gentile for having this  
16 important hearing on deed restrictions and the recent  
17 removal of the restriction on Rivington House. I am  
18 Manhattan Borough President Gale Brewer and I'm here  
19 with Jim Caras, General Counsel and Director of Land  
20 Use in the Office of Manhattan Borough President.

21 As we are all painfully aware, on  
22 November 10th, 2015 the City issued a deed  
23 modification removing the restriction that limited  
24 the use and development of Rivington House in  
25 perpetuity to a not-for-profit residential health

3 care facility. That restriction had been in effect  
4 for almost 25 years.

5 As we were reacting to the loss of  
6 Rivington House as an institution serving a public  
7 need, just three months later a deed restriction  
8 limiting use and ownership of property owned by the  
9 Dance Theatre of Harlem to "Nonprofit use by a  
10 community organization offering cultural services in  
11 the community," was similarly lifted. That  
12 restriction had preserved this property for a public  
13 use for almost 40 years.

14 These two losses -- in a borough that is  
15 at risk of having its spirit crushed under the weight  
16 of luxury condo development -- are disastrous; these  
17 two losses are disastrous. With virtually no notice  
18 -- and I do not consider publication for one day in  
19 the City Record as notice -- the restrictions  
20 limiting these properties to public use were removed  
21 so they could be developed by for-profit real estate  
22 developers. No input was solicited from the  
23 communities or from the local elected officials, the  
24 planning experts on the City Planning Commission were  
25 not involved, and the City Council, which is supposed

3 to and does balance local concerns and citywide  
4 needs, was not consulted, as you know.

5 Now the Administration has proposed a  
6 rule that would address some of the most obvious  
7 concerns. The proposed rule requires notice of the  
8 affected community board, borough president and  
9 council member, as well as a public hearing.

10 However, this rulemaking does not help us to get a  
11 handle on the range of deed restrictions that exist  
12 so that we can best formulate one or more processes  
13 for amending or removing them. In addition, it is a  
14 DCAS rule which can be changed without the approval  
15 of anyone but the agency involved and need not be  
16 maintained in subsequent administrations.

17 Int. No. 1182, proposed by Council Member  
18 Chin and me, as you know, would require the  
19 development over time of a searchable database of all  
20 former City properties with deed restrictions with as  
21 much relevant information on those restrictions as  
22 can be assembled. In addition, the legislation  
23 mandates at least 60 days' notice to the community  
24 board and local elected officials and a hearing at  
25 least 20 and not more than 30 days prior to the  
removal of the restriction.

3                   However, Council Member Chin and I,  
4 together with Council Speaker Melissa Mark-Viverito  
5 and Public Advocate Tish James, have come to believe  
6 that there is a better process that would be applied  
7 to at least some deed restriction amendments or  
8 removals. That process is our very own ULURP  
9 (Uniform Land Use Review Procedure), and at a minimum  
10 this process should be applied to the removal or  
11 amendment of deed restrictions that limit former  
12 City-owned property to public uses for the benefit of  
13 the community or public at large. Section 198-c(12)  
14 of the City Charter provides that the City Council  
15 may, by local law, subject a category of actions  
16 affecting the use of development of real property to  
17 ULURP -- there are already sections that do that;  
18 there are actions that are taken place in ULURP; this  
19 could be added. Pursuant to this section, I,  
20 together with Speaker Mark-Viverito, Council Member  
21 Chin and Public Advocate James have called upon the  
22 City Planning Commission to propose that the Council  
23 add modification or removal of certain deed  
24 restrictions to ULURP. CPC will have to do that  
25 before the Council vote.

3 Deed restrictions that require property  
4 to be used for public purposes are closer to land use  
5 restrictions than to a business term in a contract.  
6 Yet the Mayor's proposed policy that he proposed  
7 recently would still have DCAS spearheading the  
8 process of considering changes or removal of such  
9 restrictions, although with input from other agency  
10 representatives. The City Planning Commission should  
11 spearhead any process that could allow property  
12 required to be use for public purposes to be turned  
13 to a private developer, not DCAS; DCAS should not be  
14 the spearhead.

15 It should matter how a deed restriction  
16 was put in place, but rather why it was put in place.  
17 If its purpose was to benefit the public, then  
18 removing or altering it to allow a private developer  
19 to develop it should go through our City's land use  
20 review process and the City Council should have the  
21 final say on such actions. The best support for this  
22 position is found in what apparently happened with  
23 the parcel owned by the Dance Theatre of Harlem. The  
24 City Council did not include this property in the  
25 2012 downzoning of Harlem because we were under the  
impression it could only be used for cultural



3 purposes. In light of that, how could anyone argue  
4 that the removal of this deed restriction was not a  
5 land use decision?

6 The ULURP process is not perfect and it  
7 can be cumbersome, but it is a tested and dependable  
8 process for making land use decisions, with ample  
9 provision for both public and government review and  
10 comment. Land in New York City, particularly in  
11 Manhattan, is at a premium and developers stand to  
12 make steep profits. Using an existing process known  
13 to all seems to be a fair proposition. If there are  
14 actions on deed restrictions that are less  
15 substantive and more ministerial, section two of our  
16 legislation provides a process that does not subject  
17 these to a ULURP process but provides notice and  
18 opportunity for all to be heard.

19 Finally, I must add that I am very  
20 unhappy with the Administration, which has proceeded  
21 this week with rulemaking on a proposed new deed  
22 restriction process. I believe that the Speaker,  
23 Council Member Chin, the Public Advocate and I have  
24 come forth with some ideas worthy of serious  
25 consideration; thoughtful. I also believe that this  
Council hearing and your two Committees could develop

2 further proposals for help to refine or tweak those  
3 that we have put forward. I feel it is a bit of a  
4 slap in the face -- it is a big; it is a bit,  
5 depending how you wanna look at it, but it is a slap  
6 in the face that two days before this hearing, the  
7 Administration published its proposed rule on deed  
8 restrictions. Not taking sufficient time to reach  
9 out to others, like you, and not seeking input is  
10 what got us into this situation. I do not think it  
11 is the correct recipe to get us out of it.

12 Thank you very much.

13 CHAIRPERSON GENTILE: Thank you Madam  
14 Borough President. State Senator Squadron.

15 STATE SENATOR SQUADRON: Thank you.  
16 Thank you for the opportunity and I know what you're  
17 looking forward to is more testimony after the day  
18 you've had, so. I do wanna thank both Committees,  
19 both Chair Gentile and Chair Kallos for convening  
20 this hearing; I wanna especially thank Council Member  
21 Chin and Borough President Brewer for their work on  
22 Int. 1182, and of course, and this goes without  
23 saying and you know in many ways, was the initiator  
24 of this Community Board 3 and the Neighbors to Save  
25 Rivington House, which represents many different

3 community activists for their ongoing focus on this  
4 issue, going back before the deed restriction was  
5 lifted and Rivington House's closure was approved by  
6 the State.

7 A couple of perspectives and one Council  
8 Member Chin is intimately familiar with, but wanna  
9 make sure everyone hear it. The Lower East Side has  
10 faced a series of nursing home closures in recent  
11 years. In the last five, the Bialystoker Center for  
12 Nursing and Rehabilitation and Cabrini Nursing Home  
13 both closed prior to Rivington House. Together it's  
14 a critical loss to health resources that we  
15 desperately need in the community and I think is a  
16 reflection of some of the impacts, the really  
17 negative impacts that you can see in fast-changing or  
18 gentrifying neighborhoods in the absence of active  
19 government participation and responsiveness.

20 Rivington House had that government  
21 promise because it was supposed to be a nursing home  
22 in perpetuity, as you well know. But instead, the  
23 appalling process allowed it to disappear in a puff  
24 of profiteering without any transparency or community  
25 input. Let me be clear as the local representative,  
and I know Council Member Chin shares this view; the

3 terrible process came at a tremendous and  
4 unacceptable cost to the community; nothing we change  
5 prospectively will deal with that issue if we don't  
6 stay focused on Rivington House itself.

7 It does highlight significant procedural  
8 flaws at the city level that I know you have spent  
9 the last two hours focusing on, and the state level  
10 as well. On the state side, Rivington House's  
11 closure has laid bare an absolutely opaque and  
12 seemingly entirely unenforceable process. There's a  
13 major breakdown in information sharing between on the  
14 ground realities and the state closure process, and  
15 the current process allows no public input or  
16 transparency when a nursing home closure is  
17 threatened or approved by the State Department of  
18 Health, and no consideration by the State Department  
19 of Health of further community health needs.

20 The opaque and ineffective process has  
21 disturbing similarities to the broken state hospital  
22 closure process, as experienced in painful detail at  
23 Long Island College Hospital, also in my district in  
24 Brooklyn, and which led me to introduce the Local  
25 Input in Community Healthcare, the LICH Act, along  
with Assembly Member Simony. In the coming weeks, I

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3 will be introducing state legislation to improve the  
4 broken process surrounding at-risk nursing homes,  
5 working with Assembly Member Simon and my City  
6 colleagues in Lower Manhattan. That legislation will  
7 address the fundamental process that should have put  
8 the State in a position to notify the community where  
9 the City failed, to consider community health needs  
10 where the City failed, and to reject closures if they  
11 don't make sense. The fact that we have a state  
12 closure process absent transparency and absent a  
13 consideration of policy outcomes is absolutely as  
14 surreal and through the looking glass as what this  
15 Committee has been exploring at the city level for  
16 the last six hours.

17 Of course, I do support and I wanna be  
18 clear, reforming the city's laws around deed  
19 restrictions, both components of Int. 1182 would be  
20 important improvements to the existing process and I  
21 urge the Council to move those forward, as the  
22 Borough President eloquently just described.

23 Let's be clear, this closure has come at  
24 a significant cost to the Lower East side community  
25 and highlighted major flaws at the city level, and  
separately, at the state level. As investigations

2 continue, we need to solve those processes and we  
3 also need to work to make the community whole for a  
4 loss that none of us yet accept.

5 I thank you for the opportunity to  
6 testify and I look forward to continuing to work with  
7 you, both on city and state level statutory fixes, as  
8 well as solving the absolutely unacceptable situation  
9 that happened in this case.

10 CHAIRPERSON GENTILE: Thank you Senator.  
11 And just quickly, 'cause we have other panels; just  
12 through my government colleagues; does anything  
13 you've heard here today make you hopeful for the  
14 future?

15 BOROUGH PRESIDENT BREWER: Yes, in terms  
16 of the issue of dealing with the transparency in the  
17 bill that Council Member Chin and I have considered,  
18 I hope that people understand that transparency has  
19 to be legislated, not just have some kind of an  
20 executive order, and second, I do think, and I wanna,  
21 of course give the great Jim Caras credit by the  
22 notion of looking at a modified or specific ULURP  
23 tweak or whatever for future deed restrictions. We  
24 have no idea how many deed restrictions there are in  
25 the City of New York and we don't know when one's

3 gonna pop up again. So I would hope that these two  
4 issues are legislated. Hopeful because it's been a  
5 mess; we are losing unbelievable numbers of units  
6 because of this deed restriction challenge. I don't  
7 know what else is out there; I do know in Manhattan  
8 there are four deed restriction challenges on the  
9 list that we have been presented with; three next to  
10 churches and there's one that's down here near the  
11 Chase Plaza, and all of them, I believe, could use  
12 more discussion.

13 STATE SENATOR SQUADRON: I am hopeful  
14 because I think I heard the City here and if they  
15 don't contradict me, I will take it as a fact, that  
16 they also believe that this community needs to be  
17 made whole and that moving on past this situation  
18 with reform won't be sufficient if the community is  
19 not made whole in a full way, beyond what they've  
20 already announced; that makes me hopeful.

21 The second thing is the fact that this  
22 clearly is city and state coalition for support for  
23 the kind of state reform and city reform that I think  
24 we all agree.

25 And the third is, and for this I look at  
both Chairs, to know that there's real support for

3 fixing this broken problem well beyond our local  
4 community that is sort of suffering the impact of it  
5 that Council Member Chin and Borough President Brewer  
6 have been all over at the city level to see sort of  
7 the broad array of council members including the  
8 Chairs so focused on making sure the fixes do happen  
9 legislatively is also hopeful.

10 CO-CHAIRPERSON KALLOS: If the  
11 Administration had listened to you and Margaret Chin,  
12 would they have been able to do something in time?

13 BOROUGH PRESIDENT BREWER: Well to the  
14 credit of the Council Member; she was on this and  
15 asking questions way before I was, so she deserves  
16 the credit on asking the questions, but the  
17 transparency seems to me like a no-brainer and so  
18 that needs to be done and the Administration needs to  
19 support it immediately. And then the issue of ULURP,  
20 the City Planning Commission needs to take the first  
21 step; those are ways that it can be rectified and of  
22 course then, the State Senator mentioned the issues  
23 of building the housing and refurbishing the dollars,  
24 but at this point we just need to make sure that  
25 things are corrected.



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2 STATE SENATOR SQUADRON: And I would just  
3 add to Council Member Kallos' question -- and the  
4 community board.

5 [background comment]

6 CO-CHAIRPERSON KALLOS: And the Mayor has  
7 come to numerous hearings where they feel that they'd  
8 prefer to act unilaterally on items; they've proposed  
9 rules, which you've criticized them for; could they  
10 have just as easily have proposed a ULURP as opposed  
11 to this rulemaking process that could be just as  
12 easily amended?

13 BOROUGH PRESIDENT BREWER: I don't know;  
14 I know that I wanna fix it and we'll work together to  
15 fix it; that's my answer, Mr. Kallos.

16 CO-CHAIRPERSON KALLOS: Thank you Gale.

17 CHAIRPERSON GENTILE: Thank you. Thank  
18 you for coming in... [crosstalk]

19 STATE SENATOR SQUADRON: Thank you.

20 CHAIRPERSON GENTILE: Okay, we're gonna  
21 do a full panel at this point; we're gonna call Susan  
22 Stetzer, Paul Segal -- is he still here?

23 MALE VOICE: Paula, Paula Segal.

24 CHAIRPERSON GENTILE: Oh Paula Segal.  
25 I'm sorry. [background comment] 596 Acres, Paula

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3 Segal? [background comment] She's not here. Okay.

4 K. Webster. [background comments] Tessa Huxley.

5 Tessa Huxley here? [background comment] Okay.

6 [background comments] Aurora Guzman or Guzman.

7 Aurora here? Is that you? [background comment]

8 You're wanna testify? Okay, come on. And

9 [background comments] Alice Blank... [background

10 comments] Alice Blank. Okay, Alice Blank. Okay. Is

11 Alice still here? [background comments] Okay.

12 Okay. And... [background comments] And John West.

13 [background comments]

14 CO-CHAIRPERSON KALLOS: So I wanna thank  
15 everyone for joining us through the six-hour hearing;  
16 I'm really hoping that you got some answers or share  
17 in our frustration where others were not answered,  
18 but I wanna make sure that you feel heard here today;  
19 you should note that Council Member Chin, who is not  
20 on either of our committees has been here throughout  
21 much of the hearing. We will be pushed out of this  
22 room for another event shortly; to the extent you  
23 have testimony you'd like to submit in writing; to  
24 the extent you're willing to summarize your testimony  
25 -- I know that can be tough -- there be a limit of  
two minutes, so I urge that you not use the entire

2 two minutes and then I am sure that Council Member  
3 Chin may have some questions for you, and we're at  
4 this point just trying to make sure that every member  
5 of the community has a chance to be heard. If you're  
6 watching online or from home, you can submit  
7 testimony to the City Council through e-mail, through  
8 fax or just mailing it in.

9 [background comments]

10 CO-CHAIRPERSON KALLOS: Please push the  
11 button... [interpose]

12 CHAIRPERSON GENTILE: Yeah.

13 CO-CHAIRPERSON KALLOS: so that the mic  
14 is on.

15 SUSAN STETZER: Okay. Thank you.

16 CHAIRPERSON GENTILE: Go ahead.

17 SUSAN STETZER: My name is Susan Stetzer;  
18 I'm District Manager for Community Board 3 and  
19 representing Community Board 3 here. I would also  
20 like to note that as representative of Community  
21 Board 3 I spent two years working very hard with  
22 elected officials and speaking to Mr. Landau on 1199  
23 in efforts to try and keep Rivington House as a  
24 nursing home in our community.

3 Community Board 3 supports legislation  
4 that will prevent the loss of properties due to the  
5 lifting of deed restrictions imposed by the City  
6 without public notice or input. The deed restriction  
7 process for Rivington House lacked transparency,  
8 which caused great harm. When VillageCare first  
9 alerted CB3 of the proposed sale of the skilled  
10 nursing home there was no mention of the deed. When  
11 the proposed sale became public, I was informed about  
12 the deed restriction from a community member involved  
13 in work with AIDS patients. The Community Board was  
14 never formally informed of this restriction by the  
15 owner or the administration, and I mention this to  
16 highlight the need for public notice and input.  
17 VillageCare did not acknowledge the deed's existence  
18 in the beginning of the sale discussion. We did not  
19 know for two years this was because of their attempt  
20 to have the deed restriction lifted. This points to  
21 the need for a searchable database proposed in the  
22 legislation and supported by Community Board 3 in the  
23 resolution in May 2016. When an important community  
24 property is proposed for a land disposition, we  
25 should be able to research all files for the property

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3 as it is not always in the interests of the owner to  
4 disclose information.

5 The Rivington House deed restriction was  
6 published one day in the City Record and I would  
7 suggest that it actually was never noticed, because  
8 if you're only noticing by block and lot, you are not  
9 giving notice to the community at all and I would  
10 also wonder if this was purposely deceitful. [bell]  
11 The Community Board knew there was a deed restriction  
12 for both nonprofit ownership and in perpetuity  
13 nursing home facility and knew the owner would  
14 request a waiver for the nonprofit -- he actually  
15 told us that in the very beginning. However, there  
16 is a complete lack of transparency as to the  
17 implementation [bell] of action to lift the  
18 restriction for both aspects of the deed restriction...

[interpose]

19 CO-CHAIRPERSON KALLOS: I'm so terribly  
20 sorry; if somebody else... [crosstalk]

21 SUSAN STETZER: If... you know this is the  
22 Community Board; if you can give me one more minute  
23 **[inaudible]**... [crosstalk]

24 CO-CHAIRPERSON KALLOS: One minute; no  
25 problem. Thank you.

2 SUSAN STETZER: it's a big deal to us.

3 CO-CHAIRPERSON KALLOS: We agree and it  
4 will be in the record.

5 SUSAN STETZER: There was a lack of  
6 transparency that until we read the FOIEd material  
7 in the media a year later, we had no idea there had  
8 been a conscious decision by the Administration to  
9 lift both provisions.

10 In the information you have what we would  
11 like to see as the number of days' notice and I would  
12 also like to say that for Community Board 3, our  
13 official position -- there is no mitigation except  
14 the return of Rivington House to the community.

15 CO-CHAIRPERSON KALLOS: Thank you so very  
16 much, and apologies for the time constraint.

17 K. WEBSTER: Hi, my name is K. Webster  
18 and I am a member of Neighbors to Save Rivington  
19 House and President of the Sara Roosevelt Park  
20 Community Coalition, and last night I was at a  
21 photography exhibit for a neighbor who has  
22 Alzheimer's, who should be in Rivington House  
23 yesterday, but we don't have a place for him to go  
24 yet.

25

3 I was there the final days of Rivington  
4 House as a skilled nursing facility for people with  
5 AIDS and saw the last five residents leave and they  
6 didn't want to, just in case anybody was wondering.

7 And Bob is here, who's been a park  
8 volunteer since 1980; he said he had given his life  
9 to remove drug dealers and pimps to make this park a  
10 good place for children and he thought when he could  
11 no longer give back he would have a home at Rivington  
12 House looking over his life's work.

13 For those whose home this was, those in  
14 need of skilled care now or in the future, families  
15 with loved ones who need care, health care workers  
16 who lost their jobs (almost 200 of them), they are  
17 the only ones who have suffered the consequences of  
18 this mess.

19 For the evicted it has been a nightmare  
20 -- losing home, caregivers and sometimes their  
21 health. For those who need care and for those who  
22 are trying to provide it, the nightmare is just  
23 beginning. There are 11 neighbors and friends, two  
24 caregivers and a senior center trying to keep one  
25 elder safe until we find him a nursing home, all for  
the profit of a few.

3 Those of us who refuse to give up on  
4 Rivington House have been treated to stonewalling,  
5 pity, dismissal, insults, callousness, and sarcasm by  
6 this Administration for our, admittedly, dogged and  
7 angry fight.

8 After a year of fighting for Rivington  
9 House to remain a nursing home, I personally spoke to  
10 Tommy Lin, the Mayor's official liaison, on December  
11 1, 2015 and e-mailed him later that evening with my  
12 warning about Rivington House. I didn't have \$40,000  
13 to offer a campaign; I had only the representative I  
14 was afforded by this administration. [bell] Uhm...  
15 [bell] okay.

16 There are so many missed opportunities,  
17 smoking guns, lobbyists, profiteers and outright lies  
18 told. People understand there isn't a level playing  
19 field in this city.

20 But as Preet Bharara said recently about  
21 the ethics of his office: "You do the right thing in  
22 the right way for the right reason. Always. That's  
23 it."

24 So a nursing home is a bed, we insist  
25 that those 215 affordable homes be returned to the



3 community as Rivington House [bell] because it's the  
4 right thing to do. Thank you... [crosstalk]

5 CHAIRPERSON GENTILE: Okay. Now  
6 [background comments] do you know where the five  
7 residents went?

8 K. WEBSTER: Because of privacy laws, we  
9 are not... [interpose]

10 CHAIRPERSON GENTILE: Okay.

11 K. WEBSTER: We have had reporters  
12 looking for them; I do happen... [crosstalk]

13 CHAIRPERSON GENTILE: Okay.

14 K. WEBSTER: to know where some of them  
15 are.

16 CHAIRPERSON GENTILE: Okay.

17 K. WEBSTER: I do also wanna say, because  
18 I think it's relevant, that a lot of our caregivers  
19 who were there or who are still working for Allure  
20 are terrified to come forward to speak because  
21 they're worried about repercussions, and there's  
22 something wrong there..

23 CHAIRPERSON GENTILE: Uhm-hm.

24 K. WEBSTER: if they can't come forward  
25 to tell you what's going on.

2 CHAIRPERSON GENTILE: I hear you. Okay,  
3 thank you.

4 K. WEBSTER: Thank you. And thank you.

5 [background comment]

6 CHAIRPERSON GENTILE: Push the button.

7 TESSA HUXLEY: Good afternoon. I'm Tessa  
8 Huxley and I live next door to Rivington House at 152  
9 Forsyth Street and I would point out that there is no  
10 sign at 154 gives an address, which is the loading  
11 dock and was my community garden, but we gave it up  
12 for Rivington House because as a member of the  
13 community we welcomed them to be our neighbors.

14 I'm also the President of a Limited  
15 Equity Cooperative and so we are very anxious not to  
16 find that all of our other neighbors are dwellers of  
17 luxury condos.

18 I wanna just say today that, you know, I  
19 was there; the promise was made, and I wanna make  
20 that clear that there are still witnesses to what  
21 that promise was; it wasn't for 10 years; I don't  
22 know where this 10 years comes from, when a deed  
23 restriction can be lifted; we were told it was  
24 forever and that if AIDS was solved as an issue, that  
25 it would become some other kind of community medical

3 facility. For that reason, we felt that it was an  
4 excellent addition to our community and that we  
5 didn't have to worry about that anymore.

6 I wanted to tell you, because I don't  
7 know what you know, that in early December of 2015 I  
8 received a call from a man named Jay Chenges, who  
9 happened to work for Slate Construction. He asked  
10 me, as president of my building, to call a meeting  
11 for my residents so that they could talk about the  
12 imminent construction; they didn't even own the  
13 building yet, apparently. I told him that was  
14 impossible; it couldn't happen, there was a deed  
15 restriction -- little did I know.

16 So I just wanna make it clear that they  
17 were absolutely clear early on that this was  
18 happening and it's just a travesty. I wrote to Tommy  
19 Lin as well -- not once; not twice, but three times  
20 -- and I never heard a response, not even the usual,  
21 frankly, you know, oh we're so concerned too and  
22 we're investigating -- nothing. If that's the head  
23 of Constituent Services, then the Mayor has a real  
24 problem [bell]. I also spoke to the Mayor on Brian  
25 Lehrer's show and he promised to tell me how we were  
gonna get Rivington House back -- his staff asked for

2 my number; I have never heard from **[inaudible]**...

3 [crosstalk]

4 CHAIRPERSON GENTILE: 'Kay, wrap up  
5 please.

6 TESSA HUXLEY: That's it.

7 CHAIRPERSON GENTILE: Great. Thank you.

8 AURORA GUZMAN: Good afternoon. My name  
9 is Aurora Guzman...

10 CHAIRPERSON GENTILE: Move the mic down,  
11 so we... Okay.

12 AURORA GUZMAN: Good afternoon. My name  
13 is Aurora Guzman...

14 CHAIRPERSON GENTILE: Is your mic on?

15 [background comments]

16 AURORA GUZMAN: My name is Aurora Guzman;  
17 thank you for letting me speak here today on an  
18 important issue to my community.

19 My family and I have lived on the Lower  
20 East Side for over 30 years -- 20 of those directly  
21 across the street from Rivington House. For the last  
22 15 years, I have also worked down the block at  
23 University Settlement, in their Eviction Prevention  
24 Program. I know my neighborhood and my neighbors,  
25

3 how hard they work to make ends meet and how much  
4 they struggle to keep their homes.

5 My neighborhood needs community space,  
6 affordable housing for its longtime residents and  
7 senior housing so that our community can remain home  
8 as we grow older. There are enough luxury condos,  
9 bars, hotels and boutiques [sic]. Rivington House  
10 was ours; it was a nonprofit community space and it  
11 shouldn't be turned into luxury housing.

12 I'm not opposed to change; change can be  
13 a good thing that could benefit the entire community;  
14 this change does not [sic] and I'm asking that you  
15 make every effort to return Rivington House to my  
16 community. Thank you.

17 CHAIRPERSON GENTILE: Thank you.

18 JOHN WEST: I'm John West; I'm an urban  
19 designer; I am associated with the City Club, the  
20 Municipal Art Society, the American Institute of  
21 Architects, and a member of Manhattan Community Board  
22 6.

23 However, today I speak as a citizen of  
24 the City of New York.

25 Deed restrictions can be of substantial  
value to the community and to the property owner.

3 They are likely to have been imposed to achieve some  
4 important public purpose and they should not be  
5 disposed of lightly. I think that ULURP, as called  
6 for by Manhattan Borough President Gale Brewer and  
7 Council Member Margaret Chin is the proper procedure.

8 Actually, I do not understand why ULURP  
9 is not already the required procedure.

10 I have been taught that a deed  
11 restriction is an interest in real property. If so,  
12 Sections 384-b-5, 197-c(10, and 197-d of the City  
13 Charter seem to say that the removal or modification  
14 of a deed restriction by the City is already subject  
15 to ULURP.

16 Section 384-b-5 reads: "An application  
17 for the sale, lease (other than lease of office  
18 space), exchange or other disposition of real  
19 property of the city shall be subject to review and  
20 approval pursuant to Sections 197-c and 197-d."

21 Ownership of real property is sometimes  
22 likened to a bundle of sticks, each representing a  
23 different interest in the property -- water rights,  
24 air rights, mineral rights. Fee simple suggests  
25 complete ownership of all the sticks. A deed  
restriction withholds one or more of those sticks.

3 In removing the deed restriction, the city disposes  
4 of those sticks of real property.

5 Disposing of those sticks of real  
6 property interest should be subject to careful public  
7 scrutiny and ULURP is a good way to do that.

8 Thank you for the opportunity to testify.

9 [bell]

10 CHAIRPERSON GENTILE: Thank you very  
11 much. Yeah.

12 ALICE BLANK: Good afternoon. My name is  
13 Alice Blank. I am a member of Community Board 1.  
14 Today I am speaking to you as an architect who lives  
15 and works in downtown Manhattan.

16 I give heartfelt thanks to Manhattan  
17 Borough President Gale Brewer and Council Member  
18 Margaret Chin for providing legislation that ensures  
19 accountability and transparency in the review of all  
20 future deed restrictions in the City.

21 As urged by Brewer and Chin in their July  
22 2016 letter to the City Planning Commission, the City  
23 Council must work with the City Planning Commission  
24 to enact legislation that assures that in the future  
25 all proposals to modify or remove deed restrictions  
be subject to the Uniform Land Use Review Procedure.

3 The public must be assured that the example of  
4 Rivington House, in which no meaningful review  
5 occurred, and which the City essentially gave away a  
6 multimillion dollar property with no compensation to  
7 the public, will never be repeated.

8 At a minimum, proposed changes to deed  
9 restrictions on major land use proposals -- such as  
10 the now currently pending, highly controversial  
11 proposal to modify the deed restriction at One Chase  
12 Plaza (now rechristened 28 Liberty) to allow for the  
13 addition of three Apple Cube retail entrances -- must  
14 be governed by ULURP.

15 The public must be assured that the  
16 modification of a deed covering two and a half acres  
17 of the City's most valuable real estate at One Chase  
18 Plaza be give more than a "Land Use Justification  
19 Memo" -- written by James Capalino -- as was provided  
20 by the Department of Citywide Administrative Services  
21 for Rivington House.

22 Our city urgently needs legislation to  
23 bring all changes to deed restrictions within the  
24 coverage of ULURP. The legislation will not solve  
25 all of the challenges we face, but it will add a  
vitaly important layer of protection that would



3 enable the public to have at least some critical  
4 assurance that the new deals struck by developers  
5 with the City will be looked at in a meaningful way  
6 to assure they are indeed in the public's best  
7 interest.

8 I respectfully ask today that the Council  
9 assure the greatest public engagement [bell] and  
10 public scrutiny be provided to the upcoming review of  
11 the proposed modification of One Chase Plaza and that  
12 it is subject to ULURP.

13 Thank you.

14 CHAIRPERSON GENTILE: Thank... We hear you;  
15 we hear all of you, so thank you for waiting and  
16 thank you for coming in today. Thank you all.

17 Alright, our next panel I'll call --  
18 Caokai Xuan... [background comments] not here? Okay.  
19 Kevin Coenen, I think... 4545 Center Boulevard... yes,  
20 okay, good; Kevin Tobar Pesantez... is he here? Okay.  
21 Marsha Rimler... no? Okay. Enrique Cruz. [background  
22 comments] He left. Okay. Marcelo Maia Sodres... no?  
23 Okay. Carlos Chino Garcia... no? Okay. Thomas  
24 Devaney and Annie Wilson. Annie Wilson; no?  
25 [background comments] Oh, there you are. Okay.  
Come on up. [background comments]

2 Is everyone who intended to testify --  
3 have we covered everybody? Okay. Great. Okay.  
4 Folks, again we're going to limit you to two minutes,  
5 only 'cause they're gonna throw us out of here pretty  
6 soon; we have another event to get ready, so we'll  
7 take your testimony and why don't we start with you.

8 KEVIN TOBAR PESANTEZ: Sure. Uhm yeah.  
9 Good afternoon. My name is Kevin Tobar Pesantez. I  
10 am a Senior Housing Advocate at University Settlement  
11 and we're America's first social settlement house and  
12 have been across the street from Rivington House  
13 since 1899.

14 For over 130 years, University Settlement  
15 has joined with our neighbors in the never ending  
16 fight for social and economic justice. The Lower  
17 East side did not become a destination neighborhood  
18 overnight; we built this neighborhood together.  
19 Community activists reclaimed our streets and parks;  
20 renovated and repaired tenement buildings; created  
21 new affordable and supportive housing, and we  
22 continue to invest resources in a robust social  
23 service and education network.

24 Today we stand together with our  
25 neighbors and say that the Mayor's response to the

3 Rivington House scandal is simply not good enough.

4 We demand that Rivington House be returned to the  
5 Lower East Side community with deed restrictions that  
6 protect the uses for the most vulnerable of our  
7 community.

8 What do we think of the City's promised  
9 investment of \$16 million? Simply that it is too  
10 little.

11 It cost New York City taxpayers \$70  
12 million dollars to renovate Rivington House into a  
13 functional and compliant nursing home. Will they be  
14 reimbursed for this loss: Additionally, the deed  
15 restriction fee should have been \$29 million, not \$16  
16 million, based on the price Allure paid for Rivington  
17 House. We'd like to know if the City will make up  
18 for the difference. Even with this amount we would  
19 not regain all that New Yorkers have lost.

20 What do we think then of the City's  
21 efforts to change the deed process? Simply that it  
22 is too late.

23 As Senator Squadron mentioned,  
24 Bialystoker and Cabrini nursing homes were closed and  
25 with the possible loss of Rivington House, our  
community would lose another 150,000 square feet of

3 community-benefit skilled nursing home space. Where  
4 is the City's concrete, detailed plan to replace  
5 Rivington House if it isn't restored to the  
6 neighborhood?

7 The City needs to do much more than make  
8 a few promises and hopes that we go away.

9 The facts are as follows: The Lower East  
10 Side is ranked the third highest gentrifying district  
11 in New York City, but there are still deep, chronic  
12 needs in our neighborhood. The Furman Center ranked  
13 the Lower East Side as one of the neighborhoods with  
14 the highest gap between [bell] lower income and  
15 higher income residents -- almost done -- nearly one  
16 out of three seniors in the Lower East Side lives in  
17 poverty; over 70% of seniors in the neighborhood are  
18 foreign born, and University Settlement knows these  
19 seniors -- we serve over 2,000 people, ages 60 to  
20 106; we work with them, including when it's time for  
21 long-term nursing care. The... [interpose]

22 CHAIRPERSON GENTILE: Wrap up please.

23 KEVIN TOBAR PESANTEZ: Sure. The City  
24 needs to step up and seriously discuss returning  
25 Rivington House to the Lower East side; it's fair,  
it's right and it's necessary. We need and deserve

3 better than promises and excuses, and I thank you for  
4 the opportunity to testify.. [crosstalk]

5 CHAIRPERSON GENTILE: Thank you. Thank  
6 you very much. Yes, go ahead.

7 TOM DEVANEY: Hello. I'm Tom Devaney;  
8 I'm the Director of Planning and Land Use at The  
9 Municipal Art Society of New York.

10 The Municipal Art Society of New York  
11 supports Int. 1182, but with modifications to provide  
12 more oversight and inclusion of the environmental  
13 review process; this will strengthen the proposed  
14 reforms to the process of removing and/or modifying  
15 deed restrictions to City-owned property.

16 As a means to strengthening the bill, MAS  
17 concurs with Manhattan Borough President Gale Brewer  
18 and Council Member Margaret Chin's requests to  
19 subject all deed removals and/or modifications on  
20 City-owned property to ULURP.

21 In addition, MAS proposes that the bill  
22 be further amended to require deed restriction  
23 removals and/or modifications to be subject to the  
24 City Environmental Quality Review to determine if  
25 such actions have the potential to result in adverse  
environmental impacts. Together these modifications

3 would add a much needed level of transparency,  
4 provide a forum for public review and address  
5 environmental concerns.

6 Poor handling and lack of accountability  
7 surrounding the removal of the deed restrictions for  
8 Rivington House brought to light the need for  
9 transparency and public input in what has been up to  
10 now a rather clandestine City process.

11 We are aware that there are 14 properties  
12 citywide with pending applications for deed  
13 modifications or removals and that nearly half are  
14 owned by Limited Liability Corporations, which makes  
15 it difficult to identify entities seeking new changes  
16 in the restrictions.

17 As we have seen with the Rivington House  
18 case, the removals of the use restrictions and deed  
19 restrictions have the potential to result in  
20 environmental impacts. In another example, one that  
21 involves private property, a proposed deed  
22 restriction modification would lift a structural  
23 height limitation to allow construction of three  
24 glass pavilions at the Chase Manhattan Plaza in Lower  
25 Manhattan, which would affect resources and view  
corridors.

2 The time is right for deed restriction  
3 reform; MAS supports Int. 1182 if it is amended to  
4 include ULURP and environmental review.

5 Please note that MAS is also aware of the  
6 proposal from the Mayor's Office and the New York  
7 City Department of Citywide Administrative Services  
8 to amend their rules to the City of New York  
9 regarding policies; procedures for removal [bell] of  
10 deed restrictions; MAS feels that agency rulemaking  
11 does not go far enough to address the concerns  
12 mentioned herein. Thank you for the opportunity to  
13 provide comments on this critically important  
14 proposal.

15 CHAIRPERSON GENTILE: Thanks for coming.

16 Thank you.

17 [background comment]

18 CHAIRPERSON GENTILE: Push the button.

19 KEVIN COENEN: Good afternoon. My name  
20 is Kevin Coenen; I'm a retired lieutenant in the  
21 FDNY. I've been awarded some money from the VSF and  
22 I will be a candidate in the 2017 election to run for  
23 mayor against Mr. de Blasio.

24 This is very simple to me -- it's pay for  
25 play politics -- Capalino put \$10,000 in to campaign,

2 for one; they sent him to the deputy; the deputy  
3 lifted the restriction; Mr. Landau put \$50,000 into  
4 Mr. de Blasio's account to run for mayor in 2017;  
5 they sold the building to him for \$16 million, and  
6 then he sold it for \$116 million, for a \$100 million  
7 profit, and that's the bottom line. You can go and  
8 ask as many questions as you want, you can dig into  
9 e-mails, you can talk to officials, but it's all  
10 about corruption and something needs to change in  
11 this city. \$100 million could've went to educating  
12 children, it could've did a lot of things -- help  
13 homeless people; that property could've been used for  
14 a lot of other things -- and aside from the fact that  
15 it already had a deed restriction on it and it had a  
16 purpose for the community, this corrupt official took  
17 money, sent one of his well-connected lobbyists,  
18 after taking \$10,000, flipped a building and \$50,000  
19 was put into his fund.

20 This is very simple for me to figure out.  
21 So I will be running against Mr. de Blasio; you can  
22 give him notice.

23 And to answer your first question --  
24 Who's running the bus? That would be Mr. de Blasio;  
25 he's in charge; he should know everything that's



2 going on here; he can't just say, oh it was a big  
3 mistake; he needs to have some accountability, some  
4 [bell] someone should be fired for not going over  
5 this.

6 CHAIRPERSON GENTILE: Okay. Thank you..

7 [crosstalk]

8 KEVIN COENEN: That's all I have to say.

9 CHAIRPERSON GENTILE: Thank you very  
10 much. You're up.. [crosstalk]

11 ANNIE WILSON: Hi. I'm Annie Wilson and  
12 I thank you for the opportunity to speak today. The  
13 Int. 1182 can be a very good idea; the City has a  
14 responsibility to protect the public from greedy real  
15 estate developers that work the system to their  
16 advantage whenever possible; oftentimes the  
17 consequences of corrupt activities impact the  
18 overburdened and the most vulnerable.

19 Through my own experience with City  
20 program failures, I have concerns with this proposed  
21 amendment to the New York City Charter.

22 The database will require information,  
23 such as the name and address of the person or entity  
24 of whom the property was disposed and the name and  
25 address of the current holder of the property

3 interest, if different. Does property interest  
4 include beneficial interest? There is a potential  
5 loophole here. At this time the City allows for a  
6 real estate developer to obtain and possibly misuse  
7 the beneficial interest attached to a property within  
8 a program. There also needs to be a limit and/or a  
9 clarification as to what is included as beneficial  
10 interest. The City should not allow for the  
11 relinquishing of all beneficial interests to a  
12 developer participating in a City program.

13 For example, there is currently a problem  
14 situation with the inclusionary zoning program; the  
15 stakeholders in a project include 544 East 13th  
16 Street, HPD, UHAB and BFC Partners. Don Capoccia is  
17 the managing principal for BFC Partners, which  
18 guaranteed the loan to finance the building  
19 renovations. I have recently been informed that a  
20 BFC subsidiary also included in this project has  
21 secretly negotiated an arrangement within a  
22 relocation contract which involves preferential  
23 treatment and apartment designation without due  
24 process. This contract has already produce nefarious  
25 consequences; UHAB, as owner, is now required to  
respect this contract because they were required to

2 release all beneficial interests to BFC. This  
3 example illustrates what is clearly outside of a  
4 reasonable scope of what is a beneficial interest,  
5 when a real estate developer is participating in a  
6 City housing program.

7 I suggest that the database within the  
8 website also include some additional [bell] detail --  
9 Can I just finish up **[inaudible]**? -- for when the  
10 current holder of the property interest is different  
11 than the name and address of the person or entity to  
12 whom the property was disposed.

13 Regarding the timeframe for notice of the  
14 public hearing, not more than 30 days prior to the  
15 removal or modifications of any deed restriction is  
16 not enough; 60 days would be more realistic and would  
17 provide enough time... [interpose]

18 CHAIRPERSON GENTILE: Please wrap up.

19 ANNIE WILSON: okay, I am -- for the  
20 people to mobilize and organize. What are the  
21 enforcement measures or penalties for noncompliance  
22 with this new law? Fines are not effective measures;  
23 the penalties should include sanctions, such as no  
24 leases, no contracts and no business with the City.

25 Thank you.

3 CHAIRPERSON GENTILE: Thank you and thank  
4 all of you, 'cause it's been a long day and you've  
5 been here most of you... been here most... and I think  
6 all of you have been here all day, so thank you so  
7 much. Thank you all and again, as I said, we've  
8 heard you and the Council will take all of this into  
9 account.

10 That concludes the testimony today; I  
11 just want to end up by saying that I think we shed  
12 light on a process that has too often been cloaked in  
13 darkness and leaving the public grasping for answers  
14 that we have searched for today. Moving forward, the  
15 best interest of the City should be the interest of  
16 its people which are at the top of the hierarchy on  
17 the New York City government organizational chart.  
18 So let's never ever forget that. I thank my  
19 colleagues who were here and certainly thank Chairman  
20 Kallos for working together to produce a hearing that  
21 I think had a lot of substance and hopefully answered  
22 some questions.

23 CO-CHAIRPERSON KALLOS: I'd like to thank  
24 all the members of the public who stayed with us  
25 throughout the day, the staff who prepared and I just  
wanna take a moment to thank my Co-Chair for this

3 hearing, Vinnie Gentile; when it comes to fighting  
4 corruption, it seems that the two of us have been  
5 partners, whether it's here or at the Board of  
6 Elections, and he has been a champion and a fighter  
7 every step of the way; this has been a tough and  
8 contentious issue; the Speaker has also been a strong  
9 advocate, and as you can see from everything from  
10 who's testifying, how long they're testifying; what  
11 documents we had access to, the Speaker, my Co-Chair  
12 and I have been fighting for the people every step of  
13 the way. We thank you and we will continue to fight.

14 CHAIRPERSON GENTILE: With that, this  
15 hearing is concluded.

16 [gavel]  
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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date October 12, 2016