

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PARKS AND RECREATION

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September 17, 2018  
Start: 1:37 p.m.  
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HELD AT: 250 Broadway - Committee Rm 14<sup>th</sup> Fl.

B E F O R E: BARRY S. GRODENCHIK  
Chairperson

COUNCIL MEMBERS: Joseph C. Borelli  
Justin L. Brennan  
Andrew Cohen  
Costa G. Constantinides  
Mark Gjonaj  
Andy L. King  
Peter A. Koo  
Francisco P. Moya  
Eric A. Ulrich  
James G. Van Bramer

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

Matt Drury, Director of Government Relations  
NYC Department of Parks and Recreation

Bill Estelle, Executive Director, Division of  
School Facilities, NYC Department of Education

Elizabeth Goldstein, President, Municipal Art  
Society

Lynn Kelly, Director, New Yorkers for Parks

Carter Strickland, New York State Director  
Trust for Public Land

Brett Dakin, Volunteer, Jacob Schiff Playground  
Neighborhood Association, Manhattan, District 7

Marlene Pantin, Executive Director & Founder  
Red Hook Conservancy

Rachel Levy, Executive Director  
Friends of the Upper East Side Historic Districts

Renee Patterson, President, Seton Falls Park  
Coalition

George James, Urban Planner

Mr. Vanderbilt

Alexander Adams, Executive Director  
Civitas Citizens Inc.



2 [sound check] [gavel]

3 CHAIRPERSON GRODENCHIK: Good afternoon  
4 everybody and welcome to this Parks and Recreation  
5 Committee hearing on the state of the city's jointly  
6 operated playgrounds. I am Barry Grodenchik. I have  
7 the honor of chairing the Parks and Recreation  
8 Committee of the New York City Council for this  
9 Council term. I'm joined by the Counsel to the  
10 Committee Kris Sartori. I am looking in no  
11 particular order from left to right although I don't  
12 know if that holds politically. Costa Constantinides  
13 from Queens, Mark Gjonaj from the Bronx, Eric Ulrich  
14 from Queens, Peter Koo from Queens, Keith Powers from  
15 Manhattan, Mark Levine from Manhattan, Ben Kallos  
16 from Manhattan and Andy Cohen from the great borough  
17 of the Bronx where I was born. He's also a committee  
18 member. Most of them are committee members. I want  
19 to thank you all for being here today, and taking up  
20 your valuable time, and caring so much about this  
21 very, very important issue related to our city's  
22 parks. I'm going to read an opening statement and  
23 then we're going to hear from the Administration  
24 first. They will be followed by advocates, Parks  
25 advocates that we all know, and I have asked the

2 Administration to stick around in case after you're  
3 done testifying in case I want to bring you back up  
4 to answer some of the questions that may have been  
5 raised, some of the issues that may have been raised  
6 by some of the people who are going to testify today.  
7 Alright, we're going to begin now. This hearing will  
8 examine the state of the city's jointly operated  
9 playgrounds, how we can expand the use of playgrounds  
10 for more of the city's children and how we can  
11 protect jointly operated playgrounds in the long-term  
12 from being lost or inappropriately converted into  
13 non-recreational spaces. I want all who have come  
14 today to be able to engage in a productive discussion  
15 on this important topic, and I expect that questions  
16 relating to the joint operated playground, the JOP  
17 program playgrounds in general, and how we can  
18 protect them in the future. That's what should be  
19 addressed today. I and my colleagues will be asking  
20 questions that are relevant to this topic, and we  
21 expect responsive answers so that we may fulfill the  
22 Council's role of conducting proper oversight, and it  
23 is the Administration's duty to comply with this  
24 oversight role as they often do. Not always, but  
25 often, but now to the issue at hand. JOPs were first

2 created in the 1930s out of a partnership between the  
3 Parks Department and the Board of Education in order  
4 to expand recreational space to more New Yorkers in  
5 areas of the city where such space was lacking. The  
6 goal was to provide recreational space for school  
7 children who attended schools where the playground  
8 was located during school hours, and then open up the  
9 playground to the rest of the community after school  
10 hours and on weekends. A joint effort to build and  
11 run the playgrounds occurred with the Board of  
12 Education financing the acquisition of the sites  
13 while the Parks Department paid for the maintenance  
14 and the operation of those sites. Today there are  
15 almost 270 JOPs throughout each of the five boroughs  
16 and they are still run as a partnership between the  
17 Department of Parks and Recreation and what is now  
18 known as the DOE, the Department of Education. They  
19 are particularly concentrated in neighborhoods that  
20 are otherwise lacking in available recreation space.  
21 Partnerships to increase open space such as the  
22 school yards, the Playgrounds Initiative, which is an  
23 offshoot of the JOP program have a longstanding  
24 history in our city, and continue to benefit New  
25 Yorkers. The initiative started in 2007 with a \$111

2 million capital investment from then Mayor  
3 Bloomberg's administration. The City in conjunction  
4 with the non-profit organization the Trust for Public  
5 Land targeted certain Department of Education school  
6 yards in order to transform them into more vibrant  
7 parks and make them open and accessible to the  
8 community at large. Playgrounds that are part of  
9 this initiative are chosen based on whether the  
10 neighborhoods in which they are located have a high  
11 population density, a population that is projected to  
12 grow, limited existing play or open space and a lack  
13 of other vacant land that can be developed into a new  
14 park or playground. Once complete, the renovated  
15 playgrounds are turned over to DOE to maintain and  
16 operate. These playgrounds, which had previously  
17 been off limits to their respective communities are  
18 now open and accessible to the public on weekdays and  
19 after school from dusk and on weekends or days when  
20 school is not in session. At least that is the plan.  
21 It doesn't always work out that way, but that's the  
22 idea. Since the initiative started, 251 of these  
23 playgrounds, many of which are JOPs have undergone  
24 renovation, and have been made publicly accessible.  
25 That may-number will increase to 261 after ten more

2 playgrounds were added to the initiative in 2017 with  
3 funding of \$24 million composed of \$18.2 million in  
4 capital funding from the city and \$6 million in  
5 community development block grants. While the need  
6 to expand the available stock of playgrounds and  
7 continually maintain and update them, is universally  
8 believed to be crucial to enhancing the livability of  
9 the city, playgrounds aren't as protected from being  
10 lost as some might think. I know that there are  
11 specific cases that have concerned some of the Parks  
12 advocates who are here with us today, and I share  
13 those concerns, which— which they will outline  
14 shortly. A noteworthy example is the Marx Brothers  
15 Playground in East Harlem, which has been approved as  
16 the site of \$1 billion redevelopment including three  
17 schools, a 760-foot multi-use residential and retail  
18 tower. While the Marx Brothers Playground is now  
19 subject of litigation, the underlying issues that  
20 were brought to light by the proposed development are  
21 of concern to me, the committee and the Council, and  
22 were among the primary reasons for the selection of  
23 today's hearing topic. Without discussing specific  
24 locations, I will say by way of introduction that the  
25 view that a playground is not parkland is a view that



2 I do not share. The idea that a transfer of a  
3 playground to inappropriate uses may have been absent  
4 state and city legislation, raises flags—red flags  
5 and at the same time I understand that if all  
6 playgrounds are deemed to be parkland they may then  
7 be protected just as any—just as much as any other  
8 piece of officially mapped parkland would. Such a  
9 policy could have longstanding implications for  
10 future projects. As a project that's sought to  
11 remove a playground would have to go through the  
12 multiple levels of the alienation process thereby  
13 increasing the level of public review. Such a change  
14 would have the potential to add a layer of protection  
15 to much needed open space especially as more and more  
16 interests in the city continue to jostle—jostle for  
17 our limited land resources and how they should be  
18 used. I thank the Administration and the advocates  
19 and the public that are all here today to participate  
20 in today's hearing. I look forward to examining how  
21 we can develop policies to expand and protect access  
22 to playgrounds and open space by all New Yorkers and  
23 children in particular and I thank you all. That is  
24 my opening statement. The first two people that are  
25 going to testify representing the city's mayoral de

2 Blasio Administration are Matt Drury from the New  
3 York City Department of Parks and Recreation, and  
4 Bill Estelle who is with the Department of Education  
5 School Facilities. I would now ask that our counsel  
6 swear them in.

7 LEGAL COUNSEL: Do you affirm to tell the  
8 truth, the whole truth, and nothing but the truth in  
9 your testimony before this committee today?

10 MATT DRURY: I do.

11 BILL ESTELLE: I do.

12 CHAIRPERSON GRODENCHIK: Thank you very  
13 much. I have lots and lots of people who have signed  
14 in to testify today. We will get to all of you. I  
15 promise you that. I don't have anything too exciting  
16 planned for the rest of the day so, but people in  
17 North Shore Towers, I'm only kidding, but if anybody  
18 has not signed up, and would like to testify, please  
19 see the sergeant-at-arms. So, Mr. Drury, you're  
20 going first?

21 MATT DRURY: I am.

22 CHAIRPERSON GRODENCHIK: Thank you very  
23 much. Your testimony, please.

24 MATT DRURY: Thank you. Good afternoon--

25 CHAIRPERSON GRODENCHIK: Good afternoon

2 MATT DRURY: --Chair Grodenchik and  
3 members of the Park and Recreation Committee and  
4 other Council Members. My name is Matt Drury. I'm  
5 the Director of Government Relations for the New York  
6 City Department of Parks and Recreation. Thanks for  
7 inviting us to testify today regarding the city's  
8 jointly operate playgrounds also know as JOPs and the  
9 School Yards to Playgrounds Program, as my colleagues  
10 from the Department of Education will outline in  
11 greater detail in just a minute. Both Jointly  
12 Operated Playgrounds and School Yards to Playgrounds  
13 Program are proof of the city's longstanding  
14 commitment to providing vitally important  
15 recreational open space for more New Yorkers  
16 regardless of who is chiefly responsible for day-to-  
17 day maintenance be it NYC Parks in the case of JOPs  
18 or DOE in regards to School Yards to Playground  
19 sites. We have jointly crafted a robust interagency  
20 partnership over the past eight decades that has  
21 taken these spaces primarily used by schools during  
22 the day, and opened them up to broader public access  
23 outside of school hours. This is certainly one of  
24 the NYC Parks' more notable interagency partnerships,  
25 but it's far from the only example. As you might be

2 aware, NYC Parks manages numerous parcels that are in  
3 the jurisdiction of other city agencies or within the  
4 joint jurisdiction of NYC Parks and another city  
5 agency. The entities that have such a jurisdiction  
6 of these properties retain decision making authority  
7 over their use even though the day-to-day management  
8 of the properties resides with NYC Parks. Probably  
9 the best and most familiar example of this is our  
10 Green Streets Program, which allows hundreds of  
11 public, median or triangles that are technically  
12 under DOT's jurisdiction and control they can be  
13 improved with park like features and then managed and  
14 maintained by NYC Parks subject to DOT's present and  
15 future needs. Though JOPs are under DOE's  
16 jurisdiction and control, NYC Parks is dedicated to  
17 providing a very high level of care and attention  
18 from our hard working Maintenance and Operations  
19 staff resulting in a very extremely positive  
20 experience for visitors. We've been equally proud of  
21 our partnership in DOE and helping identify potential  
22 sites and funding for the School Yards to Playgrounds  
23 Program since its launch in 2007. So, in all I'm  
24 pleased to be here today to offer more background on  
25 our longstanding agency partnership, and I am now

2 happy to introduce my colleague from the Department  
3 of Education, William Estelle.

4 BILL ESTELLE: Thank you. Good afternoon  
5 Chair Grodenchik and other Council Members and  
6 members of the Parks and Recreation Committee. I am  
7 Bill Estelle, Executive Director within the Division  
8 of School Facilities that the New York City  
9 Department of Education. Thank you for inviting me  
10 today to testify regarding the city's Jointly  
11 Operated Playgrounds and School Yards to Playgrounds  
12 program. The health and wellbeing of our students,  
13 their families and the greater community is a  
14 priority for this Administration and the New York  
15 City Department of Education. As the largest school  
16 system in the nation serving over 1.1 million  
17 students, we know that our 1,800 schools are hubs for  
18 the community to be active, play and stay well. The  
19 DOE works in partnership with the New York City Parks  
20 whose primary mission is to offer resilient and  
21 sustainable parks, public spaces and recreation  
22 amenities for New Yorkers. This serves as a steward  
23 of over 30,000 acres and oversees nearly 4,500  
24 individual properties ranging from parks and  
25 playgrounds to community gardens and green spaces. We

are here today to discuss various ways in which our agencies work together to maximize the use of city existing resources specifically the manner in which property adjacent to DOE schools, which primarily serve as educational purpose can be made available to the general public to provide additional recreational space for New York City residents. This objective has been achieved primarily in two fashions. One is the creation and designation of jointly operated playgrounds also known as JOPs where DOE has primary jurisdiction and New York City Parks plays an active role in the day-to-day maintenance and operation of the property. The other and more recent inception is the School Yards to Playground Program, which involves sites that the DOE has both primary jurisdiction and retains responsibility for the maintenance and operation. In both cases, the general public can utilize these spaces outside of school hours increasing access to much needed open space in neighborhoods all over the city. JOPs and School Yards to Playgrounds sites are a vital component of the city's commitment to ensure equity and access to open spaces as many New Yorkers are underserved by open space resources, and use these

2 properties to help meet those needs. The Jointly  
3 Operated Playground program was created to provide  
4 recreational opportunities for public students—public  
5 school students during school hours while allowing  
6 access to the public after school hours.

7 Construction of the city's first jointly operated  
8 playground was completed in 1941 and hundreds more  
9 were established over the ensuing decades. The  
10 program was largely inspired by the city's desire to  
11 avoid duplication of services to minimize the  
12 acquisition costs related to school sites being  
13 acquired by the DOE at the time. Under the JOP  
14 Program over 260 playgrounds adjacent to schools  
15 under the jurisdiction of the DOE are jointly  
16 operated by the DOE and the New York City Parks.

17 Broadly speaking, portions of the JOPs are primarily  
18 used by the adjacent school during the day and  
19 available for use by the surrounding community during  
20 non-school hours. Though the detail of management  
21 range between New York City Parks and DOE may differ  
22 according to the needs of the individual school and  
23 the local community. These facilities may have  
24 athletic fields for the large areas for teen sports  
25 to occur, asphalt areas and playground space for

2 basketball, shuffle ball, volley ball, et cetera.  
3 Areas with playground equipment like slides and  
4 climbing apparatus and benches near where  
5 recreational activities take place. The primary day-  
6 to-day responsibility for the management of JOP  
7 including the maintenance generally falls to the New  
8 York City Parks. Most JOPs are marked by the New  
9 York City Parks brand signage to notify visitors that  
10 the New York City Park rules are in effect at these  
11 sites. Though specifically—though specific  
12 implementation varies at each location, general care  
13 of the property is provided by the New York City  
14 Parks Maintenance staff either by mobile crews or by  
15 fixed post-staff who report directly to the site, and  
16 are cleaned five to seven times per week. In addition  
17 to the daily operations New York City Parks generally  
18 oversees the facilitation of major capital  
19 improvements for these properties as well in close  
20 coordination with the Department of Education. Since  
21 the beginning of the de Blasio Administration in  
22 partnership with the elected officials and private  
23 donors, the city has completed 76 capital projects on  
24 JOP sites with another 102 improvement projects  
25 underway representing over \$225 million in



2 investments to keep these properties in a good state  
3 of repair. Twenty-seven of these sites are part of  
4 the New York City Parks Signature Equity efforts, the  
5 Community Parks Initiative, CPI, which is providing  
6 community guided redesigns and complete  
7 reconstructions at sites in underserved communities.  
8 In July 2007, as part of the city's Play NYC, the DOE  
9 introduced its School Yards to Playgrounds program,  
10 with the goal of converting DOE school yard adjacent  
11 to elementary and middle schools in community  
12 playgrounds for the use of the general public outside  
13 of school hours in neighborhoods in need of open  
14 space. While many of the initial sites were simply  
15 designated and open to the public accordingly. Other  
16 sites receive capital funding to provide necessary  
17 upgrades such as new play equipment, greenery,  
18 asphalt and sports fields. This administration has  
19 continued the DOE and the New York City Parks  
20 Interagency Partnership by together identifying  
21 additional school yards to be designated as school  
22 yard to playgrounds and investing over \$12 million to  
23 date in capital funding. In total, this  
24 administration has announced the opening 21 school  
25 yards of which 14 are open and operational and seven

2 others are currently in design and construction. New  
3 York City Parks and the School Construction Authority  
4 continue to work together on school reconstruction  
5 projects and are working to define additional school  
6 yards to join the program. These capital  
7 improvements have been delivered with the support  
8 from several partners including the School  
9 Construction Authority, New York City Parks, the  
10 Department of Environmental Protection, and the Trust  
11 for Public Land. Since the inception of School Yards  
12 to Playgrounds and open up more broadly to the  
13 public, which helps fulfill the city's goal of  
14 bringing 85% of New Yorkers within walking distance  
15 of an open space by 2030. In a manner distinct from  
16 the shared agency operation of jointly operated  
17 playgrounds, the day-to-day management and care of  
18 School Yards to Playgrounds sites resides fully under  
19 the auspices of DOE, but offer a very similar visit  
20 experience as the JOP. Active play areas, courts,  
21 fields and seating areas for New Yorkers to enjoy.  
22 The combined open space benefit of JOPs in School  
23 Yards to Playgrounds sites for the general public is  
24 truly remarkable. Close to 850,000 New Yorkers would  
25 not live within walking distance of any open space

2 amenity without access to one of these JOPs and  
3 School Yards to Playgrounds sites. The DOE and New  
4 York City Parks are committed to continuing our  
5 partnership to make sure these spaces are kept in  
6 good condition and available for New Yorkers  
7 everywhere to enjoy open space and recreational  
8 opportunities. Thank you for allowing us to testify  
9 fore you today, and for the Council's partnership and  
10 support of both DOE and New York City Parks as we  
11 work together to educate our city's children and  
12 provide fantastic open spaces for New Yorkers. We  
13 would now be happy to answer any questions that you  
14 may have.

15 CHAIRPERSON GRODENCHIK: I hope so.  
16 Thank you very much. Thank you both for your  
17 testimony. I greatly appreciate it. You know I  
18 looked at some of the JOPs in-in my community and  
19 elsewhere in my capacity as both a Councilman and as  
20 the Chair of this committee, and that make believe I  
21 know it's not really a make believe. It's like a  
22 combination of London Plane Tree and the Sugar  
23 Maples, but that tells me more than anything that a  
24 piece of land in the city of New York is a New York  
25 City Park, and what I'm hearing today and what, you

2 know, what I know from working with the committee  
3 staff is they're not really but this has been going  
4 on for a very, very long time and, you know, people  
5 move especially people with young children they move  
6 to communities with good schools, with good parks if  
7 they can. They try to improve that. I know my—all  
8 my colleagues feel the same way. We love to invest  
9 money in our parks. So, the question to me is, and  
10 it really boils down when I see that tree leaf, it  
11 seems to me that these are really parks in everything  
12 except name only, and I think it's fair for most  
13 people because most people, you know, don't have the  
14 time to do the research that they would expect that  
15 any JOP with a—with the Parks insignia on it, the  
16 Parks labeling would be a park, and can you kind of  
17 expand on that. I'm going to ask Mr. Drury to answer  
18 that question.

19 MATT DRURY: Yeah, absolutely. So, the  
20 primary function of—of NYC Parks' signage, which is  
21 absolutely in place at—at many JOPs is to denote  
22 that, you know, the property outside of school hours  
23 is broadly open and available to the public. It's to  
24 signify sort of that it is for all rights and  
25 purposes open recreational space that's available to

2 the public outside of school hours, and from a more  
3 technical sense to note that agency rules, NYC Parks  
4 rules will be generally speaking in effect at those  
5 properties.

6 CHAIRPERSON GRODENCHIK: Are there any  
7 JOPs that are open to the public outside of school  
8 hours?

9 MATT DRURY: There are--sorry. Yes, I  
10 mean--

11 CHAIRPERSON GRODENCHIK: [interposing]  
12 So, I mean while school is in session--

13 MATT DRURY: [interposing] During school  
14 hours. Yes, there are--there are portions of some  
15 JOPs that have, you know, sort of maybe toddler--  
16 toddler play sets or things like that that are indeed  
17 open to the general public during school hours.

18 CHAIRPERSON GRODENCHIK: So, there--there--  
19 those really essentially function as a park. That's  
20 what I'm getting at.

21 MATT DRURY: Sure as, you know, I mean  
22 knowing that his space is open and available, you  
23 know, to the public was the intention of the creation  
24 of the program back in the 1930s and 40s. You know,  
25 and the notion that though the properties were

2 acquired for school use and that it's primary, you  
3 know that is and continues to be its primary  
4 underlying purpose. The notion of trying to make  
5 sure that these--these properties, these acquisitions  
6 could have greater value for the public, the broader  
7 public has absolutely always been the intention.

8 CHAIRPERSON GRODENCHIK: I know you  
9 haven't been at Parks for 80 years, but can you tell  
10 me if any of the JOPs in your--to your knowledge to  
11 the best of your knowledge and Mr. Estelle, to your  
12 knowledge, have any of them ever been transferred and  
13 made into New York City parks?

14 BILL ESTELLE: I'm no aware of any. I  
15 believe the, you know, the underlying district--  
16 jurisdiction for--for those acquisitions and  
17 designations have remained as such. That's my  
18 understanding.

19 CHAIRPERSON GRODENCHIK: Does Parks--does  
20 Parks have an official opinion on whether or not some  
21 of them might be suitable to become Parks property as  
22 opposed to Department of Education property?

23 BILL ESTELLE: I mean we think they are  
24 excellent spaces that are available to the public  
25 and--and enjoyed by a great many and we relish and

2 enjoy our role in keeping them, you know, in as-in  
3 the best condition possible in this partnership, but  
4 ultimately, you know, the fact that it is under DOE's  
5 jurisdiction and control is something we're well  
6 aware of and comfortable with.

7 CHAIRPERSON GRODENCHIK: Okay. Because  
8 they, you know, if it looks like a duck and it walks  
9 like a duck and it quacks like a duck and the water  
10 runs off its back like duck, it's usually a duck.

11 BILL ESTELLE: Sure but that's, you know,  
12 and ultimately that's sort of the goal that these  
13 spaces would be seamless, you know, to-to a user  
14 like, you know, folks should, you know, understand  
15 that, you know, it doesn't-ultimately if they just  
16 want to go and, you know, to groups of sit in-

17 CHAIRPERSON GRODENCHIK: [interposing]  
18 Whatever, whatever it might--

19 MATT DRURY: [interposing] [interposing]  
20 Whatever it is.

21 CHAIRPERSON GRODENCHIK: --whatever it  
22 might have.

23 MATT DRURY: So my experience is sort of  
24 immaterial to-to-to the visitor.

2 CHAIRPERSON GRODENCHIK: Okay. Mr.  
3 Estelle are you aware of any property that has been  
4 transferred from DOE to Parks and--and your--and how  
5 long you've been at DOE with the--?

6 BILL ESTELLE: I hate to--I was afraid you  
7 were going to ask that.

8 CHAIRPERSON GRODENCHIK: I don't--you--  
9 you're under oath. Remember that so-- [laughter]

10 BILL ESTELLE: I've been with the  
11 Department of Education in many, many capacities for  
12 over 44 years.

13 CHAIRPERSON GRODENCHIK: God bless you.

14 MATT DRURY: Yeah.

15 CHAIRPERSON GRODENCHIK: Thank you for  
16 your service to the city and the children. You have--  
17 I assume this goes back for decades. You have  
18 agreements, contracts, memorandum of understanding  
19 between the two agencies, but is there one generally?  
20 Is there one for each of the 260 some odd?

21 MATT DRURY: To our understanding there's  
22 actually not one umbrella MOU the way there is for  
23 Green Streets or some other arrangements. So, it's--  
24 there's, you know, sort of broad understandings that  
25 were developed through, you know, through policy



2 during lots (sic) of the program and then there are  
3 also, you know, site-by-site different needs,  
4 different configurations. So, there's actually a  
5 really close partnership between both agencies  
6 especially at the--the local level, the school's  
7 principal what have you to sort of, you know, Tweet,  
8 you know, the maintenance approach or sort of--

9 CHAIRPERSON GRODENCHIK: Would that be  
10 between the principal and say Commissioner Marr or  
11 between somebody operating under one of the local  
12 Commissioners? How would that work?

13 MATT DRURY: Again, it depends each--I  
14 think it just depends on circumstances and the issues  
15 that are--that--that arise, but generally speaking it's  
16 a conversation between the local school and--and the  
17 borough, that's correct.

18 CHAIRPERSON GRODENCHIK: And can you tell  
19 me now of the 260 some odd JOPs how many DPR managers  
20 are maintained? Is it all of them? Are there any  
21 that--

22 MATT DRURY: [interposing] Those  
23 properties are managed sort of as part and parcel of  
24 our--our broader maintenance approach. So, they--they  
25 experience the same sort of cleaning treatment from

2 either a mobile crew or in some cases you know, fixed  
3 of split post crew. So, it's sort of from our  
4 maintenance perspective--

5 CHAIRPERSON GRODENCHIK: [interposing]  
6 From your perspective they're treated as any other  
7 park would be treated? Is that fair to say?

8 MATT DRURY: That is very simple. (sic)

9 CHAIRPERSON GRODENCHIK: Okay, and do you  
10 have the numbers broken down by each borough. I, um,  
11 and can you just quickly go through--

12 MATT DRURY: [interposing] Yeas, I will.

13 CHAIRPERSON GRODENCHIK: --how many there  
14 in each borough and--

15 MATT DRURY: Roughly.

16 CHAIRPERSON GRODENCHIK: Roughly. I  
17 won't hold you to it too much.

18 MATT DRURY: Roughly 44 and this is--again  
19 this is specific to JOPs.

20 CHAIRPERSON GRODENCHIK: Right.

21 MATT DRURY: Where they operate in  
22 playgrounds and not in school yards. They Playground  
23 program. Um, about roughly 263 give or take. Forty-  
24 four in the Bronx, in Brooklyn, 35 in Manhattan, 82  
25 in Queens, 16 in Staten Island.

2 CHAIRPERSON GRODENCHIK: We have a lot in  
3 our district. Permitting for these sites, I know  
4 that's important and I—I just wondered is that done  
5 by your agency or is it done by DOE or--

6 MATT DRURY: Special event permitting is  
7 handled by the borough permit office for these  
8 spaces.

9 CHAIRPERSON GRODENCHIK: So, that the-to  
10 be specific, the Parks are open--

11 MATT DRURY: [interposing] Yes, I'm  
12 sorry. That's the NYC Parks Borough Office.

13 CHAIRPERSON GRODENCHIK: And when it's  
14 time to inspect a park I know you—you inspect them,  
15 and commissioners inspect them and other people  
16 inspect them. Is that done by—by our agency alone,  
17 Mr. Drury or is it also done in conjunction with the  
18 principal or how does that work?

19 MATT DRURY: You know, it may be the case  
20 that principals are kept apprised of, you know,  
21 inspections results, which are public information or,  
22 you know, as part of the conversation, but generally  
23 speaking, those—those inspections are conducted by—by  
24 the agency, by Parks agency staff.

2 CHAIRPERSON GRODENCHIK: And just to go  
3 back a little to the--the--how they're operated. Would  
4 you say in your--your understanding of how things  
5 work, that there are frequent contacts between Parks  
6 and DOE or is Parks kind of allowed to pretty much do  
7 what they want within the understanding that this is  
8 also DOE property?

9 MATT DRURY: On a day-to-day sense I'd  
10 say there's--there's, you know, it's probably not a  
11 great degree of top level manage, you know,  
12 managerial, you know, administrative side contact,  
13 but, you know, but I think there's a great degree of  
14 contract, you know, sort of on the--on the ground  
15 between local staff on--at both the school and in our  
16 borough offices.

17 CHAIRPERSON GRODENCHIK: And this is just  
18 to pick up on I guess just some of the rules. The--  
19 the--obviously Parks has its own rules and DOE has its  
20 own rules for--for--for both Park--for the property that  
21 you maintain, and I know that Commissioner Silver's  
22 testimony previous we're over 30,000 acres, which is  
23 great. Do your rules apply at JOPs or do DOE's rules  
24 apply and either of you gentlemen can answer that  
25 question.

2 MATT DRURY: I know that Parks agency  
3 rules are in effect at Jointly Operated Playgrounds.  
4 It may—I think we'd have to check to see if my maybe  
5 there are sort of underpinning that if they were  
6 broader DOE rules sort of at large that would also  
7 apply, but turning the school yards to playgrounds  
8 that would be under the rule structure entirely of  
9 DOE.

10 CHAIRPERSON GRODENCHIK: Is that your  
11 experience, Mr. Estelle?

12 BILL ESTELLE: Are you referring to JOPs  
13 or a School Yards to Playgrounds?

14 CHAIRPERSON GRODENCHIK: Both.

15 BILL ESTELLE: So, with our--

16 CHAIRPERSON GRODENCHIK: [interposing]  
17 JOPs is really the subject here, but, you know.

18 BILL ESTELLE: So, JOPs and my colleague  
19 was just saying they basically do all the operation  
20 and maintenance, but I do want to add to it the  
21 custodians are on site, and many of these JOPs the  
22 Administration, School Administration use it for  
23 lineup and also recess. So, we ensure that remote  
24 (sic) hasn't felt this such as broken glass, any  
25 damaged fence. So, the custodian does monitor that,

2 and in many cases assists the department--the Parks  
3 Department in maintaining it. It's a collaborative  
4 agreement and working relationship that we have with  
5 Parks on that, but we do inspect them on a daily  
6 basis.

7 CHAIRPERSON GRODENCHIK: And do PEP  
8 Officers ever patrol the JOPs, Parks Enforcement  
9 Patrol.

10 BILL ESTELLE: They do. Yeah, in short  
11 they--they are part of mobile patrols or if there's  
12 response for a 311 or other type call, they're--  
13 they're--it's certainly part of their sort of bailey  
14 wick.

15 CHAIRPERSON GRODENCHIK: With--with most  
16 of my schools--I have one school safety officer, which  
17 is generally fine.

18 BILL ESTELLE: Uh-hm.

19 CHAIRPERSON GRODENCHIK: Go ahead, do you  
20 want to say something?

21 MATT DRURY: Yeah. No, it's an important  
22 clarification. PEP Officers are certainly available  
23 during school hours to assist as needed. That's  
24 generally speaking more of a sort on-call situation.  
25 You know, someone not--if--if the portion of the

2 property is not open to the general public and yet  
3 somebody is trying to get in and that sort of thing,  
4 we're certainly on call. During school hours, yeah,  
5 those issues are generally—normally sort of handled  
6 by—by school safety and other patrols. That's a good  
7 clarification.

8 CHAIRPERSON GRODENCHIK: Okay. Alright  
9 and does Department of Recreation, Parks and  
10 Recreation or DOE keep any statistics on criminal  
11 activity or do you leave that to the Police  
12 Department? Who—who would know that information.  
13 These are JOPs.

14 MATT DRURY: Yeah for sort of criminal  
15 activity, criminal summons, PD would be the best  
16 source. I'd have, you know, I—I presume we could get  
17 access to that—those types of numbers.

18 CHAIRPERSON GRODENCHIK: Okay, and  
19 regarding the School Yards to Playgrounds Initiative,  
20 are there any current plans to add more playgrounds  
21 to be covered under this initiative? I know you did  
22 mention some in your testimony, but I just wondered  
23 going forward are we planning on adding to what has  
24 been a successful program?

2 BILL ESTELLE: Yeah, I can answer that.

3 So, currently we have about 252. I believe we added  
4 14 under this administration. I believe there is  
5 about 7 or 8 that are currently under construction to  
6 be opened up in the next couple of years, and I think  
7 the Department of Education and—and also New York  
8 City is looking to expand that program. It has been  
9 an extremely successful program.

10 CHAIRPERSON GRODENCHIK: The ones that  
11 are under construction now is that Parks, is it SCA  
12 and I know the Trust for Public Land has also worked  
13 on—on some—at least working on one of mine school  
14 years right now.

15 BILL ESTELLE: That's—that's correct. I  
16 think there are—of the several—it's—Parks are  
17 handling overseeing capital projects in one or two  
18 instances. SCA is handling an additional three or  
19 four, and then I believe Trust for Public Land has  
20 helped and provided funding, but I think those  
21 projects will be overseen by SCA.

22 CHAIRPERSON GRODENCHIK: Okay. I've got  
23 some more questions for you, but I have patient  
24 colleagues that I don't want to keep waiting forever,  
25 and right now we have questions from two of my



2 colleagues, and if any of you would like—others would  
3 like to ask questions, you're certainly welcome. The  
4 first one will be Ben Kallos from Manhattan.

5 COUNCIL MEMBER KALLOS: Okay.

6 CHAIRPERSON GRODENCHIK: Councilman.

7 COUNCIL MEMBER KALLOS: Thank you Chair  
8 Grodenchik for your oversight of this issue, which is  
9 near and dear to my district. For folks who are just  
10 catching up on this, what is the big difference  
11 between a playground and a park specifically in  
12 regards to alienation or—sorry. In English it would  
13 be to selling it or giving it to somebody to put a  
14 building or some other use. What—what is the big  
15 difference between a playground and a park for that  
16 purpose? Does one have different protections than  
17 the other?

18 MATT DRURY: I mean I think—So, there's a  
19 couple different ways to sort of parse this question.  
20 You know, as a legal concept, you know, dedicated  
21 parkland is a very, you know, sort of unique and it  
22 has a very unique and specific definition. So, using  
23 terms frankly like park or playground you know, can—  
24 can get a little confusing. So, I—I guess I'm—I  
25 don't know with that in mind do you want to--?

2 COUNCIL MEMBER KALLOS: Is the process  
3 for this city giving land to a developer or another  
4 third party different for a piece of land that is  
5 classified as a park versus classified as playground?

6 MATT DRURY: Yeah, I get that. There is  
7 process in place where if a property is dedicated  
8 parkland, like legally, you know, as legally defined,  
9 then that has to be alienated by-by-via state  
10 opposition for the alienation. I think that's your  
11 question.

12 COUNCIL MEMBER KALLOS: But a playground  
13 does not need state authorization?

14 MATT DRURY: A plate, yeah, they are  
15 conflicting (sic) terms here. A playground can be  
16 dedicated parkland or it cannot.

17 COUNCIL MEMBER KALLOS: A playground that  
18 is not a dedicated park?

19 MATT DRURY: Correct. Then, if it's not  
20 dedicated parkland, it would not need to be formally  
21 alienated and-and by state authorization.

22 COUNCIL MEMBER KALLOS: Do you know, and-  
23 and so Marx Brothers Playground was not in your  
24 opinion designated parkland?

2 MATT DRURY: Yeah. So, as I think folks  
3 are aware and as has been discussed like we're not  
4 here to discuss like--

5 COUNCIL MEMBER KALLOS: [interposing]  
6 Okay.

7 MATT DRURY: --it's under active  
8 litigation. So, we're not going to discuss the  
9 specifics of it. .

10 COUNCIL MEMBER KALLOS: [interposing] So,  
11 so you can't comment whether or not there or why  
12 there wasn't a state action on something that the  
13 city did not believe may have been a parkland--

14 MATT DRURY: [interposing] Yeah.

15 COUNCIL MEMBER KALLOS: --so you can't  
16 comment on that.

17 MATT DRURY: Well, we're absolutely happy  
18 to share the papers. You know, the municipal  
19 respondent's memorandum of law, which was joined by  
20 the City Council. We're happy to share that for you.

21 COUNCIL MEMBER KALLOS: Perfect. So,  
22 then the--the next piece is where, you mentioned the  
23 numbers of locations, but currently for the jointly  
24 operated playgrounds, is there currently a map or an

2 open data set or are they just listed with everything  
3 else as a park? So, for instance--

4 MATT DRURY: [interposing] It is a  
5 distinction that's made. Oh, I'm sorry. Go ahead.

6 COUNCIL MEMBER KALLOS: No.

7 MATT DRURY: It is a distinction that's  
8 made internally for--certainly for our maintenance  
9 efforts. We have a--sort of a property class jointly  
10 operated playground and that's tracked, and I believe  
11 that would be available on the open data set. I  
12 presume.

13 COUNCIL MEMBER KALLOS: If you can send  
14 that over--

15 MATT DRURY: Sure.

16 COUNCIL MEMBER KALLOS: --or make sure it  
17 gets put up there. I guess the--the next piece is are  
18 there any additional jointly operated playgrounds  
19 that are currently being considered or in negotiation  
20 or--or that Parks or the City Hall has been approached  
21 about for being converted for a use as other than a  
22 park?

23 MATT DRURY: So, with the easement. (sic)

24 BILL ESTELLE: Pardon me. There are some  
25 properties that are being considered property under

2 the schools—the DOE's jurisdiction and control.

3 There are some JOPs that are under consideration for  
4 school expansion, things of that type or the  
5 footprint might, you know, cut into the sort JOPs  
6 footprint. There are several. I think there are  
7 three or four of those sort of under consideration  
8 right now for, you know, for non-school use. I'm not  
9 aware of any proposals.

10 COUNCIL MEMBER KALLOS: DOE, if you can  
11 share which schools and can you also answer the  
12 question of whether or not any current JOPs that DOE  
13 also has jurisdiction over are currently being  
14 considered for non-education uses, and that—that—that  
15 would be anything including housing that might  
16 benefit an educational institution.

17 BILL ESTELLE: Me personally, I am  
18 unaware of anything. I am aware of as my colleague  
19 mentioned that there are four sites that are  
20 currently being reviewed that will be school use.

21 COUNCIL MEMBER KALLOS: We had a—a  
22 situation in the Council where a nursing home was  
23 converted into luxury condos. We created a process  
24 around that. What is the process moving forward  
25 should there ever be another jointly operated

2 playground or other space operated by the Parks  
3 Department that does not have the full protections of  
4 parkland requiring a state action?

5 MATT DRURY: It's property that was  
6 acquired for school/playground use, which is sort of  
7 the class we're discussing here. If there is a  
8 proposed use that is not within those bounds, you  
9 would have to go through the—it would go through a  
10 Land Use item and—and be approved through that  
11 normal—through that normal ULURP process.

12 COUNCIL MEMBER KALLOS: And—and just—  
13 okay, so if we have a jointly operated playground,  
14 how much of that playground can be licensed or  
15 franchised to somebody? So—so currently, if somebody  
16 wants to play kick ball, they can do a kick ball  
17 league. There's an entire company. One of them in  
18 particular is like Zogsports, and I know because I  
19 see the shirts, so people can use those spaces  
20 privately, kick the kids off, which happens at Samuel  
21 Seabury Playground in my district, which the kids are  
22 very unhappy about. So, what are the jointly  
23 operated playgrounds available to private companies  
24 in any way, shape or form?

2 MATT DRURY: I think what you're  
3 discussing are—those are athletic permits that are  
4 issued to a variety of leagues. You know, some I  
5 guess you're referring to as private. Others are,  
6 you know, I guess community based. Is that the  
7 distinction being made here?

8 COUNCIL MEMBER KALLOS: [interposing]  
9 Yeah.

10 MATT DRURY: But, yeah, those—so that's  
11 all done within the athletic permit process through  
12 our offices.

13 COUNCIL MEMBER KALLOS: And that's for an  
14 hour at a time and I will do one last question.

15 MATT DRURY: Generally, they're about,  
16 yeah, about an hour. It depends on the sport. It  
17 depends on the use. You know, but one to two hours I  
18 suppose.

19 COUNCIL MEMBER KALLOS: And—and so I  
20 guess what would be the distinction between—so I have  
21 a playground in my district, too. It's called the  
22 Queens Borough Oval. It was so designated by the  
23 Board of Estimate, and so what—that—that has actually  
24 alienated now year-round through a franchise. I  
25 guess how is that piece different and how do we—how

2 do you distinguish between giving a piece land over  
3 permanently versus or a 99-year lease versus on a 40-  
4 year lease?

5 MATT DRURY: Well, similar to JOPs,  
6 Queens Borough Oval is not dedicated parkland either  
7 so it can't be alienated in—in the legal sense.  
8 However, Parks can engage in concessions, you know,  
9 where—to activate space in partnership in this case  
10 to the Queens Borough Oval with DOT, which has the  
11 underlying jurisdiction control.

12 COUNCIL MEMBER KALLOS: And are there any  
13 other for JOPs places where there's a concession that  
14 exceeds several hours to months or—or years?

15 MATT DRURY: I'm—I'm not aware of any  
16 concessions on JOPs at all.

17 COUNCIL MEMBER KALLOS: And—and I would  
18 just like to echo the—the comment of our Parks Chair  
19 here. I won't use the—the—the duck analogy. I will  
20 use the dead parrot analogy from Monty Python, which  
21 is it's—it's a dead parrot and—and I guess you—you  
22 may see something different, but a park is a park,  
23 and we—we can argue all we want and—and I think just  
24 to be clear with the investments that Park is making—  
25 Parks Department is making, in order for them to be



2 capitally eligible should there not be a requirement  
3 that at least these parks can't be alienated for five  
4 years?

5 MATT DRURY: We can use the word  
6 alienated, and it has a specific legal term. So, I  
7 mean you may want to clarify your question.

8 COUNCIL MEMBER KALLOS: If the city is  
9 investing and this is my-my final question.

10 CHAIRPERSON GRODENCHIK: [off mic] Final,  
11 final.

12 COUNCIL MEMBER KALLOS: Final, final.  
13 If the city is investing capital dollars, which is  
14 money from our budget from the taxpayer dollars into  
15 a park, capital money has a restriction that it has  
16 to be there for five years. Would the Parks  
17 Department admit that any of these G-O... J-O-Ps or  
18 playgrounds that may not be operated with DOE. It  
19 might be operated DOT in my district should not be  
20 eligible for lease licensure or otherwise sale or use  
21 by somebody for non-public purposes that are agreed.  
22 (sic)

23 MATT DRURY: The Mayor's Office of  
24 Management and Budget defines capital eligibility as  
25 being dedicated towards work that will be expected to

2 add at least a five years expected life. That's—  
3 that's not just, you know, unique to Parks. That's—  
4 that's, you know, I think that's true of citywide  
5 capital expenditures with that. (sic)

6 CHAIRPERSON GRODENCHIK: Councilman, I'll  
7 be happy to come back to you in a second round if  
8 you'd like. If you'd like. Okay, with regard to the  
9 ornithological references, I never want to be a dead  
10 duck or a dead parrot, but I appreciate your—your  
11 reference there. Councilman Powers, please

12 COUNCIL MEMBER POWERS: Thank you.  
13 Thanks so much. I have no Monty Python analogy there  
14 so far. Just definition alienation does on a  
15 specific definition and it's related to parks and  
16 specifically lays out the—the process by which one  
17 can alienate parks. So, let me just pick up where he  
18 left off. Maybe try to be more specific in—in the  
19 approach. The 260 JOPs and I don't know how many  
20 schools and playgrounds there are.

21 MATT DRURY: About the same.

22 COUNCIL MEMBER POWERS: About the same.  
23 Okay. So 520. We can use the number of 500. Do any  
24 of those require alienation if you wanted to—do any  
25 of them alienation?

2 MATT DRURY: Those are all properties  
3 that were acquired primarily for school usage. So,  
4 they're under the underlying jurisdiction and control  
5 of DOE. As such, they are not--

6 COUNCIL MEMBER POWERS: No way.

7 MATT DRURY: --they are not dedicated  
8 parkland, and they have not had to undergo  
9 alienation.

10 COUNCIL MEMBER POWERS: Got it and for  
11 the Marx Brothers Park I know it's under litigation  
12 but I want to say that did have a whole new role for  
13 that. Is that correct and can you explain why that  
14 one had a whole a new role versus--

15 MATT DRURY: [interposing] I have to  
16 acknowledge it did, you know, undergo the alienation  
17 process for a variety of reasons that, but I can't  
18 really speak to that. You know, that's now sort of  
19 part and parcel of the--what's now undergoing  
20 litigation. So, we're not really--

21 COUNCIL MEMBER POWERS: [interposing] Got  
22 it and is--is there a process by which if there was a  
23 joint operated park or schools and playground that  
24 wanted to transfer control from DOE to the  
25 department, what is the process from transferring?

2 MATT DRURY: Um, it essentially, you  
3 know, I propose—I guess it would be sort of like any  
4 interagency transfer, and I—I'm not—I'm sorry. I'm  
5 not a land use expert, but I, you know, I believe  
6 there is a process in place to kind of go through,  
7 you know, go through ULURP and map something as  
8 parkland.

9 COUNCIL MEMBER POWERS: [interposing]  
10 Right.

11 MATT DRURY: That's something he city--

12 COUNCIL MEMBER POWERS: Right, and has--do  
13 you have any understanding if that's a process that's  
14 been looked at or--or--

15 MATT DRURY: [interposing] No, I don't. I  
16 believe that, you know, the JOPs as--as a property  
17 class have--have basically sort of existed in that set  
18 generally speaking since the 1940s.

19 COUNCIL MEMBER POWERS: Got it and I just  
20 wanted to go through--you mentioned DOE jurisdiction  
21 and control were the words that were used. So, I  
22 just want to go through a couple of things. The  
23 Chair did a good job of sort of going through some of  
24 the categories, but maintenance is the Department of  
25 Public--maintenance for the JOP's parks and do it?

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2 MATT DRURY: For JOPs--

3 COUNCIL MEMBER POWERS: Yes.

4 MATT DRURY: --maintenance, day-to-day

5 maintenance is generally handled by Parks although we

6 do have some partnership in many of the--

7 COUNCIL MEMBER POWERS: [interposing] You

8 have permitting?

9 MATT DRURY: Permitting Parks.

10 COUNCIL MEMBER POWERS: Okay, these are

11 the ones he's covering. I'm just going back to it

12 and inspecting?

13 MATT DRURY: Inspections are handled by

14 Parks.

15 COUNCIL MEMBER POWERS: Okay, Rules are

16 governed by Parks?

17 MATT DRURY: Correct.

18 COUNCIL MEMBER POWERS: Who sets closing

19 hours?

20 MATT DRURY: Park in coordination with

21 the local school.

22 COUNCIL MEMBER POWERS: When we designate

23 capital funding, does it go to DOE or to Parks?

24 MATT DRURY: Generally speaking a capital

25 project at a JOP is handled by Parks.

2 COUNCIL MEMBER POWERS: Parks. I could  
3 probably keep going through categories--

4 MATT DRURY: Yes.

5 COUNCIL MEMBER POWERS: Parks, Parks,  
6 Parks. I mean--

7 MATT DRURY: [interposing] Sure.

8 COUNCIL MEMBER POWERS: --my-my point  
9 being and I'm asking the alienation question and the  
10 control question for the reason to better understand  
11 that because there are specific things in alienation.  
12 I think there is--I am not familiar with that the  
13 process is. I think there is a process for doing--  
14 looking at them and looking at authority and so  
15 forth, but you guys are essentially running these  
16 spaces whether we call them--whether the colloquial  
17 terms of parks or playgrounds are used or the legal  
18 definition between them, and I think that the concern  
19 that many folks have like Council Member Kallos maybe  
20 here in the community is that they are essentially  
21 used as parks by whatever familiar definition we use.  
22 They're operated that way. They seem to be funded  
23 that way and, in fact, the concern is that they don't  
24 get treated that way under the law and perhaps we  
25 should be looking at like the transferring authority

2 or looking at the alienation law. I-I just have a  
3 couple. That was my statement. I have some follow-  
4 up questions. Is-do any have developmental rights  
5 the JOPs? Parks I believe I don't have developmental  
6 rights. Can you take developmental rights off them  
7 and use them air rights?

8 MATT DRURY: Yeah, I'm-I'm afraid I can't  
9 speak to that. I can't speak to that.

10 COUNCIL MEMBER POWERS: Does anybody have  
11 the answer from Parks?

12 MATT DRURY: We can-we can look more into  
13 that, and get back to you.

14 COUNCIL MEMBER POWERS: Because that  
15 would be another reason to think about, you know,  
16 what is the impact on the surrounding community  
17 particularly I mean one of the most famous locations  
18 is development site, and I think that's a primary  
19 concern here. The-there-so there's 260 schools in  
20 it. So, can you just describe-describe again the  
21 basis of the joint operated parks and the schools and  
22 playgrounds?

23 MATT DRURY: Sure. Absolutely. So, both  
24 are essentially properties, city property under the  
25 control and jurisdiction of DOE. In one case

2 historically back in the 1940s, a class were created.  
3 Normally, when these properties were actually  
4 acquired for schools, subset of those plots, if you  
5 will, were set aside from—for broader public access.  
6 Those are JOPs. Parks plays a day-to-day maintenance  
7 role in those. The spirit of that endeavor was  
8 carried through in 2007 when School Yards to  
9 Playgrounds launched. That essentially sort of feels  
10 and looks the same except that Parks plays less—  
11 doesn't play a day-to-day operational role, but we  
12 have—we are very supportive and in some cases  
13 overseeing some of the capital work that happens at  
14 those sites or providing funding or and essentially  
15 providing input as to potential additions or  
16 expansions. We help provide that guidance and  
17 expertise.

18 COUNCIL MEMBER POWERS: Yeah, and I just  
19 wanted to clarify there's no answer from any of the  
20 folks on your side about the developmental part of it  
21 or their rights?

22 MATT DRURY: No, nothing on that.

23 COUNCIL MEMBER POWERS: We'll follow up  
24 with you on that, and—and the DOT site that my  
25 colleague mentioned that is the Oval, which you're



2 very familiar with. Is that a JOB then because it's  
3 a joint? It's not a DOE but it's a--it's a joint--it's  
4 that you guys are like--

5 MATT DRURY: [interposing] Internally  
6 yeah. Internally for our maintenance needs, but in  
7 all--in all practicality it's actually essentially--I  
8 believe it's characterized essentially as a  
9 concession because for most--the bulk of the year  
10 there's a bubble on site, and the actual vendor cares  
11 for the space. So, I don't know that it has a  
12 designation--it is not a GOP. I can speak to that,  
13 but I don't know how else it might be categorized.

14 COUNCIL MEMBER POWERS: And having  
15 expressed a little of my opinion in asking a couple  
16 of questions, I just wanted to maybe ask a final  
17 question here we just had here, with--what are the  
18 challenges or--or the considerations for the  
19 Department of Parks and DOE since you're both here  
20 and--and--and other agencies that might be--play role in  
21 this through the Construction Authority. If you were  
22 to transfer authority over, if you were to--or to  
23 redefine them, so they there are parks and, of  
24 course, in one of the examples we're talking about is  
25 we get a home rule, it did get--it did get passed by

2 the legislatures. So, that doesn't mean that that  
3 doesn't have a process, but certainly when we--the  
4 reason those processes are in place is to have a  
5 public review process for changing those properties--  
6 the usage of the properties. What are the challenges  
7 if you wanted to go through the process? Because it--  
8 because it, with all of the things we've said, it  
9 behooves us to not just thinking--

10 MATT DRURY: [interposing] sure.

11 COUNCIL MEMBER POWERS: --of issues (sic)  
12 of the parks.

13 MATT DRURY: I'll--I'll leave this to Bill  
14 to mostly speak to, but I--I would think it would be  
15 the potential loss of flexibility for--for the  
16 Department of Education to expand as needed and sort  
17 of use this property as best, you know, to educate  
18 our kids and sort of serve that purpose.

19 COUNCIL MEMBER POWERS: [interposing] For  
20 example, that are using and for school expansion?  
21 Right now you mentioned that one. Okay, what are  
22 the--

23 MATT DRURY: [interposing] Two more  
24 beyond that. (sic)

2 BILL ESTELLE: I just want to make a  
3 statement. The primary use whether it's a School  
4 Yards to Playground or it's a JOP is primarily for  
5 the school. It's for school use. It's used during  
6 recess, and if it's in an overcrowded district where  
7 there's a desperate need for seats, they look at JOPs  
8 and they do look at to School Yards to Playgrounds.  
9 They look at these sites to, you know, accommodate  
10 the additional seats that are greatly needed in a lot  
11 of our areas throughout New York City.

12 COUNCIL MEMBER POWERS: Got it. So  
13 that's a challenge. It's about flexibility?

14 MATT DRURY: Yeah.

15 COUNCIL MEMBER POWERS: And—and, okay,  
16 but with those, theoretically you could have, still  
17 have some transferring authority with some  
18 flexibility to be able to expand, but yeah, they have  
19 to discuss what alienation and things like that.  
20 Okay, thank you. I'm going to have a second round  
21 with that.

22 CHAIRPERSON GRODENCHIK: Okay, I think we  
23 want to dedicate parkland regardless, and it will  
24 still have to undergo ULURP. So, Andrew Cohen from  
25 the Bronx. Councilman Cohen.

2 COUNCIL MEMBER COHEN: Thank you, Mr.  
3 Chair. You know, I have to say, though, I am  
4 disconcerted about—about the status of some—what I  
5 thought were parks, but I use this park that I  
6 brought my daughter to is a park. It's not really  
7 as—but I have invested Council capital money in that  
8 is not a park, and I feel—and I only learned that in  
9 the last week or two. So, I have to say I am very  
10 surprised and I am a little concerned that, you know,  
11 the alienation process exists for a reason. It's not  
12 insurmountable. It does happen, but that I have a  
13 park like, you know, Vinmont (sp) Park and Vinmont  
14 Park is—there may be portions of Vinmont Park that  
15 are used by the school during the day, but a  
16 substantial part of it is not. It is open to the  
17 community 24 hours a day, and it's JOP despite that—I  
18 mean if you tried to—I have a crowding problem at the  
19 school adjacent to Spartan Dogwood(sic). If we tried  
20 to build a school in there, there would be a revolt  
21 like—but these properties are not really protected  
22 and as fully as—as parkland as designated parkland.  
23 I think that that is—it should be a real concern to  
24 everybody, and I mean again, we're not saying there  
25 aren't instances where alienation makes sense, but to

2 have this sort of—it's really a misrepresentation of  
3 the community that they think that they have a park,  
4 and they really don't. They don't have the full  
5 protections of Parks Department property. I—I find  
6 that very disconcerting. I think I do want to follow  
7 up a little bit on Councilman Powers' questions. A  
8 park does not have—is not zoned for development.  
9 There's no—there's no air rights in a park. Am I  
10 right about that?

11 MATT DRURY: I—I apologize. That speaks  
12 to sort of the—I mean I'm—I'm not uniquely conversant  
13 in the—in the sort of air rights section.

14 COUNCIL MEMBER COHEN: That's my  
15 understanding. However, that may not be true in a  
16 jointly—a jointly operated play ground. You can go  
17 build your school. If you want to expand the school  
18 into the jointly operated playground, it could  
19 conceivably be zoned for that or it could have air  
20 rights.

21 BILL ESTELLE: I—I can't speak to that  
22 either. I'm sorry.

23 COUNCIL MEMBER COHEN: Yeah, I—I have to  
24 say, Mr. Chair, I am very—much more concerned than  
25 when—than I was a little while ago learning about

2 this. I mean really core parks. The Wakefield  
3 Playground is the only playground in the entire area  
4 there and then it doesn't have all the protections of  
5 the park.

6 CHAIRPERSON GRODENCHIK: I share your  
7 concern Councilman Cohen and we might have to do  
8 something about that.

9 COUNCIL MEMBER COHEN: I'm not sure I  
10 asked any questions. I've been ranting.

11 CHAIRPERSON GRODENCHIK: That's okay.

12 COUNCIL MEMBER COHEN: Thank you. Mr.  
13 Chair.

14 CHAIRPERSON GRODENCHIK: That's what I'm  
15 here for. Mr. Gjonaj, I'm sorry. I skipped over  
16 you. We've been joined also by Councilman Van  
17 Bramer, Councilman Gjonaj from the great Borough of  
18 my birth, the Bronx.

19 COUNCIL MEMBER GJONAJ: Thank you,  
20 Chairman, but you often skip over the Borough of the  
21 Bronx, which is understandable.

22 CHAIRPERSON GRODENCHIK: I don't think  
23 it's understandable.

24 COUNCIL MEMBER GJONAJ: Would you please  
25 elaborate on the number of J—the number of JOPs

2 again. I heard 261 and the breakdown was 44 Bronx.

3 Can you repeat them again, and if we can ask the same  
4 from schools with lots of playgrounds.

5 MATT DRURY: No, no comment. 263 total.  
6 44 in the Bronx, 86 in Brooklyn, Manhattan 35, 82 in  
7 Queens, Staten Island 60.

8 COUNCIL MEMBER GJONAJ: And for school  
9 yards the playgrounds?

10 MATT DRURY: The Bronx 35.

11 COUNCIL MEMBER GJONAJ: And the total is  
12 254?

13 MATT DRURY: Correct. 252 I have.

14 COUNCIL MEMBER GJONAJ: 252.

15 MATT DRURY: It's-it varies.

16 BILL ESTELLE: The Bronx 35, Brooklyn 97,  
17 Manhattan 18, Queens 73, and Staten Island 29.

18 COUNCIL MEMBER GJONAJ: And I believe the  
19 dollar amount that you implement of \$225 million.  
20 Could we get a breakdown of that \$225?

21 MATT DRURY: For JOP work I don't have  
22 that breakdown currently, but we can certainly get  
23 that to you.

24 COUNCIL MEMBER GJONAJ: And the same for-

2 MATT DRURY: Oh, yeah.

3 COUNCIL MEMBER GJONAJ: That would be  
4 great. Alright I felt the same concerns as my  
5 colleagues that we can lose our parks thinking that  
6 they were protected from alienation, but over night  
7 they rezone. You know, a master plan of some sort  
8 can alleviate the much needed and used playgrounds  
9 that we've become so accustomed to having.

10 MATT DRURY: I think the important  
11 context here is-is-is the sort of historical of how  
12 these properties were acquired in the first place.  
13 You know, they were acquired by DOE for school often  
14 construction and it was made, you know, these  
15 portions of these properties were essentially  
16 cordoned off back in the 1930s and 40s and made  
17 available to the product-to the public more broadly  
18 and at the end of the day the acquisitions, the  
19 property was always primarily for school use and that  
20 continues to this day. So that's always been the  
21 spirit. So, I--I think we understand and we're  
22 actually frankly flattered that people would become  
23 attached to many of these properties, but we need to  
24 remember that the underlying--the whole reason the

25



2 property existed in the first place and is in the  
3 city's hand was for school purposes.

4 CHAIRPERSON GRODENCHIK: Well, I just  
5 want to pick up on something he said, Councilman,  
6 it's been in the city's hands in just a different  
7 part of the city, but you could certainly understand  
8 our concern that properties that have the Parks logo,  
9 and are operated by Parks and are funded through  
10 Parks might actually be perceived as Parks. So, Mr.  
11 Gjonaj, please continue.

12 COUNCIL MEMBER GJONAJ: Thank you,  
13 Chairman for that elaboration, and with JOPs do any  
14 of the sports fields that are currently in larger  
15 parkland areas fall into that same definition?

16 MATT DRURY: There are some JOPs that  
17 include athletic facilities, courts, fields but they-  
18 -

19 COUNCIL MEMBER GJONAJ: [interposing]  
20 Pelham Park for example?

21 MATT DRURY: Pelham Bay Park as I  
22 understand it would not be considered a JOB. It's-  
23 it's sort of a more conventional park.

24

25

2 COUNCIL MEMBER GJONAJ: You're certain of  
3 that? Because although I think there are some fields  
4 that have exclusive use to some of our schools--

5 MATT DRURY: [interposing] I mean we  
6 certainly have arrangements where now we're, you  
7 know, in conventional and dedicated parkland where  
8 there are athletic fields. There are athletic--  
9 there's an athletic permit process where use for that  
10 field is, you know, granted at various times to  
11 various organizations. You know, exclusive use is by  
12 permit.

13 COUNCIL MEMBER GJONAJ: Right, that's all  
14 I have to say, Mr. Chairman. I do also encourage in  
15 the upcoming months we have a hearing on alienating  
16 parklands that have been used for sports and  
17 activities in our parks for open green space versus  
18 the traditional use of activities. In particular,  
19 Chairman, it was just brought to my attention this  
20 past week, the Warrior's Football League as well as  
21 a soccer league that used Pelham Bay Park for more  
22 than 20 years for their activities has been taken  
23 away from them because someone has deemed it more  
24 important we have a great lawn that will be fenced-  
25 that has been fenced in and will be cordoned off for

2 the sports activities for the or four events that are  
3 had each year, and that's quite disturbing when we  
4 are consistently portraying our parks as places for  
5 children to play and healthy sports such as soccer  
6 and another, when we lack the fields that can  
7 accommodate their needs. It's quite disturbing. A  
8 20-year use has just been taken away by fencing.

9 CHAIRPERSON GRODENCHIK: We will—we'll  
10 talk about that offline. We've been joined as well  
11 by Councilman Joseph Borelli from Staten Island. I  
12 have some more questions for you two gentlemen, and  
13 I'm just deciding which one to start with. Let's go  
14 back to Marx Brothers. Regarding that specific joint  
15 operated playground, shouldn't State Commissioner  
16 Rose Harvey determine that it is, in fact, a park  
17 requiring alienation? How would that affect the  
18 proposed development?

19 MATT DRURY: Yeah, I can't speak to the—  
20 to the details of that. Again, the Governor's you  
21 know, authorization whether it exists or not, whether  
22 it's in effect or not are all part and parcel of that  
23 active litigation. So, I can't speak to that.

24 CHAIRPERSON GRODENCHIK: Alright, you may  
25 have some more questions that I can't ask, but I did

2 want to put them out. What role did the Department  
3 of Parks and Recreation play in determining how the  
4 acre-for-acre replacement land for Marx Brothers  
5 Playground was chosen? Did you have a role? [pause]  
6 Can you answer?

7 MATT DRURY: I can speak broadly to JOPs  
8 and let's use maybe a school expansion like, you  
9 know, a more conventional purposes--

10 CHAIRPERSON GRODENCHIK: [interposing]  
11 Okay.

12 MATT DRURY: --let's just say. When that  
13 happens, there is absolutely a dialogue between DOE--

14 CHAIRPERSON GRODENCHIK: [interposing]  
15 Right.

16 MATT DRURY: --and they identify that  
17 need. We're actually a part of the--Parks is actually  
18 a part of that conversation to make sure that it's  
19 indeed an expansion into--into the GOP footprint as  
20 necessary. There's absolutely a discussion about  
21 whether that will be disrupted. If so, can, you  
22 know, how can design elements be, you know, you know,  
23 is there maybe, you know, ways to improve the rest of  
24 the property to essentially mitigate for that. You  
25 know, there's sort of an internal effort to at least

2 make sure that that's advised because you know, again  
3 at the end of the day all of this is an effort to  
4 make sure that the broader public can enjoy these  
5 properties whether it's—whether it's a JOP or whether  
6 it's school yards property and about the playgrounds.  
7 You know, ultimately, these are the two agencies  
8 working together that are taking property owners  
9 designated for—for one specific use, and making sure  
10 that we can get the most out of it.

11 CHAIRPERSON GRODENCHIK: Okay, so, we  
12 don't know whether or not Parks had a—had a roll in  
13 determining how the replacement land for Marx  
14 Brothers Playground was chosen. Can you answer that?

15 MATT DRURY: I can say that broadly  
16 speaking whenever there is a—a design that impacts a  
17 JOP, you know, we're a part of the conversation in  
18 terms of reviewing what that would look like  
19 certainly.

20 CHAIRPERSON GRODENCHIK: Okay. Will the  
21 proposed replacement land in Parks Department's  
22 pending be a sufficient replacement for the Marx  
23 Brothers Playground?

24 MATT DRURY: I can't speak to as to how  
25 we feel whether that's sufficient or not. My

2 understanding is that that it's, you know, square.  
3 You know, it's acre to acre in exact replacement.

4 CHAIRPERSON GRODENCHIK: Can you speak to  
5 what features the replacement parkland will have?

6 MATT DRURY: I'm not familiar with the  
7 design.

8 CHAIRPERSON GRODENCHIK: Okay, since the  
9 area is expected to become more dense because we're  
10 going to put a 70-story tower on it, should the  
11 development proceed, isn't it likely that the  
12 replacement parkland will be more densely utilized  
13 when compared to the current parkland, and is that a  
14 problem if you have more people utilizing a  
15 replacement of the same size as the original?

16 MATT DRURY: I think some of these  
17 dynamics are including in-in many of the affidavits  
18 and other materials. So, I don't know that I can  
19 speak to that.

20 CHAIRPERSON GRODENCHIK: Okay, were there  
21 any plans to your knowledge to consider a replacement  
22 park even bigger than the original specifically to  
23 accommodate for the fact that the new park will be  
24 more densely utilized.

2 MATT DRURY: I wasn't familiar with the  
3 processing nor do I think it would be an appropriate  
4 answer.

5 CHAIRPERSON GRODENCHIK: Okay. Let's  
6 walk away from that a little. Can you talk a little  
7 bit about JOPs have been factored into the Community  
8 Parks Initiative?

9 MATT DRURY: Yes, absolutely. As part of  
10 the capital investment that has been provided, you  
11 know, the Mayor and the Borough Presidents, many  
12 Council Members, the Community Parks Initiative is a  
13 great example of the types of improvements that we're  
14 bringing to playgrounds all over the city, and so I  
15 believe there are 27 sites that are underway that are  
16 categorized as JOPs or those--those two and--

17 CHAIRPERSON GRODENCHIK: [interposing]  
18 It's a lot of--a lot of sites.

19 MATT DRURY: Uh-hm.

20 CHAIRPERSON GRODENCHIK: Would you  
21 describe in your opinion that using these sites as  
22 part of the Community Parks Initiative would suggest  
23 maybe permanence, a permanency to those sites as  
24 parkland or--?

2 MATT DRURY: I can tell you the DOE is  
3 very—is very involved and will continue to be very  
4 involved in any capital work that happens at JOPs.  
5 Everyone—we all recognize that at the end of the day  
6 these are—this is property that’s under DOE’s  
7 jurisdiction and control. It was initially acquired  
8 for school purposes.

9 CHAIRPERSON GRODENCHIK: Okay. Section  
10 12-10 of the Zoning Resolution defines a “public  
11 park” as being any publicly owned park, playground,  
12 beach, parkway or roadway within the jurisdiction and  
13 control of the Commissioner of Parks. Why is it that  
14 some have argued that playgrounds are not technically  
15 parks? We heard that before, but this would seem to  
16 indicate that playgrounds including JOPs are in the  
17 same categories as traditional parks. At least, some  
18 people feel that way. Any thoughts on that?

19 MATT DRURY: I, yeah, I don’t really feel  
20 comfortable characterizing what some people may or  
21 may not feel.

22 CHAIRPERSON GRODENCHIK: Alright. I  
23 think I’ve gone over the playgrounds on that and  
24 right now I think I have asked all the questions I  
25 want to ask for now. We are going to be hearing from



2 at least 12 people who love their parks and they are  
3 advocates of parks. So, I would ask that both of you  
4 gentlemen stick around in case I want to ask some  
5 questions that may be raised by the people that are  
6 going to testify this afternoon. For now, though,  
7 you are dismissed. Anybody want to—no, I guess not.  
8 Alright. So, thank you for that. With that we will  
9 have our first panel, and that will consist of Carter  
10 Strickland from the Trust for Public Land; Lynn  
11 Kelly, Director of New Yorkers for Parks; and  
12 Elizabeth Goldstein of the Municipal Art Society.  
13 [pause] Good afternoon. Thank you for being here  
14 today. I called Mr. Strickland first, but I'll leave  
15 it up to you three to decide who is going to testify.

16 ELIZABETH GOLDSTEIN: I think I'm the  
17 designated head.

18 CHAIRPERSON GRODENCHIK: Okay, you're the  
19 designated head. Thank you, Ms. Goldstein.

20 ELIZABETH GOLDSTEIN: Good afternoon. My  
21 name is Elizabeth Goldstein and I'm the President of  
22 the Municipal Art Society.

23 CHAIRPERSON GRODENCHIK: [interposing]  
24 One second. Do we have copies of your testimony?  
25 Okay. Thank you very much. Could you just wait

2 because I like to—I like to read along. [pause]

3 Thank you, very much.

4 ELIZABETH GOLDSTEIN: Just one moment.

5 CHAIRPERSON GRODENCHIK: Thank you very  
6 much. Okay, go ahead. Thank you.

7 ELIZABETH GOLDSTEIN: I am the President  
8 of the Municipal Art Society and I realized that I  
9 had remiss in my written testimony to not tell you  
10 that I also served as the Director of Planning for  
11 the New York City Parks Department in the late '80s.

12 CHAIRPERSON GRODENCHIK: I knew that.

13 ELIZABETH GOLDSTEIN: Thank you for the  
14 opportunity to speak to you this afternoon. I've  
15 provided you with more comprehensive written  
16 testimony. However, in my remarks today I would like  
17 to focus on the relationship between the threat of  
18 Marx Brothers Playground in East Harlem and JOPs  
19 citywide, and I've brought with me 362 letters from  
20 constituents of yours and other City Council members  
21 who have all spoken out about this issues about  
22 protecting JOPs. Balanced communities with adequate  
23 schools, housing, parks, and other public amenities  
24 are what makes New York City strong, and MAS rejects  
25 any implication that neighborhoods must choose

2 schools over parks or parks over housing. A recent  
3 development initiated and approved by the city at  
4 Marx Brothers Playground in East Harlem sets a  
5 dangerous precedent for JOPs citywide. MAS with  
6 other prominent civic organizations have filed a  
7 lawsuit to challenge the city's actions, which have  
8 effectively allocated development rights to Marx  
9 Brothers Playground, a public park for the purpose of  
10 contributing them to the development of private  
11 developers' 700-foot residential tower. MAS believes  
12 that both the process and the substance of the city's  
13 determination were fatally flawed for multiple reasons.  
14 The first is that the city's decision to assign  
15 development rights to a park is illegal, and  
16 unprecedented. Parks do not have development rights,  
17 and Marx Brothers Playground should not be an  
18 exception to the long city's standing policy.  
19 Second, the city has offered replacement open space  
20 that is inferior and would be developed for other  
21 purposes—could be developed for other purposes at any  
22 time, and lastly, the disclosures that the city made  
23 throughout the process were at best confusing and  
24 worst deliberately obscured the facts. The city  
25 contend that Marx Brothers Playground was never

2 protected parkland despite this characterization they  
3 took an alienation to the State Legislature, and in  
4 an abundance of caution. The Governor stayed the  
5 implementation of the alienation pending a review of  
6 the Marx Brothers Playground parkland status by the  
7 Commissioner of New York State Parks. MAS strong  
8 affirms the status of Marx Brothers Playground as  
9 implied parkland under the state's definition and,  
10 therefore, demands the rigors of not just the alien-  
11 alienation process, but a commitment to replace in-  
12 kind and value, which is clearly not proposed as part  
13 of the current development plan. We conducted a risk  
14 analysis of properties characterized as JOPs and  
15 identified 20 playgrounds that have comparable levels  
16 of risk to Marx Brothers Playground. MAS strongly  
17 believes that parks and open space are vital to  
18 livable communities and neighborhoods. Allowing  
19 developers to claim air rights from JOP's challenges  
20 to protections that parks should have in New York  
21 City. We urge the City Council to ensure that  
22 jointly owned-operated playgrounds are always treated  
23 as implied parkland from a procedural perspective.  
24 Thank you for your time and attention.

2 CHAIRPERSON GRODENCHIK: Thank you.

3 Thank you, Ms. Goldstein. Ms. Kelly.

4 LYNN KELLY: Hello.

5 CHAIRPERSON GRODENCHIK: Hello.

6 LYNN KELLY: Good afternoon, Council

7 Member Grodenchik and members of the Parks Committee.

8 My name is Lynn Kelly. I'm the Executive Director

9 New Yorkers for Parks, the citywide advocacy

10 organization for parks and open space. We, too,

11 believe that the alienation of Marx Brothers

12 Playground has set a very dangerous precedent for New

13 York City parkland in that it would put at risk the

14 other 267 jointly operated playgrounds throughout New

15 York City, but as New York City continues to be more

16 dense, and become more populated, we know that

17 there's a need for more school seats, affordable

18 housing and other critical city needs, but we also

19 believe that provision and protection of public open

20 space must accompany that growth. An equitable,

21 livable city depends upon that balance. The JOP

22 Program actually represented 37% of all New York City

23 Parks playgrounds and, therefore, it becomes truly

24 essential in many of their neighborhoods, which are

25 in some cases park poor. Many of these JOPs have

2 been in continuous use for decades in communities,  
3 generations, in fact, and have all outward  
4 appearances as city parks. They have signage, parks  
5 workers, investments in capital and expense dollars,  
6 and management and improvements of these spaces have  
7 all been led by the Parks Department. In fact, 26 of  
8 the 67 sites that were chosen to receive Community  
9 Parks Initiative funding are, in fact, JOPs, and  
10 while the representative from the Department of  
11 Education said and I quote, "They're primarily used  
12 by schools." I would think that the many community  
13 parks advocates that are here that fought for a long  
14 time for funding in the cumulative amount of \$95  
15 million for CPI funding might feel differently about  
16 the importance to their neighborhood and community  
17 and that they are equally as shared and equally as  
18 important. Make no mistake, Jointly Operated  
19 Playgrounds are indeed parks, and as such, they are  
20 protected by the State's Public Trust Doctrine making  
21 them subject to alienation. You know, there's a  
22 reason that alienation of parkland is complicated,  
23 it's arduous and it has many public thresholds. It's  
24 designed to protect what's, in fact, a taking of a  
25 critical public asset for other private or public

2 uses. Simply put, we believe that if these JOPs are  
3 left legally unprotected the city and are you ready  
4 for this statistic?

5 CHAIRPERSON GRODENCHIK: Yes, ma'am.

6 LYNN KELLY: We have 402 fewer acres of  
7 playground space. That might not sound like a lot,  
8 but that's half the size of Central Park that is at  
9 risk at this point in communities where it is  
10 valuable more than even twice the size of Central  
11 Park. I want to argue, reiterate that New Yorkers  
12 for Parks is not arguing against the need for  
13 affordable housing, for space for school children for  
14 additional school seats, but we are arguing for a  
15 city that aims to be equitable to all its residents  
16 that the protection of public space of parkland in  
17 this case is made in all cases of JOPs. At a  
18 minimum, we would ask that this committee consider  
19 that Jointly Operated Playgrounds are always treated  
20 as implied parkland under the law, and treated as  
21 such from a procedural perspective. Thank you for  
22 your time today.

23 CHAIRPERSON GRODENCHIK: Thank you, Ms.  
24 Kelly. Mr. Strickland.

2                   CARTER STRICKLAND: Thank you, Mr.  
3 Chairman. Thank you, Chairperson Grodenchik and  
4 members of the committee for the opportunity to  
5 testify on this really critical topic of Jointly  
6 Operated Playgrounds in New York City. My name is  
7 Carter Strickland. I am the New York State Director  
8 of the Trust for Public Land, a national non-profit  
9 organization that creates parks and protects land for  
10 people ensuring healthy livable communities for  
11 generations to come. This is an important moment  
12 obviously for New Yorkers to learn about, and take  
13 steps to protect JOPs. Parks and open space provide  
14 recreational health, and environmental benefits for  
15 all New Yorkers. The Trust for Public Land in New  
16 York has protected over 100 community gardens and  
17 crated over 200 parks and playgrounds that are within  
18 a 10-minute walk of over 3.9 million New Yorkers  
19 including the transformation of over 150 acres of  
20 barren asphalt school lots and green infrastructure  
21 playgrounds that are open to the general public.  
22 Close by parks are critical because those are the  
23 parks that people will use on a frequent basis. For  
24 example, when people live near parks they're more  
25 likely to engage in physical activity, a critical



2 step for preventing or mitigating diabetes, obesity  
3 and depression all of which are on the rise according  
4 to New York City Department of Health and Mental  
5 Hygiene. Nearby parks also allow residents to meet  
6 their neighbors creating two communities, improving  
7 mental health and social resiliency according to the  
8 Center for—Centers for Disease Control. It's even  
9 more critical for our children to have outdoor places  
10 to play and get away from their devices, and their  
11 use of parks includes—increases by 400% when parks  
12 are closer to home. JOPs are the quintessential  
13 neighborhood open space. They provide benefits to  
14 nearby schools and neighbors. The Trust for Public  
15 Land collects facts on parks every year for our City  
16 Park Facts Reports nationwide, and also our Parks  
17 Score Report for the hundred largest cities in the  
18 U.S. In the past year, New York City's great park  
19 system ranked ninth in the country in large part  
20 because of 97% of New Yorkers live within a 10-minute  
21 walk of the park over 8.3 million people. Critically  
22 that includes JOPs. If we take away JOPs, the New  
23 York City's Park Access Score drops to about 94%.  
24 That means that over 220,000 New Yorkers would lack  
25 access to a nearby park without JOP. To put that in

2 perspective, that's more people—that would be more  
3 people living in a park desert than live in  
4 Rochester, Yonkers, Syracuse or Albany, the third,  
5 fourth, fifth and sixth largest cities in New York  
6 State respectively. Whether municipal owned land,  
7 this park land is determined on a case-by-case basis  
8 under state law, municipally owned land, this  
9 parkland does not carry development rights that can  
10 be used or transferred. In addition, non-parkland  
11 uses or transfer requires state alienation  
12 legislation, as you pointed out so well. The city  
13 has confused the issue here by assigning development  
14 rights to—for transfer of Marx Brothers Playground to  
15 Tower Developers, which is inconsistent with  
16 parkland, but then by going through the alienation  
17 process that's necessary for parkland. You can  
18 clarify the situation by setting aside the city's  
19 actions and claims and looking at the facts and  
20 history of the site. That's the appropriate test  
21 under state law. As you pointed out, and as we've  
22 learned through public information and also Freedom  
23 of Information Law requests, Parks has a New York  
24 City Park sign and flag. It's listed on the Parks  
25 website as a recreational resource. In my longer

2 written testimony I provide the citation as well as  
3 an official document covering properties under the  
4 jurisdiction of New York City Parks as put forward in  
5 this report. It's just by sports leagues who are  
6 issued recreational permits by New York City Parks.  
7 It's maintained by Parks personnel, as you've drawn  
8 out so well. It's frequently inspected by Parks  
9 personnel. It's been repaired by New York City Parks  
10 for over 20 year, and it was considered already by  
11 the city alienated parkland when they MTA stored  
12 material on a portion on this site for construction  
13 of the Second Avenue Subway. Any reasonable New  
14 Yorker presented with these facts would say, That's a  
15 park. There are several breakdowns in the process  
16 that led to the current proposals of Marx Brothers  
17 Playground, and we're worried that left unchecked,  
18 these breakdowns will threated all 268 JOPs in the  
19 city, and I think it's telling, by the way that  
20 everybody has a different number of JOPs. We are  
21 using 268. That's what we've counted, but there  
22 certainly has to be tighter management and control.  
23 At a minimum, given the history of JOPs and the facts  
24 of their operation, we believe as a policy matter  
25 that they should always be treated as implied

2 parkland from a procedural perspective. In addition,  
3 we suggest the City Council pass legislation that  
4 would provide it and the public with timely input on  
5 land use decisions affecting JOPs and would afford-  
6 inform the final determination of whether particular  
7 JOPs imply parks-imply parkland. This legislation  
8 could include the following elements: An inventory of  
9 all JOPs in the city with information about the  
10 agencies responsible for operations and maintenance,  
11 capital repairs, permitting and other management  
12 duties as well as a collection of all city, state and  
13 federal funds that have been used site as-as members  
14 of this committee have pointed out quite-quite a lot  
15 of city capital dollars have gone into JOPs. Notice  
16 community boards, Council Members, borough  
17 presidents, school communities and other interested  
18 parties when development is proposed on a JOP or  
19 purported using JOP air rights. A determination by  
20 the City Council Parks Committee that has to sign off  
21 on home rule messages and land us determinations  
22 concerning JOPs, and finally a policy determination  
23 that JOPs should not carry transferrable air rights.  
24 Thank you for the opportunity to testify on this  
25 important issue.

2 CHAIRPERSON GRODENCHIK: Thank you all.

3 I have some questions, and I know my colleague Keith  
4 Powers. Keith if you'd like to go first, Councilman.

5 COUNCIL MEMBER POWERS: Yes. Sorry, and  
6 my apologies. I wanted to stay to hear the  
7 testimony, but we started late and I have to run to  
8 another one. So, I apologize. You guys—a lot of  
9 people all use the term implied parkland. Can you  
10 give me a definition of what that—what that means?

11 ELIZABETH GOLDSTEIN: No I can't.  
12 [laughs] So the distinction—there is distinction  
13 between the city processes that map parkland and the  
14 state policies around parkland, and at the state  
15 level alienation is considered an action that needs  
16 to be taken when the public has for any length of  
17 time accepted a parcel of land as use, as being in  
18 use as a park. So, implied parkland relates to all  
19 kinds of parcels of land that are being used for  
20 parks for a continual purpose for many years. In  
21 excess of ten years is what case law say I believe,  
22 where the—the state recognizes that the public has a  
23 accepted that as implicit parkland, and then feels  
24 that it needs to take the—that piece of land that's  
25 going to be alienated in some way or another. Its

2 use is going to be converted something else through  
3 an alienation process, and there are certain kinds of  
4 requirements that the state imposes, which relate to  
5 the replacement in kind and in value for the land  
6 that is lost. So, the reason that this is important  
7 is because—and there—there is case law all over the  
8 State of New York where other kinds of parcels in  
9 other jurisdictions, which were not mapped parkland,  
10 but were nonetheless alienated and taken for some  
11 other reason, needed to go through this alienation  
12 process, and needed to be replaced in kind and in  
13 value.

14 COUNCIL MEMBER POWERS: So, there's—so,  
15 I'll be asking a final question.

16 ELIZABETH GOLDSTEIN: Yes.

17 COUNCIL MEMBER POWERS: The—the—your—  
18 your—your belief is that if or—or state law says that  
19 if it's being used as a park and publicly accepted--

20 ELIZABETH GOLDSTEIN: [interposing]  
21 That's right.

22 COUNCIL MEMBER POWERS: --accepted and  
23 utilized as a park for a certain period, and the case  
24 law says for ten years, that that should be then  
25 subject to alienation?

2 ELIZABETH GOLDSTEIN: That's correct.

3 COUNCIL MEMBER POWERS: Is that correct  
4 and then alienation is important here to--well, and  
5 then that also talks about--that also dictates there  
6 not--the development rights if it's--does--?

7 ELIZABETH GOLDSTEIN: No. So, let me--let  
8 me back up--

9 COUNCIL MEMBER POWERS: [interposing]  
10 Yes.

11 ELIZABETH GOLDSTEIN: --and clarify this--  
12 this portion. When you look at the map for Marx  
13 Brothers Playground, there is--there is no development  
14 rights or there weren't until the ULURP actions of  
15 last year. There were not development rights on Marx  
16 Brothers Playground. None. So there was nothing to  
17 transfer and, in fact, all mapped parkland and  
18 implicit parkland in New York is when you look at the  
19 Zoning Map it has certain kinds of characteristics--  
20 which I will not go into at the moment, but delighted  
21 to do if you'd like to--that set it apart, and say  
22 there's no development or air rights on that  
23 particular parcel. What took place here was the city  
24 essentially went through a ULURP action, and it

2 assigned development rights to Marx Brothers  
3 Playground, and then it--

4 CHAIRPERSON GRODENCHIK: [interposing]  
5 Is that--? Ms. Goldstein, was that essentially or it  
6 did?

7 ELIZABETH GOLDSTEIN: It did.

8 CHAIRPERSON GRODENCHIK: Okay,

9 DEBORAH GODDARD: Yes, and then it  
10 transferred those air rights to the broader  
11 development that was going to go on the block. So  
12 not only is Marx Brothers Playground being relocated  
13 to a new location in the block and we can talk about  
14 whether that's--we--I believe a less advantageous  
15 place, but for the sake of this discussion it's being  
16 replaced acre-for-acre but not in value, and it is  
17 also continues to have air rights on it that are  
18 unexpected--unexpended even by the development that's  
19 being proposed there. There 300,000 square feet of  
20 remaining development rights in the Marx Brothers  
21 Playground. If JOPs across the city of New York were  
22 to have air rights today, if by some wave of the  
23 magic wand they were to have development rights, they  
24 would represent somewhere between 20 and 40 million  
25 square feet of development rights that aren't



2 currently on the books, which is ten Empire State  
3 Buildings

4 COUNCIL MEMBER POWERS: Yes, and, of  
5 course, there's rules about how they can transfer,  
6 but the—and the second—but the question and my point  
7 is that you—you believe that 268, 1 or whatever the  
8 number is, are implied meaning that they fall under  
9 state law saying they've been utilized and—and  
10 characterized as a park for the period time.

11 ELIZABETH GOLDSTEIN: Right, and—and I  
12 want to be absolutely clear that—that when I was the  
13 Director of Parks Planning at the Parks Department,  
14 JOPs are a miraculous thing. They're a great thing,  
15 and the double use of—of public land is a fabulous  
16 thing, but they have because they were established  
17 in—often in the '30s, and in the case of Marx  
18 Brothers in 1941, they have been accepted by the  
19 public and in use as public parkland, implied  
20 parkland for that entire time.

21 COUNCIL MEMBER POWERS: Got it and then  
22 just two more questions before I go and I know others  
23 have questions. One of the—one of the statements and  
24 I think it's Mr. Strickland's testimony makes the  
25 point that there's a confusion around developmental

2 rights because they go through the alienation  
3 process. Like this particular example went through  
4 the alienation process and it particularly didn't  
5 have to. There was a whole message about normally I  
6 think the process is. My view not having been  
7 involved, and this is all--that was sort of belts and  
8 suspenders on the whole thing. Is that--is that  
9 similar to your view or are you making a different  
10 point about--about the alienation?

11 CARTER STRICKLAND: Yes, I was making a  
12 different point. So, the point I was making is you  
13 can't have both. It's either parkland and then you  
14 go through alienation, and then you go through  
15 alienation, but it doesn't have development rights,  
16 or it has development rights, and almost by  
17 definition it can't be parkland. So, you know, the  
18 city did both here, but they're calling it belts and  
19 suspenders--

20 COUNCIL MEMBER POWERS: But I called it  
21 that, by the way. I don't know if they ever called  
22 it.

23 CARTER STRICKLAND: No, I understand.  
24 We're using it colloquially--

2 COUNCIL MEMBER POWERS: [interposing]

3 Yeah.

4 CARTER STRICKLAND: --or attributing  
5 things to them. If it is--if it was a belts and  
6 suspenders approach, it sounds to me like an  
7 admission that it was, in fact, implied parkland, and  
8 it should go through the process.

9 COUNCIL MEMBER POWERS: Okay, and thank.  
10 Thank you for that question, and the last question is  
11 I had was the comment from the Department of  
12 Education and--and Department of Parks was that the--  
13 the existing agreement allows them to be--I mean  
14 taking their logic, their existing agreement allows  
15 for parks to be utilized for the school, and that's a  
16 primary purpose and then uses parks in the hours when  
17 they're not being operated by a school. In addition,  
18 though, when there is capacity--there might be reasons  
19 that the school, you know, the school the DOE would  
20 want that school to be able to do handle over-  
21 crowding and school capacity. So, if we decide and I  
22 agree with one of the comments that was made in  
23 testimony that by all New Yorkers' definitions this  
24 is really a park, and by the prior--previous testimony  
25 Parks has predominant control over it. But how do we

2 deal with that task? How do we deal with the need to  
3 address over-capacity, school overcrowding? How do  
4 we address the issue that they're primarily—if you  
5 want to, if you believe primarily use that as—as  
6 school—school purposes with an outside use or an  
7 additional use to that. How—how do we reconcile  
8 those two things if we were to view them as—as  
9 appropriately placed in parks?

10 ELIZABETH GOLDSTEIN: I think we have a  
11 more broad issue here in that when open space is  
12 planned for in New York City even as a part of ULURP  
13 process, and I think you know this from having  
14 through ULURP, it's often planned or it's like a  
15 mitigate maybe as opposed to school seats, sewers,  
16 infrastructure as a part of rezonings or land use  
17 process. So, we would argue that going forward that  
18 open space should be considered upfront as a part of  
19 a planning process when there is an opportunity to do  
20 so, and in this case in Marx Brothers, you had an  
21 existing park for what, sixty plus years on a site  
22 that because it did not have a mapped parkland  
23 status, which is what essentially protects everything  
24 under the Public Trust Doctrine, we believe it's  
25 implied parkland, which would also carry the same

2 kind of weight. It was able frankly in this case it  
3 didn't come to the Committee of Park and to your  
4 committee for alienation proceeding or the home rule.  
5 If we had some of these tighter teeth in place, we'd  
6 be able to have a public discourse and a dialogue  
7 about planning. Nobody wants to pit one use against  
8 the other. That's not what this is about. We know  
9 the city needs affordable housing. We know the city  
10 needs school seats. We're here to say we need to  
11 have a true public dialogue and a true public process  
12 when what is very scarce existing open space is right  
13 now under threat.

14 COUNCIL MEMBER POWERS: Thank you and I'm  
15 sorry I have to leave. I do want to recognize I see  
16 Carnegie Laborers and Civitas and I think some other  
17 groups. Many looking in my district or everywhere.

18 CHAIRPERSON GRODENCHIK: Do you can--you  
19 can recognize them next week, but for now I'd like  
20 to--

21 COUNCIL MEMBER POWERS: [interposing] I  
22 want to thank--I want to thank the Chair for having  
23 this hearing. Okay.

24 CHAIRPERSON GRODENCHIK: Thank you very  
25 much, Mr. Powers, and thank you for being with us.

2 Even though you're not a member of this committee,  
3 but I'm very happy to have you here today. Alright,  
4 so it's me versus the world now.

5 COUNCIL MEMBER POWERS: Goodbye.

6 CHAIRPERSON GRODENCHIK: Thank you.

7 [laughter] Good luck to the world or good luck to  
8 me.

9 COUNCIL MEMBER POWERS: I don't know.

10 CHAIRPERSON GRODENCHIK: Okay, both of  
11 us. So questions for anybody on the panel. Would  
12 you say in your opinion and I don't know if any of  
13 you are lawyers. Any of you lawyers? No. One  
14 lawyer. Okay, one lawyer is enough. Would you say  
15 that the city of New York has created a precedent  
16 here for JOPs in your opinion? Just asking your  
17 opinion as a lawyer and advocate.

18 CARTER STRICKLAND: Can I give my—I'll  
19 give my advocate.

20 CHAIRPERSON GRODENCHIK: Okay.

21 CARTER STRICKLAND: I hung up my lawyer  
22 spurs a long time ago. You know, I do think it is a  
23 precedent. I mean I think if it goes through here  
24 and we know how inexorable development pressures are  
25 in this city. Land is at a premium. One of the

2 things that makes our city great is our density but  
3 we also need parkland for all the people that are  
4 coming here, and we can have both. So, yes, I do  
5 think that the logic of assigning air rights to open  
6 space will mean that we'll see more pressures in  
7 other JOPs throughout the--throughout the city, if  
8 that was your question.

9 CHAIRPERSON GRODENCHIK: Well, I-I think  
10 it is to some extent, but I also think whether you or  
11 your colleagues here feel that this is interesting  
12 because they didn't--if it's really not parkland,  
13 which some people feel, then they didn't have to do  
14 ULURP. They didn't have to alienate it and but they  
15 kind of did that. So, and we--my counsel tells me  
16 that we did have a home rule message about this some  
17 time last year. So, the question really is, and I  
18 guess different people will differ on this, and I'd  
19 be happy to hear from Ms. Kelly and Ms. Goldstein  
20 about this whether or not, you know, was this--was  
21 this done do you think because it's such a high  
22 profile site? Whereas something at the end of  
23 another part of another borough in the city might not  
24 clamor as much attention.

2 CARTER STRICKLAND: I'll make one comment  
3 and hand it over to my colleagues. It was alienated  
4 twice, this site.

5 CHAIRPERSON GRODENCHIK: Sure.

6 CARTER STRICKLAND: So, I think, you  
7 know, over the space of a number of years, part of it  
8 was alienated when the MTA said we want to use a  
9 portion of this site to store construction materials  
10 for the Second Avenue Subway. Under state law it was  
11 appropriate as parkland for alienation--

12 CHAIRPERSON GRODENCHIK: [interposing]  
13 It was for public good, though.

14 CARTER STRICKLAND: It was for public  
15 good. Sure, you know, but there are--the mitigation  
16 requirements did kick in, and then a second time,  
17 which is at concern here.

18 LYNN KELLY: Can I comment?

19 CHAIRPERSON GRODENCHIK: yes.

20 LYNN KELLY: I would add more broadly  
21 that I think we have a real mixed message coming from  
22 the city about JOPs. You know, very specifically--

23 CHAIRPERSON GRODENCHIK: [interposing]  
24 Ms. Kelly, could you just make sure you speak into  
25 the--



2 LYNN KELLY: Is that better?

3 CHAIRPERSON GRODENCHIK: That's better.

4 LYNN KELLY: Okay. So, I was going to  
5 say I think the city sent a—a mixed message to the  
6 public about how it views JOPs both in its treatment  
7 of Marx Brothers Playground, but then also in its  
8 very positive investment of JOPs as Community Parks  
9 Initiative sites. I mean to have invested a  
10 collective \$95 million in these JOPs sites is a  
11 positive thing. That shows Parks—

12 CHAIRPERSON GRODENCHIK: It's a  
13 considerable amount of money.

14 LYNN KELLY: [interposing] It's a huge  
15 sum.

16 CHAIRPERSON GRODENCHIK: If my—my math is  
17 correct, it's about 2% of the entire Capital Budget  
18 for the Parks Department in the next ten years.

19 LYNN KELLY: And so that's a very  
20 positive sign. That's, you know, to me as an  
21 advocate and someone from the public that's a Yay  
22 parks thumbs up sign, and that's an affirmation to  
23 the communities that have fought for this funding to  
24 improve their JOPs, but in the case of Marx Brothers  
25 to take the property through an alienation process,

2 which underscore also says it's a park right, because  
3 you're taking it through alienation, which it did  
4 twice but to not take it to the Committee for Parks  
5 as a part of the public process didn't allow at least  
6 for us as advocates to really flag it as a Parks  
7 issues, which I think is a really important  
8 distinction in the public review process. So, it  
9 sends a mixed message and then to have alienated and  
10 then added development rights onto the site in the  
11 case of Marx Brothers, which is unprecedented we—we  
12 know for a fact as planning professionals, park land  
13 does not carry. It simply doesn't carry development  
14 rights. So, the city has made an exorbitant  
15 investment in JOPs. Fantastic. The city has in the  
16 case of Marx Brothers taken it through an alienation  
17 albeit not with the committee that typically would  
18 see alienation of parkland okay, but then now saying  
19 that it's going to assign development rights to  
20 parkland, unacceptable, and so that's a very mixed  
21 message to us as advocates and as a public, and it is  
22 something that you are correct that the Council  
23 should be concerned about.

24 CHAIRPERSON GRODENCHIK: Ms. Kelly,  
25 you've made clear and Ms. Goldstein, if you want to

2 comment, too. I'm sorry. I saw you reaching for the  
3 microphone.

4 ELIZABETH GOLDSTEIN: Well, if you—if you  
5 want to ask your question.

6 CHAIRPERSON GRODENCHIK: No, I'll ask it  
7 after.

8 ELIZABETH GOLDSTEIN: Okay, I—I just—I  
9 just want to say something that's really important  
10 here, and that is to—to talk about the future state  
11 of Marx Brothers. Marx Brothers will never be mapped  
12 parkland. It cannot be mapped parkland under this  
13 scenario because it has development rights on it, and  
14 because those development rights have in part been  
15 transferred to other parts of the block—

16 CHAIRPERSON GRODENCHIK: [interposing]  
17 Well, maybe.

18 ELIZABETH GOLDSTEIN: Well, maybe, yes.  
19 [laughter] Yes, from your mount of frontiers, but  
20 there can never be a situation where this land would  
21 be protected as a park in the future because it is a  
22 totality. It would undermine the rights that have  
23 been given to both private developers and city  
24 entities to build what they're going to build on the  
25 balance of the block. That future state, the fact

2 that this can never be protected and, in fact, is  
3 vulnerable to development on the site in the future  
4 because there's unused development rights that could  
5 be—the DOE could partner with the Education  
6 Construction Fund next week, and decide that it was  
7 going to build 300,000 square feet of space on the  
8 brand new Marx Brothers Playground the instance after  
9 it's built because there is no long-term protection,  
10 and that is the flaw in this argument that's been  
11 made, and that is the thing that brought the  
12 Municipal Art Society to the table. If you are going  
13 to say that these jointly operated playgrounds all  
14 over the city of New York are suddenly going to be  
15 subject to things that could be transferred to other—  
16 you don't have any long-term way to protect them  
17 either a park space or as classroom space, or--

18 CHAIRPERSON GRODENCHIK: [interposing]

19 Well, they're not—they're apparently not protected  
20 right now.

21 ELIZABETH GOLDSTEIN: [interposing]

22 Right.

23 CHAIRPERSON GRODENCHIK: So, you know  
24 that--

2 ELIZABETH GOLDSTEIN: [interposing] Or as  
3 use for students in the schools that are adjacent.

4 CHAIRPERSON GRODENCHIK: Um-

5 LYNN KELLY: Council Member

6 CHAIRPERSON GRODENCHIK: Yes.

7 LYNN KELLY: If I may just ask because I  
8 don't think it came out of the part of the response  
9 to the Council's questions, but it left the point on  
10 me that they Department of Education said that there  
11 are four other sites in the pipeline that it may be  
12 considering and I-it might have been Councilman  
13 Kallos that said well what are the names of those  
14 sites? But it wasn't actually-they weren't named as  
15 a part of this hearing, and I'm raising that simply  
16 because as a matter of just tracking, normally we  
17 would go if this is an alienation to follow the Parks  
18 Committee to say okay this is online, we can have a  
19 public process. We're now as a public we don't even  
20 know the names of those four sites to pay attention  
21 to them.

22 CHAIRPERSON GRODENCHIK: Well, I think-I-  
23 I think there is a distinction in my mind at least  
24 between what would be for a public purpose such as a  
25 school or a hospital, and private development. I

2 think there's definitely a clear, and it may have  
3 been and I-I can't go back and talk to those people  
4 because they're probably all dead, but that may have  
5 been the original idea that they were reserving this.  
6 You know, it was a noble idea, but here we are 80  
7 years later, and as I think Councilman Cohen really  
8 laid in, it was kind of got your—obviously got your  
9 letter, Ms. Goldstein, that many of our parks are  
10 indeed JOPs. So, it probably would take the  
11 connivance of a local member to be able, but I'm not  
12 sure that would need to be the case. Now it is  
13 interesting in my mind and we could talk about this  
14 all day, but there are other people waiting to  
15 testify, but that, in fact, on this case the city  
16 felt that it needed to alienate. So, it will be very  
17 interesting to see what happens as we go forward to  
18 see what Commissioner Harvey has to say about this,  
19 and to see—I'm not going to talk about the lawsuit,  
20 but just in generally to see how that plays out as  
21 well. So, I do thank you. I-I do want to ask one  
22 more question. Are any of you aware of any other  
23 JOPs in the last number of years that have been used  
24 for other purposes other than school?

2 ELIZABETH GOLDSTEIN: We know that there  
3 was another--and--and, you know, I want to be  
4 absolutely transparent here. So, the development  
5 that's proposed on the--on the block of Marx Brothers  
6 includes private development as well as rebuild  
7 public schools.

8 CHAIRPERSON GRODENCHIK: Okay.

9 ELIZABETH GOLDSTEIN: So, I--I want to be  
10 absolutely clear--

11 CHAIRPERSON GRODENCHIK: [interposing]  
12 Okay,

13 ELIZABETH GOLDSTEIN: --about that. I  
14 think that--I know that the Education Construction  
15 Fund actually proposed another one of these JOPs to  
16 be taken on the west side, and that was defeated by  
17 the public before it ever got to the ULURP process.  
18 So, this is the reason that we--we did our risk  
19 analysis was because we wanted to understand what are  
20 the characteristics of--of Marx Brothers? It might be  
21 the same characteristics for other kinds of JOPs  
22 around the city where the same pressures are  
23 underway, and as I mentioned earlier in my testimony  
24 we identified 20 such sites across the city and in  
25 multiple boroughs. So, we think the characteristics

2 that led to the development proposal and Marx  
3 Brothers are not unique.

4 CHAIRPERSON GRODENCHIK: Alright, thank  
5 you. I thank you for your advocacy and for your  
6 passion, and I don't think we've finished this  
7 conversation. I think we're going to be working on  
8 this together for a while. At this time-

9 LYNN KELLY: [interposing] Thank you.

10 CHAIRPERSON GRODENCHIK: --you are  
11 dismissed.

12 ELIZABETH GOLDSTEIN: Thank you.

13 CHAIRPERSON GRODENCHIK: I thank you  
14 very, very much. I hope I'm pronouncing this right.  
15 Brett-I'm-I'm trying. I think it's Dakin, but am I-  
16 did I get that right?

17 BRETT DAKIN: Yep.

18 CHAIRPERSON GRODENCHIK: Come on up,  
19 Brett and Brett is with Jacob Schiff, Marlene Canton.  
20 You still want to testify? Okay. She's with the Red  
21 Hook Conservancy and Lynn Kennedy from My Home  
22 Borough Friends of the Astoria Heights Park. So,  
23 we're going to call you guys up. [background  
24 comments, pause]



2           BRETT DAKIN: Good afternoon, Chair  
3 Grodenchik and members of the committee. I'm Brett  
4 Dakin, a volunteer with the Jacob Schiff Playground  
5 Neighborhood Association. Thanks for the opportunity  
6 to speak today. The Association is a group of  
7 volunteers supporting Jacob Schiff Playground, the  
8 park at about four acres in Hamilton Heights,  
9 Manhattan. We're located in District 7 and we thank  
10 Council Member Mark Levine for his support, and we  
11 look forward to welcoming you, Chair Grodenchik along  
12 with Council Member Levine to our park later this  
13 week so you can see it for yourself.

14           CHAIRPERSON GRODENCHIK: I will be there.

15           BRETT DAKIN: The association strongly  
16 supports the call to protect our city's Jointly  
17 Operated Playgrounds or JOPs from future non-park  
18 development. Jacob Schiff Playground may technically  
19 be classified as JOP, but for our members and the  
20 thousands of folks who use it every week, the  
21 playground is a park. At nearly four acres, it is  
22 twice as big as the next largest JOP in the district.  
23 There is a children's playground in our park, but it  
24 represents a small portion of the footprint. We're  
25 also home to a synthetic turf field, a large seating

2 area, two large lawns dotted with beautiful trees and  
3 several basketball and handball courts, which are  
4 slated to be reconstructed beginning next year as  
5 part of the million dollar capital project currently  
6 in legal review. Our local middle school uses the  
7 playing fields and courts during school hours, but  
8 outside of school hours these resources are booked  
9 solid by sports leagues from the neighborhood and  
10 throughout the city. The rest of the park is used by  
11 teenagers, young families, children, and the elderly  
12 from early in the morning until sundown seven days a  
13 week. Parks Department employees provide all  
14 horticulture, maintenance, repair and cleaning in the  
15 park and we work closely with them as well as  
16 Partnership for Parks and other non-profit groups to  
17 provide programming the park. We've held several.  
18 It's My Park Volunteer Days to clean up and plant  
19 flowers. I'm not sure how successful they would have  
20 been if we had name them: It's MY Jointly Operated  
21 Playground Volunteer Days. [laughter] This summer  
22 alone we—we hosted a sing for hope piano, a puppet  
23 mobile—a puppet show, two corporate volunteer groups,  
24 four creative artworks murals, a union project,  
25 public library and a screen of a *Wrinkle in Time*.

2 Our members and all the folks who use Jacob Schiff  
3 Playground would be very surprised to learn that it  
4 is classified as anything other than a park. In  
5 fact, this summer a group of high school students  
6 from Creative Art Works made a short documentary film  
7 about the past, present and future of Jacob Schiff  
8 Playground and they named it *In the Park*. We are  
9 here to ensure that our city's JOPs are protected  
10 from non-park development. We understand that  
11 schools and housing are very important, but open  
12 space is a rare asset we must fight to protect. If  
13 any development is proposed in Jacob Schiff  
14 Playgrounds, if anyone for example seeks to alienate  
15 it to facilitate the construction of a tower, we will  
16 be there to fight for our park and ensure that this  
17 essential open space remains available to our  
18 community forever. Thank you very much for your work  
19 and support of our parks and for your attention  
20 today.

21 CHAIRPERSON GRODENCHIK: Thank you.  
22 Thank you very much. Mr. Dakin. Ms. Pantin.

23 MARLENE PANTIN: So, good afternoon,  
24 ladies and gentlemen and Chair Grodenchik. I'm  
25 Marlene Pantin, Executive Director and Founder of Red

2 Hook Conservancy. I and seven core members with  
3 support from hundreds of volunteers maintain and  
4 beautify 16 parks and open spaces throughout the year  
5 in Red Hook, Brooklyn in Council Member Menchaca's  
6 district of Council District 38, but I reside in  
7 Council Member Brad Lander's District 39. Like  
8 others here, I am dismayed at the current plans for  
9 construction in what is now the Marx Brothers  
10 Playground in Harlem, and the precedent that sets for  
11 other GOPs across New York City. I am concerned that  
12 similar efforts will ensure in the future where other  
13 JOPs like the six that exist in Council Districts 38  
14 and 39 are sacrificed in the either/or argument of  
15 housing versus parks or education versus parks or  
16 something else versus parks. There is no need to  
17 triage housing, parks, and education in New York  
18 City. They are all important, and like parks, JOPs  
19 are major recreational assets that should be  
20 protected from future development. I don't think  
21 there is anyone here would argue with the addition of  
22 new schools or the availability of more housing, but  
23 this precedent will create a vague public policy  
24 where the criteria for a park shifts in the wind as  
25 real estate and power interest crowd the minds of the

2 decision makers. One has to look no further for  
3 examples that the impact of upscale public policy  
4 than the hoodwink that is affordable housing. At one  
5 time housing construction was described in terms of  
6 low-income, middle income, high income, but with the  
7 shift to the term affordable housing, which means  
8 different things to different people, it has enabled  
9 an ambiguous and false narrative to take hold of New  
10 York's housing policy to the detriment of many New  
11 Yorkers. Similarly, efforts to circumvent the rules  
12 of JOPs or parkland, I--parkland will, I fear, lead  
13 to a slow insidious policy change that rephrase and  
14 justify the alienation of JOP for future development.  
15 I, therefore, ask that all Council Members stand firm  
16 and reiterate that JOPs are parks and like all parks  
17 protected policies should be enacted to ensure that  
18 JOPs are available to communities well into the  
19 future. Thank you.

20 CHAIRPERSON GRODENCHIK: [off mic] Thank  
21 you very much for your testimony. We will now hear  
22 from Ms. Kennedy.

23 LYNN KENNEDY: [off mic] Good afternoon  
24 and thank you for allowing me to testify in support  
25 of Friends of Astoria Heights Park and playground.

2 My name Lynn Kennedy and I am the Co-Founder of  
3 Friends of Astoria Heights Park, which is a volunteer  
4 group for the surrounding park located at 46<sup>th</sup> Street  
5 in Astoria and adjacent to I-S [background comments,  
6 pause]

7 CHAIRPERSON GRODENCHIK: [on mic] Is it  
8 working?

9 LYNN KENNEDY: [on mic] Is it on?

10 CHAIRPERSON GRODENCHIK: Yes.

11 LYNN KENNEDY: Okay, and I can hear that.  
12 [laughs]

13 CHAIRPERSON GRODENCHIK: Welcome to the  
14 21<sup>st</sup> Century.

15 LYNN KENNEDY: Just take a button. If we  
16 could do what the parks. Okay. [laughter] So, the  
17 park is located next to-adjacent to IS-10 Middle  
18 School, which is a JOP site. Our group has been in  
19 existence since 2013 when we began advocating with  
20 our elected for a safer and more beautiful park  
21 space. We are the recipients of funding that has  
22 allowed for a renovation of the park space recently  
23 we opened in May of this year. We received \$2.2  
24 million on behalf of Mayor de Blasio through the CPI  
25 Initiative and Parks Without Borders. \$1.5 million

2 from the Department of Environmental Protection, \$1.1  
3 million from Council Member Constantinides, who is  
4 not here any more and \$1 million from Borough  
5 President Malinda Katz. The Friends of Astoria  
6 Height Park has been active since 2013 in hosting  
7 relevant programming for all members of the  
8 community. The park space is heavily utilized with  
9 many diverse ethnic groups of varying ages. The park  
10 is utilized by families with toddlers, youth for  
11 sport training, seniors for Tai Chi and relaxation,  
12 adults taking exercise classes, adolescent  
13 volunteering to take care of trees and much more. Our  
14 park group has also worked carefully to develop  
15 relationships with all neighborhood schools that  
16 utilize the park. Our newly painted track renovated  
17 tennis courts and shady nooks created by more mature  
18 trees are as popular as I have ever witnessed and  
19 provides much needed reprieve from the city's cement.  
20 Not only does the park group and Parks Department  
21 provide programming, but the park is a place where  
22 people see their friends and it feels like family.  
23 There are simply not enough green and public spaces  
24 available to support our densely populated  
25 neighborhoods' needs. Parks and playgrounds support

2 a healthy lifestyle, physical and mental. We cannot  
3 afford to lose any park space especially in our  
4 district, which falls short of the citywide average  
5 of green acreage. In terms of developing New York  
6 City parks and playgrounds, our history is actually  
7 quite short and took the vision of more progressive  
8 thinkers to recognize the value and educate others of  
9 the importance of these kinds of spaces. As a mother  
10 of a younger child who uses all of the jointly  
11 operated spaces in the district, and as co-founder of  
12 a group that has worked years to improve a park, one  
13 park, I ask you to carefully consider, committee,  
14 protecting our city's parks and playground spaces  
15 especially those that are jointly operate and which  
16 are at higher risk of unthoughtful and likely  
17 unnecessary overdevelopment, which will undoubtedly  
18 have a negative impact upon the quality of all of our  
19 lives. Thank you.

20 CHAIRPERSON GRODENCHIK: Thank you very  
21 much. Before you go, and I'm going to ask this of  
22 any panel or every panel, would you agree that the  
23 people that use the JOPs that you represent would be  
24 kind of surprised to find out they were not  
25 designated city parkland?



2 LYNN KENNEDY: Uh-hm.

3 CHAIRPERSON GRODENCHIK: Is that a yes?

4 LYNN KENNEDY: Yeah. Overall, yes. Our  
5 park actually was often referred to as the IS-10  
6 park. However, before our Friends Group had come  
7 along, there really—the park was falling apart, and  
8 it wasn't either maintained by the Parks Department  
9 or IS-10 quite frankly. So, it rally took the Parks—  
10 the Friends Group to revitalize this park space and  
11 to advocate for it.

12 CHAIRPERSON GRODENCHIK: [interposing] I—  
13 I think I was at the meetings when we--

14 LYNN KENNEDY: [interposing] Yes.

15 CHAIRPERSON GRODENCHIK: --were  
16 representing the borough president and that group.

17 LYNN KENNEDY: So, I'm—I'm sort of—I'm in  
18 the middle of, you know, you know, happy, you  
19 planning all of this.

20 CHAIRPERSON GRODENCHIK: Well, would—  
21 would you—would—I understand all that, but you would  
22 be—the people that use the park Astoria had to be  
23 kind of surprised that it wasn't JOP—it wasn't a city  
24 park.

25

2 LYNN KENNEDY: They wouldn't understand  
3 this, okay.

4 CHAIRPERSON GRODENCHIK: And would you  
5 say that—that if they were not longer there, these  
6 three Joint 1 to 6, these 8 Jointly Operated  
7 Playgrounds/parks would be devastating to your  
8 community if there were no longer there?

9 LYNN KENNEDY: Absolutely. There is no  
10 other space in our neighborhood.

11 CHAIRPERSON GRODENCHIK: Okay, thank you  
12 very much for coming here today, and thank you for  
13 your testimony.

14 LYNN KENNEDY: Thank you.

15 CHAIRPERSON GRODENCHIK: Okay, the next  
16 panel. What? [background comments, pause] The next  
17 panel we have two more panels Rachel Levy from the  
18 Friends of the Upper East Side; Renee Patterson from  
19 the Seton Falls Park Preservation Coalition; and  
20 Joanna Cawley from the Carnegie Hill Neighbors.  
21 Actually, you know, what I'm going to—there are three  
22 of you so I'm going to make you guys if you'll all  
23 come together that will be nicer. So, George James  
24 from the GMJAA. So, I'm going to hold off on the  
25 Carnegie Hill. We'll hold you to the next one if

2 that's okay. [background comments] Okay, so it's  
3 for this panel Rachel Levy, Renee Patterson and  
4 George James. [background comments, pause] Ms. Levy,  
5 if you would begin.

6 RACHEL LEVY: Sure.

7 CHAIRPERSON GRODENCHIK: Thank you.

8 RACHEL LEVY: Good afternoon, Chair  
9 Grodenchik and well, no other Council Members, but  
10 Good afternoon in any case.

11 CHAIRPERSON GRODENCHIK: I—I represent  
12 them all so--

13 RACHEL LEVY: Thank you for the  
14 opportunity to testify today. My name is Rachel Levy.  
15 I'm the Executive Director of Friends of the Upper  
16 East Side Historic Districts. Friends of the Upper  
17 East Side is 36-year-old non-profit organization  
18 dedicated to preserving the livability, sense of  
19 place of the diverse neighborhoods that comprise the  
20 Upper East Side. This concerns the neighborhood  
21 preservation assesses its sound planning as a vital  
22 tool of balance urban development, and among the most  
23 important elements that contribute to livable urban  
24 environments and neighborhood character is, of  
25 course, our parkland providing critical and

2 recreational and open space in a dense city. In  
3 recognition of parkland as an essential yet finite  
4 resource in New York City parkland has rightly been  
5 the subject of high standards of protection. Jointly  
6 operated playgrounds, as you know a subset of over  
7 250 public parks spread across all five boroughs are  
8 deserving of that same level of protection. JOPs  
9 fulfill the same open space and recreation need for a  
10 wide variety of communities often those who lack  
11 other nearby park access. The recent development of  
12 initiated by the city at Marx Brothers Playground  
13 raised troubling issues for JOPs citywide. Marx  
14 Brothers Playground sits at the intersection of the  
15 Upper East Side and East Harlem on 96<sup>th</sup> Street  
16 between First and Second Avenues. A portion of the  
17 city where less than 1% of land area is devoted to  
18 parks and open space. Indeed, while Manhattan as a  
19 whole averages 567 residents per acre of parkland on  
20 the Upper East Side over 4,000 people share that same  
21 acre. Since its dedication by the city over 70 years  
22 ago, Marx Brothers Playground has been in continuous  
23 public use as one of the only such open spaces in  
24 this park starved neighborhood. It has been the site  
25 of Little League baseball games, soccer matches and

2 other recreational uses by countless individuals and  
3 families living with a five-minute walk. The 1.3  
4 million square foot development at the site of Marx  
5 Brothers Playground would eliminate this critical  
6 open space with no binding commitment to replace the  
7 parkland in kind or in value as you've heard. By  
8 extracting air rights from the park to facilitate the  
9 private developers' 700-foot tall residential tower,  
10 it would also overturn the foundational principle  
11 that parks do not generate development rights. This  
12 unprecedented and illegal action is what led Friends  
13 to join our fellow-fellow civic organizations in  
14 filing a lawsuit to challenge these actions. As  
15 stated by former Parks Commissioner Adrian Benepe in  
16 his affidavit in the case, it is indisputable that  
17 the Marx Brothers Playground is park with no  
18 development rights. The taking of public parkland at  
19 Marx Brothers Playground to facilitate development  
20 contradicts longstanding policy on parkland and  
21 creates a dangerous for JOPs and other small parks  
22 citywide. These spaces are critical elements in the  
23 network of open spaces that serve the public and  
24 deserve the same legal protections as other New York  
25 City parkland. Friends urges the City Council to

2 recognize the implications of the actions affecting  
3 Marx Brothers Playground and to take steps to ensure  
4 the long-term protection of JOPs (sic) in the area.  
5 Thank you so much.

6 CHAIRPERSON GRODENCHIK: Thank you very  
7 much for your testimony. Ms. Patterson.

8 RENEE PATTERSON: Good afternoon. Is it  
9 on?

10 CHAIRPERSON GRODENCHIK: Yes.

11 RENEE PATTERSON: Good afternoon, Council  
12 Chair and Council Members. My name is Renee  
13 Patterson, and I'm President of the Seton Falls Park  
14 Coalition. Seton Falls Park falls in the  
15 jurisdiction of Council Member King's District,  
16 Community Board 12. The Seton Falls Park  
17 Preservation Coalition has been a Friends group for  
18 Seton Fall Park since 1990. Under the past president  
19 to Christine Forman and reactivated in 2012 by Embido  
20 (sp?) Haywood and I, Renee Patterson. We request  
21 that playgrounds and parkland remain free from  
22 development and protected. The Coalition was  
23 fortunate enough to receive our first Park Equities  
24 Initiative Grant in 2017. This grant enables the  
25 coalition to initiate our two goals to preservation

2 and promotion of Seton Falls Park and Stars and  
3 Stripes Playground. The Coalition's efforts to help  
4 preserve the park have cumulated (sic) with the Parks  
5 with the Parks Department Green Neighborhood Program  
6 selecting Seton Falls Park for ten-month residency to  
7 help removing invasive plants and care for community  
8 street trees. In addition, the coalition has  
9 organized with Partners for the Parks and the  
10 community with It's My Park cleanups. Preservation  
11 of Seton Falls Park has led to many initiatives to  
12 promote the parks. The Coalition has promoted Parks  
13 Department Urban Park Rangers to conduct nature tours  
14 through our park trails. We have hosted City Parks  
15 Foundations, Movies Under the Stars and Coalition's  
16 most talked about program, Fitness in the Park an  
17 exercise program the Park Equity Initiative Grant  
18 helps to maintain June through October. Seton Falls  
19 Park and Stars and Stripes Playground is responsible  
20 for the outdoor recreation of the John Philip Souza  
21 Middle School Campus, which houses the following  
22 three schools: The Baychester School, Block's (sic)  
23 Alliance School and One World School. Our park is  
24 over-utilized. Where shall our children play and  
25 adults relax? The Coalition is well aware of the

2 affordable housing problem that plagues the city of  
3 New York, but most residents who are looking for  
4 dwellings usually ask how close the apartment or  
5 houses to a park or school. New York City is not  
6 pleasant livable place without parkland they deserve,  
7 and protection is needed yesterday, today and  
8 tomorrow. Thank you for your attention.

9 CHAIRPERSON GRODENCHIK: Thank you very  
10 much, Ms. Patterson and Mr. James.

11 GEORGE JAMES: Good afternoon my name is  
12 George James. I'm an urban planner. I've worked  
13 professionally on this project for the Community  
14 Board.

15 CHAIRPERSON GRODENCHIK: Okay.

16 GEORGE JAMES: And then for Carnegie Hill  
17 Neighbors. Here I am—I am here representing myself  
18 today because I think this is really important. So I  
19 prepared a little deck, which I'm going to talk  
20 through. So, the first fly talks about what they're  
21 trying to do here at Marx Brothers Playground, and  
22 the point of this is simply to say that it's a  
23 jointly operated playground now, and the proposal is  
24 that it's going to be a jointly operated playground  
25 after the—the new building and adjacent school are



2 built, and that's important because, you now, the  
3 issue of whether it's a park or not talks about the  
4 legality of--of this building and--and to be clear to  
5 you, Chairman is that I'm not a parks person. I'm  
6 just--I do zoning and land use. I--I--I'm not here as  
7 an advocate for a park at all.

8 CHAIRPERSON GRODENCHIK: We're all parks  
9 people.

10 GEORGE JAMES: Well, other than the user.  
11 [laughs]

12 CHAIRPERSON GRODENCHIK: Okay. That's  
13 important. Without users we have no parks. Trust  
14 me.

15 GEORGE JAMES: [laughs] So, so ECF, I'm  
16 going to quote some of the things that were in the  
17 ULURP application for this. Marx Brothers Playground  
18 and the EIS. The Marx Brothers Playground has always  
19 been a JOP and not a park. Out of an abundance of  
20 caution and perhaps under the mistaken belief that  
21 the playground is parkland, the MTA sought alienation  
22 legislation in 2004, as you know. Although the MBP  
23 is not, and has never been parkland, the city and ECF  
24 has determined that it is prudent to obtain new  
25 alienation legislation, and then finally, we have

2 discussed with DCP the status of the playground under  
3 the zoning resolution, and have been advised that as  
4 a JOP, it is not considered a public park. Now,  
5 what's amazing to me, you know, I went through this.  
6 I heard all this, and I was--the MTA sough alienation  
7 when they didn't have to? That sounded amazing to me  
8 at the time, but I believed it. I believe it because  
9 it was in the ULURP application and generally  
10 speaking, you know, those--those applications are as  
11 truthful as they can be. Now--

12 CHAIRPERSON GRODENCHIK: [interposing]  
13 It's--it's possible they visited the site and it  
14 looked very much--I've looked at it on Google Earth,  
15 and I saw the maple leaf and the--you know, it looks  
16 like a park to me. So--

17 GEORGE JAMES: [interposing] So the most--

18 CHAIRPERSON GRODENCHIK: --maybe that's  
19 what they saw a well

20 GEORGE JAMES: Well, so the thing that I  
21 can't believe hasn't been said yet is PLANYC. We all  
22 remember Plan NYC--

23 CHAIRPERSON GRODENCHIK: Uh-hm.

24 GEORGE JAMES: --at least I do

25 CHAIRPERSON GRODENCHIK: I remember.

2           GEORGE JAMES: --because I am urban  
3 planner and this came out and on page 32 of PLANYC it  
4 says since 1938 JOPs have been considered designated  
5 parkland, which restricts how the land can be used  
6 and, in fact, when you go into the records, and the  
7 thing is about government it produces records and  
8 paper, and if you go back 70 years, JOPs have been  
9 considered parkland, and the fact that they are just  
10 a really very simple review of the record, you'll see  
11 that. It's not only--not only in Bloomberg but in  
12 Giuliani and Dinkins and Kotch and Lindsay. It goes  
13 back in time and, you know, I have on the next page  
14 the--the New York Times, the article featuring the  
15 Department of Parks new Manhattan Playgrounds and  
16 there's a--there's a record here and, you know, the  
17 question is--is from zoning perspective--I'm not going  
18 to talk about map parkland, but from a zoning  
19 perspective why does it matter? Because I--I have a  
20 page here for you, sir, of the zoning on this is that  
21 District designations on zoning maps do not apply to  
22 parks, and a block is defined by either streets or  
23 parks, and then a zoning lot is either a track of  
24 land located within a single park. So, if JOPs are  
25 parks, this building, this development, this entire

2 development at Marx Brothers is illegal not only  
3 under city law but under state law because the  
4 building that they're proposing if you just look at  
5 the land that they are using on their zoning lot is  
6 26 FAR. We don't have 26 FAR districts and under the  
7 Multiple Dwelling Law the you're limited to 12 as  
8 you--I'm sure you know. So, it is--this link--this  
9 development can't work if JOPs are parks. It's  
10 illegal. Alright, so the citywide impact. I've been  
11 talking about this as Marx Brothers, but as you know,  
12 there's a bunch of these and if this is right, we've  
13 just made 270 publicly owned development sites, and  
14 speaking as a planner and land use person, you know,  
15 might be good for New York City I don't know, but the  
16 problem is this has followed no process, right? We  
17 have a process--process for land use decisions. The  
18 public was never asked, the community boards were  
19 never asked, the borough presidents were never asked,  
20 and you were never asked, and that--and also there was  
21 no environmental review. We've just permitted or  
22 allowed development for 10 Empire State Buildings and  
23 no one has analyze the environmental review for that.  
24 This is a decree, and it is a decree that's not based

2 upon law, and it's not how land use decisions are  
3 made in New York .

4 CHAIRPERSON GRODENCHIK: I think the  
5 Council was asked, but I'll leave that to my counsel  
6 to determine, but I agree with mostly what you had to  
7 say, and so that's one of the reasons, certainly the  
8 reason that we're here today--

9 GEORGE JAMES: Sure.

10 CHAIRPERSON GRODENCHIK: --and I would  
11 since you're representing a specific park and Ms.  
12 Patterson you certainly are representing some JOPs  
13 and it would be would you say a huge effect on-on  
14 your community if these would no longer be usable as  
15 parkland?

16 RENEE PATTERSON: Absolutely.

17 CHAIRPERSON GRODENCHIK: And would you--

18 RENEE PATTERSON: [interposing]

19 Absolutely.

20 CHAIRPERSON GRODENCHIK: --would you also  
21 say that the people that use that park have no idea  
22 that it's technically not a park only in the  
23 technical sense?

24 RENEE PATTERSON: No idea.

25

2 CHAIRPERSON GRODENCHIK: Okay. Is that  
3 the same for your Ms. Levy?

4 RACHEL LEVY: Yes, definitely.

5 CHAIRPERSON GRODENCHIK: Yes on both?

6 RACHEL LEVY: Yes.

7 CHAIRPERSON GRODENCHIK: Okay. I thank  
8 you all very much, and with that I'm going to call up  
9 the final—you're dismissed. I call up the final  
10 panel which are all Carnegie Hill neighbors. It's  
11 good so see neighbors get along so well. There's  
12 actually one more. So, I'm going to ask Mr.—I'm  
13 going to ask Ms. Cawley and Vanderbilt. Actually,  
14 you filled out two slips it looked like unless there  
15 are two Vanderbilt, both living at 11. Okay, and  
16 then Mr. Alexander Adams as well. So, if you would  
17 all come up and then I'm going to call back Mr. Drury  
18 and Mr. Estelle for a quick question that I have.  
19 [background comments, pause] Okay. You can give it to  
20 the sergeant-at-arms. Thank you. I don't want to  
21 get in trouble with this union. So, Ms. Cawley left.  
22 Mr. Vanderbilt and then is it Vanderbilt?

23 CHAIRPERSON GRODENCHIK: Okay. I  
24 appreciate that with my name. Being Grodenchik, it's  
25 not easy some days and then after that Mr. Adams.

2 MR. VANDERBILT: Yes. Where's the button.

3 CHAIRPERSON GRODENCHIK: You'll see it on  
4 bottom right in front. Bingo.

5 MR. VANDERBILT: Did it come on?

6 CHAIRPERSON GRODENCHIK: I don't know.  
7 Let's hear you.

8 MR. VANDERBILT: Say again.

9 CHAIRPERSON GRODENCHIK: Now you're on.

10 MR. VANDERBILT: Yes, oh, great.  
11 Firstly, we want to thank you. Chair Grodenchik for  
12 holding this--this hearing. This is a--it's a--it's a  
13 great opportunity for all the issues related to this  
14 complex situation we're facing with Marx Brothers  
15 proposed development so we are very appreciative of  
16 this [coughs] of this opportunity. I'm in full  
17 agreement with all the testimony given by--earlier by  
18 Elizabeth Goldstein and the Municipal Art Society and  
19 Lynn Kelly of New Yorkers for Parks, and Carter  
20 Strickland of--of the Trust for Public Land and our  
21 organization. It is in full agreement with the  
22 statements made. So, I'm not going to dwell on that,  
23 but I am going to dwell on--on an interesting  
24 phenomenon we attended because Carnegie Hill is part--  
25 part of Carnegie Hill is in Community Board 11 and--

2 and—and Lower Harlem, and—and we follow those  
3 developments in their community, and we were struck  
4 by the huge tower, and we thought we ought to look  
5 into this, and—and find out more about why this  
6 application had been presented. Our—so our initial  
7 opposition to the project was focused on the—on the  
8 extraordinary height of the residential tower, which  
9 is almost twice the height of even the tallest nearby  
10 apartment buildings in this residential community.  
11 We accepted the explanation put forward by ECF and  
12 the city that once Marks Brothers Playground was  
13 moved to the center of the Block and construction of  
14 the tower and three schools had been completed, the  
15 land of the playground would be returned to the city  
16 and again placed under the control of the Parks  
17 Department. So what's there to complain? We—we were  
18 not yet as sophisticated in our—in our understanding  
19 of the laws governing and the practices governing  
20 Parks at that time. We—we—we didn't find that it  
21 strange and—and this seemingly slight of hand  
22 [coughs] sequence of actions could be allowed. I  
23 mean we did think that there you were creating air  
24 rights for development and then you could return the  
25 land back to the Parks. So everybody supposedly



2 wins. You get the park back and the air rights for  
3 development allowed schools to be—to be built and  
4 affordable housing supposedly even thought that's  
5 controversial. So, our solution was to accept this,  
6 these arguments and ask instead for an alternative to  
7 the proposed single tall tower that would—0—and our  
8 suggestion was why don't you build two towers and no  
9 more than 400 feet tall, and—and the—and this would—  
10 this would create a better, a better context for the  
11 community. We asked our Zoning Consultant George  
12 James to create—he just testified—a 3-D model of the  
13 solution for presentation purposes, and even as we  
14 proposed the two tower solution, [coughs] our pro  
15 bono attorney Carolyn Harris of Goldman Harris,  
16 [coughs] initially made clear that we should abandon  
17 this proposal because it's still involve the same  
18 extraction of the development rights from the  
19 playground as the—as the original proposal. She  
20 reluctantly agreed to a compromise where we presented  
21 both proposals to the community board. You see, you—  
22 you can—you—you have the choice before you, but—but  
23 we—we favor a—a—we favor either—either following  
24 either a smaller development that would not need the  
25 air rights or if you're going to use the air rights

2 then two towers. That was our-our proposal. Now, we  
3 lost that battle and it went to the City Council and  
4 the City Council approved, and we were like the lone-  
5 there was no one out there to support our position at  
6 that time because no one understood this and it-it  
7 wasn't properly vetted as has been repeatedly stated  
8 here. Shortly after the City Council hearing in  
9 June-in June 2017 and subsequent approval, we re-  
10 examined the issues and became convinced of the full  
11 import of the role of playground as-as parks, and-and  
12 by that I mean JO-JOPs as parks, and also the  
13 principal concept that once development rights are  
14 assigned to a built structure, the land is forever  
15 tied to that structure and cannot be returned as park  
16 land. It is with these arguments that we appealed to  
17 the Governor to veto the Alienation Bill, which had  
18 been passed in both houses of the state. That appeal  
19 was heeded when the Governor on October 23, 2017  
20 proposed his attenuated solution that before the  
21 project is allowed to proceed, the State Commissioner  
22 of Parks should make a definitive determination  
23 whether indeed Marx Brothers Playground could be  
24 deemed as either parkland or not parkland, and if the  
25 result was parkland, he indicated that there could be

2 no development rights. Thank you and that's—and  
3 that's where—that's how we came to where we are  
4 today.

5 CHAIRPERSON GRODENCHIK: [off mic] Thank  
6 you very much for your testimony. Next. You are—  
7 you're the last of Mohegans here, but we're going to  
8 actually have the city back, but I do appreciate both  
9 of you sticking around to make sure that your—we hear  
10 from you.

11 ALEXANDER ADAMS: Thank you very much,  
12 and my name is Alexander Adams. I'm the Executive  
13 Director of Citizens Civitas. (sic)

14 CHAIRPERSON GRODENCHIK: Uh-hm.

15 ALEXANDER ADAMS: Civitas Citizens Inc.  
16 and I'm actually joined today by four of our board  
17 members here as well as four partners in this court  
18 case. So, a lot of folks here on behalf of this  
19 issue and they've stuck around as well. We thank  
20 everyone. I have prepared remarks for you written  
21 from the board that agrees, and we agree with most of  
22 what's going on, but I wanted to give you some  
23 context and say that we're deeply concerned that  
24 these playgrounds are not being treated as parks, and  
25 the matter, the issue here, the underlying issue

2 really becomes do they development rights. I mean  
3 this is really what ends up coming out of this.

4 These small parks most of them are very small. We're  
5 not talking about huge, you know, we heard Pelham Bay  
6 or Central Park.

7 CHAIRPERSON GRODENCHIK: [interposing]

8 No, those are--those are no--

9 ALEXANDER ADAMS: These are small  
10 neighborhood parks. These are places where people  
11 walk. They don't, you know, go for big barbecues and  
12 things.

13 CHAIRPERSON GRODENCHIK: In my district  
14 some of them are attached to places that are city  
15 park actually, but--

16 ALEXANDER ADAMS: Yes, and so there's a--

17 CHAIRPERSON GRODENCHIK: [interposing]  
18 you know, but I can take a look.

19 ALEXANDER ADAMS: There's a lot of  
20 mixture there.

21 CHAIRPERSON GRODENCHIK: Yes.

22 ALEXANDER ADAMS: So, without getting  
23 into all those technicalities, if you look at it  
24 these small parks are some of the most heavily used  
25 and they're located in 49 of the 51 Council

2 Districts. So, this is not just one park, although  
3 we're party to that lawsuit as well. This is about a  
4 very large issue. There's a lot like I said of legal  
5 codes interpretations regarding parks, playgrounds,  
6 JOPs, but I think it comes down to the very simple.  
7 You know, if you were to go as a Council person to  
8 any of these JOPs and ask 20 people on the street  
9 your constituents. Is this space a park? I think  
10 you could try. I think all 20 would say, yes, it's a  
11 park. Why are you asking me? I mean, you know. So  
12 residents believe that these are their neighborhood  
13 parks. There is a legal side, but I think what comes  
14 out of this is that the City Council has the right to  
15 set policies. You're the one that sets laws for the  
16 city, and I think what's needed here is for this  
17 committee and for the City Council to make a clear  
18 statement. There's a lot of mud in the water. We  
19 need a clear statement and City Council has that  
20 ability to make that clear statement whether it's to  
21 designate these parks, whether it's to come up with  
22 another MOU, whatever it is, you can clarify  
23 everything by making a clear statement, and the last  
24 thing I'll say is we're not creating any more land.

2 So, this is an item that is super important to  
3 everyone. Thank you.

4 CHAIRPERSON GRODENCHIK: Thank you both  
5 very much. Yes, Mr. Vanderbilt.

6 MR. VANDERBILT: I'd like to make one-one  
7 addition. When--when--after the City Council had  
8 approved in the summer of 2017 the project, we--we  
9 then we--we were not alone. We then reached out to  
10 the Municipal Art Society to the Trust for Public  
11 Land, New Yorkers for Parks. Friends was already  
12 with us and Civitas was in the background. So, we  
13 didn't do this alone and--

14 CHAIRPERSON GRODENCHIK: [interposing]  
15 No, I'm aware of that. Yes.

16 MR. VANDERBILT: --we dog the Governor's  
17 decision so I just wanted to recognize.

18 CHAIRPERSON GRODENCHIK: We'll see what  
19 the Governor's the Park Commissioner decides, but I  
20 than, you all for being here today, and thank you for  
21 your testimony and for your passion for our public  
22 lands. Mr. Drury and Mr. Estelle, I'd just like to  
23 bring you back for on quick question. [pause] Okay,  
24 counsel would remind you that you're under oath, but  
25 I already did. So, the only question that came to my

2 mind while people were testifying are either of you  
3 gentlemen aware of any land that in say the last 10  
4 or 20 years that gone from what was used as what  
5 would—I might consider, anybody might consider park  
6 land to another use, and what would that use be?

7 MATT DRURY: I can speak to—for JOP  
8 specifically. I can—you know, there have certainly  
9 been incidents of the school using its property under  
10 its, you know--

11 CHAIRPERSON GRODENCHIK: Right.

12 MATT DRURY: --jurisdiction and control  
13 for school expansion or things like that. I'm not  
14 aware--

15 CHAIRPERSON GRODENCHIK: [interposing] So  
16 mostly it's been school expansion?

17 MATT DRURY: I'm not a—yes. I mean  
18 absolutely to the degree that there's been any sort  
19 of infringement or—or imposition into that—that  
20 footprint. My understanding is generally speaking  
21 it's—it's been for a specific school use, which I,  
22 you know, not to define that we're not, but it's, you  
23 know, sort of the point that DOE, you know,  
24 understandably wanted to attain that flexibility, you  
25 know, for that sort of use.

2 CHAIRPERSON GRODENCHIK: Understandable  
3 to me. I mean not to everybody but I get.

4 MATT DRURY: Yeah, I've certainly been  
5 around long enough than I like to admit and-

6 CHAIRPERSON GRODENCHIK: You already  
7 admitted to it.

8 MATT DRURY: I know and there you go. I'm  
9 under testimony. I know, anyway so any of these joint  
10 property parks or these playgrounds, School Yards to  
11 Playgrounds have only been used for school purposes  
12 in my recollection throughout my years.

13 CHAIRPERSON GRODENCHIK: Okay. Alright,  
14 thank you both. Thank you for your testimony. Thank  
15 you all for being here today. Obviously, if you have  
16 any further thoughts you can certainly communicate  
17 them to me. As the chair of this committee you've  
18 given us much to think about today, and I think you  
19 for taking time from your busy schedules to be with  
20 us on this Monday afternoon. We will be meeting next  
21 month. We haven't had a topic approved yet. Has it  
22 been approved? Not yet.

23 FEMALE SPEAKER: There's tons.

24 CHAIRPERSON GRODENCHIK: Yes.



2 FEMALE SPEAKER: Well, we can come back  
3 in a week or two. We can come.

4 CHAIRPERSON GRODENCHIK: Well, people can  
5 always send in testimony. That's not a problem. I  
6 will add it to my file and then as will the counsel.  
7 We urge people to do that as quickly as possible.  
8 Certainly you're—you're always able to communicate  
9 with me and I meet quite frequently with Advocates  
10 for Parks. Ms. Kelly and I have become very good  
11 friends over the last few months as some of the  
12 others in this room, and that's all to the good  
13 because when I hear from people who love parks, and I  
14 visit parks, it makes me a better parks chair. So,  
15 with that, I thank you again for being here today,  
16 and I close this hearing. [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 September 23, 2018