

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

SUBCOMMITTEE ON ZONING AND FRANCHISES

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January 24, 2017  
Start: 9:58 a.m.  
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HELD AT: 250 Broadway - Committee Rm,  
16th Fl.

B E F O R E:  
DONOVAN J. RICHARDS  
Chairperson

COUNCIL MEMBERS:  
Daniel R. Garodnick  
Jumaane D. Williams  
Antonio Reynoso  
Ritchie J. Torres  
Vincent J. Gentile  
Ruben Wills  
Corey D. Johnson

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

Tom Finkelppearl  
Commissioner  
NYC Department of Cultural Affairs

Stephen Johnson  
NYC Department of City Planning

Anita Laremont  
Counsel  
NYC Department of City Planning

Robin Kramer  
Partner  
Duval & Stachenfeld

Michael Slattery  
Representative  
Real Estate Board of New York

Ellen Lehman [sp?]  
Representative  
Archdiocese of New York and  
Trustees of St. Patrick's Cathedral

Victoria Bailey  
Executive Director  
Theatre Development Fund

Rosalba Rolon  
Artistic Director  
Pregones Theatre

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

Eric Edward Stern

Chair

Land Use, Housing and Zoning Committee

Manhattan Community Board 5

[sound check]

[pause]

[gavel]

CHAIRPERSON RICHARDS: Alrighty, good morning. I am Donovan Richards, Chair of the Subcommittee on Zoning and Franchises and this morning we are joined by Council Member Vincent Gentile, Council Member Garodnick; Council Member Johnson.

We have one item for a public hearing today, Land Use Item No. 545, a zoning text amendment concerning a Theater Subdistrict of the Special Midtown District. The text amendment would change the rules governing the transfer of unused floor area from listed theaters within the Subdistrict. The proposal would change the required payment amount into the Theater Subdistrict from a fee per square foot of development rights transferred to a fee of 20% of the sale price for each development rights transaction. The text amendment would also change the review process for proposed transfers in the rules governing the use of the Fund.

We will be holding a public hearing on this application today and laying it over for future

1 consideration. We now will hear from Council Members  
2 Johnson and Garodnick -- I was about to say  
3 Grodenchik -- [laughter]. So we'll go to Council  
4 Member Johnson and/or Council Member Garodnick to  
5 give us their statements first and then we will  
6 proceed.  
7

8 COUNCIL MEMBER JOHNSON: Thank you Chair  
9 Richards and members of the Subcommittee for giving  
10 me an opportunity to speak about the application to  
11 update regulations governing development rights  
12 within the Theater Subdistrict. I believe this is  
13 the 19th year of the Theater Subdistrict transfer  
14 program.

15 At this time there are two main issues  
16 that I'd like to bring up; one is specific missed  
17 opportunity within the application and the other is  
18 an area that I think needs major clarification by the  
19 Department of City Planning.

20 As for the former, this application  
21 presents us with an opportunity to amend the  
22 composition of the Theater Subdistrict Council so  
23 that it includes community leadership. As it stands  
24 now, the Council is comprised of the Mayor, three  
25 mayoral appointees from performing arts and related

1 industries, the director of City Planning, the  
2 Speaker of the City Council, and the Manhattan  
3 Borough President. What I believe is lacking are the  
4 voices of people who are elected locally and  
5 appointed to serve the interests of the community and  
6 who are directly accountable to the people who live  
7 in the surrounding community and represent that  
8 surrounding community.

10 That said; I'd like to see the  
11 composition of the Subdistrict Council be amended to  
12 include local elected officials and representatives  
13 who are designated by the local community boards.  
14 The bottom line is that local community leadership  
15 ought to have a voice at the table as part of this  
16 council.

17 Secondly, the baseline contribution that  
18 owners make to the Subdistrict under this application  
19 is a significant leap from current standards. I'm  
20 not here to say that that is right or wrong that  
21 these calculations are just or unjust; I simply think  
22 we need a clear explanation from the Department of  
23 City Planning as to why they are updating the  
24 mechanism for calculating the contributions so  
25 radically. When such a big shift is proposed, we

1 need an explanation as to why that's appropriate  
2 before we move forward. We haven't had such an  
3 explanation yet or at least not one that has  
4 satisfied my understanding of why it needs to be that  
5 large, so I invite DCP to let us know why the 1998  
6 standards are no longer appropriate and why it should  
7 be updated to a much larger increase.

8  
9 Again I want to thank the Subcommittee  
10 for allowing me the time to raise these concerns and  
11 I look forward to posing these questions to  
12 representatives of the Department of City Planning.  
13 I love Anita Laremont in City Planning, but it's  
14 going to be a fun back and forth today. Thank you  
15 very much.

16 CHAIRPERSON RICHARDS: I love her too.  
17 Alrighty, so we will now [background comments] open  
18 the public hearing on Land Use Item No. 545, the  
19 Theater Subdistrict Fund Text Amendment, and our  
20 first two panelists are Stephen Johnson of Department  
21 of City Planning and Tom Finkelpearl, Commissioner of  
22 DCLA, Consumer Affairs [sic].

23 TOM FINKELPEARL: So if I may, I will  
24 start and then hand it over to Planning. Good  
25 morning Chair Richards and members of the

1 Subcommittee; I am Tom Finkelpearl, Commissioner of  
2 the New York City Department of Cultural Affairs; I  
3 am here to testify in regard to the grant activity of  
4 the Theater Subdistrict Council and how it relates to  
5 the proposed zoning amendment. Thank you for the  
6 opportunity to present testimony on this important  
7 topic.

8  
9 As you may know, and as was just  
10 mentioned by Councilman Corey Johnson, the Theater  
11 Subdistrict administers the Theater Subdistrict Fund;  
12 the TSC's goal includes enhancing long-term viability  
13 of Broadway facilitating production of new theater  
14 and developing new audiences. The TSC includes the  
15 Mayor, or the representative of the Mayor, which is  
16 me in this case, City Council Speaker Mark-Viverito,  
17 Manhattan Borough President Gale Brewer, Department  
18 of City Planning Director Carl Weisbrod, City Council  
19 Speaker appointee Paige Price, and three mayoral  
20 appointees, and those this year are Lin-Manuel  
21 Miranda, Daryl Roth and George C. Wolfe.

22 As the Commissioner of Cultural Affairs,  
23 I serve on behalf of the Mayor as Chair of the TSC;  
24 additionally, our staff works closely with City  
25 Planning staff and TSC administrator to facilitate



1 the grant program. This creative zoning mechanism  
2 expands opportunities for theater owners to transfer  
3 their air rights while providing investments in long-  
4 term health of the theater sector; we believe that  
5 this yields substantial public benefit. In the five  
6 rounds of funding provided since it was established  
7 -- and the fifth round, the most recent round, was  
8 just announced earlier this month -- TSC has invested  
9 over \$7.5 million in programs that promote the  
10 welfare of the Theater Subdistrict and the theater  
11 sector. In previous rounds of funding, the TSC has  
12 supported audience development, education, new  
13 productions, and management programs. Through these  
14 programs, TSC funds have supported 266,000 tickets  
15 distributed (many of them free or discounted), 62,000  
16 students engaged in arts education programs, 36 new  
17 productions, 75 workshops, and readings.

18  
19 Round five grants were recently announced  
20 and they'll support paid mentorships and workforce  
21 development programs specifically targeted to  
22 diversifying backstage and technical positions in  
23 theater -- this is an urgent need within the theater  
24 community. A survey of DCLA grantees released a year  
25 ago this month found that 70% of theater employees in

1 New York City identified as white non-Hispanic and  
2 only 35% of technical and production staff identified  
3 as female. In our increasingly diverse city, it is a  
4 great time to reach out to the widest pool of talent;  
5 the future of theater in New York will be stronger  
6 with their contributions. This is not news to those  
7 who work in and care about theater. The response to  
8 our request for proposals for round five was  
9 tremendous; we received over 90 letters of interest;  
10 of these, 18 very strong proposals were asked to  
11 submit for full applications; we were able to support  
12 11 of them with just over \$2.2 million of Theater  
13 Subdistrict funds. Clearly, this innovative, unique  
14 tool to address some of theater's most pressing  
15 concerns is in high demand.

17 The Theater Subdistrict Council itself  
18 includes people who are deeply committed not just to  
19 theater, but theater as it is created and practiced  
20 here in New York City. As I mentioned, the current  
21 members include Lin-Manuel Miranda, actor-producer  
22 Paige Price, producer Daryl Roth, and director George  
23 C. Wolfe. Among them, they have won a total of 23  
24 Tony Awards; this level of excellence and expertise  
25

1 is clearly reflected in the grant-making activities  
2 of the TSC.  
3

4 Theater is a signature industry in New  
5 York City; according to the Broadway League, it  
6 contributed \$12.57 billion to New York City's economy  
7 and supported 89,000 jobs during the 2014-2015  
8 season. The industry attracted a record-breaking  
9 \$13.3 million admissions to Broadway shows and 63% of  
10 those were tourists. Off-Broadway has an additional  
11 \$450 million annual impact on the economy of New York  
12 City, according to the Off-Broadway Alliance.

13 The Theater Subdistrict encompasses what  
14 is probably the highest concentration of theater  
15 expertise and talent anywhere in the world, but the  
16 health of the Subdistrict is directly connected to  
17 New York's broader theater ecosystem encompassing all  
18 five boroughs -- artists, producers, professionals,  
19 and audiences all play a vital role across the  
20 commercial and nonprofit theater, both in and out of  
21 the Theater Subdistrict boundary. Strengthening the  
22 theater industry has a long-term positive effect on  
23 the Theater Subdistrict. The TSC has invested  
24 millions of dollars in the health of organizations  
25 citywide; the connection between the Subdistrict and

1 the theater community around the City can be quite  
2 direct. We all know the impact of productions like  
3 *Hamilton* that started in the nonprofit public theater  
4 and has stormed Broadway, but this is not an isolated  
5 incident. Actors, directors, technicians, and  
6 audience members move freely between the commercial  
7 and nonprofit theater, so a healthy theater world in  
8 the City makes a healthy Theater Subdistrict.

10 With additional funding, the Theater  
11 Subdistrict Council could deepen its impact; with  
12 this text amendment we can bring the program's scope  
13 in line with its original intent and expand its  
14 ability to support the theater community. For  
15 instance, we could consider scaling up some of the  
16 successful programs, explore new ways to achieve TSC  
17 goals of enhancing viability of the Subdistrict, we  
18 could fund a greater number of the initiatives and  
19 organizations that apply each round, make the theater  
20 accessible to hundreds of thousands of New York City  
21 school students who aren't able to attend Broadway,  
22 or invest in analysis or evaluation of the programs.

23 According to The Alliance of Resident  
24 Theatres, more than 80 performance spaces have closed  
25 in the last 15 years in New York City. So while New

1 York theater is undeniably vibrant, we cannot  
2 minimize the challenges faced by smaller  
3 organizations whose creative adventurousness is a  
4 major source of strength to the sector and the art  
5 form. Sustaining a robust commitment to the  
6 Subdistrict Council funding not only improves the  
7 prospect for those who work within its boundaries,  
8 but serves the field as a whole.

9  
10 Thank you again for the opportunity to  
11 testify here today and I will be happy to answer  
12 questions after we hear from the...

13 CHAIRPERSON RICHARDS: Thank you,  
14 Commissioner.

15 TOM FINKELPEARL: uh Planning.

16 STEPHEN JOHNSON: Good morning Chair  
17 Richards and members of the Subcommittee. The  
18 Theater Subdistrict Fund Text Amendment is a project  
19 to modify the contribution rate into the Theater  
20 Subdistrict Fund which is created from the transfer  
21 of development rights (TDRs) from listed theaters  
22 within the Subdistrict to receiving sites within the  
23 Subdistrict. The Theater Subdistrict Fund and the  
24 Theater Subdistrict Council, which oversees the Fund,  
25 originated from a 1998 text amendment that

1 established this mechanism for transferring TDRs from  
2 listed theaters in the Zoning Resolution throughout  
3 the Subdistrict in exchange for preserving and  
4 maintaining a legitimate theater use and for this  
5 contribution into the Fund. This proposal  
6 establishes a new, more rational methodology for  
7 calculating the contribution rate into the Fund that  
8 is based on the actual value of the TDRs and not  
9 assessed property values -- this is based on the  
10 actual values. So it'll be not only more rational,  
11 but it is aligned with the original intent of the  
12 1998 Zoning Text Amendment.

14 Now we recognize, the City recognizes and  
15 certainly City Planning recognizes that Broadway is  
16 extremely important, it's a vital economic generator  
17 for the City, and also for the development of  
18 theatrical arts and culture throughout the world;  
19 it's a world-class entertainment mecca, and the City  
20 and City Planning has been working in this area for  
21 five decades and I'll take you through some  
22 background information on this, and I have  
23 approximately about ten slides, but I'll try to be  
24 quick.

1 So the Theater Subdistrict is centrally  
2 located between West 40th Street and West 57th, 6th  
3 and 8th Avenue, and as you can see from the red in  
4 the map, this is high-density commercial area. There  
5 is this little nub just west of 8th Avenue that is  
6 also the Special Clinton District for three block  
7 frontages -- you can see it in the corner there; you  
8 have Bryant Park in the green on the bottom and the  
9 Port Authority Bus Terminal on the lower left-hand  
10 side. And obviously, as you move further west from  
11 8th Avenue it's more residential in character.

12 So our zoning map shows the zoning  
13 districts; it's mainly predominantly C6, which is  
14 high-density commercial, there are some unique zoning  
15 districts in this area, but mostly they have a base  
16 FAR of 10-15 and those could also be increased  
17 through a number of different bonuses.

18 So our map here depicts the entirety of  
19 the Theater Subdistrict. The area in blue is the 8th  
20 Avenue Corridor, the area in gray is the Subdistrict  
21 Core, and the entirety of the thing is the  
22 Subdistrict. So the original Special Theater  
23 District was created in 1967 as the first Special  
24 District in the Zoning Resolution, it has that  
25

1  
2 esteemed honor; the City did this in order to try to  
3 preserve the theaters and to protect the theaters and  
4 to try to preserve them from the westward expansion  
5 of office development. So the idea of let's preserve  
6 the theaters and not have the westward creep of  
7 commercial development from the CBD come into the  
8 area.

9 The Zoning Text also had other provisions  
10 that encouraged the creation of new theaters with a  
11 floor area bonus; again, something that the City did  
12 to try to encourage the area for development for  
13 theater use. And in 1982, the Board of Estimate  
14 approved the Special Midtown District, and that is  
15 when the Theater District became a subdistrict within  
16 the Midtown District. Now the Midtown District was  
17 to have a framework for development and growth in the  
18 area, but it also had new zoning provisions focused  
19 on the Theater Subdistrict and that included the  
20 transfer of development rights to nearby lots,  
21 preserve the 44 listed theaters that were listed in  
22 the Zoning Resolution by restricting demolition of  
23 those theaters, and having more flexibility in  
24 transferring floor area from landmarked theaters and  
25



1 there also was a floor area bonus for the rehab of  
2 theaters, which was used twice during that time.

3  
4 So these are the 44 listed theaters on  
5 our map here. In the Theater Subdistrict, all were  
6 built before 1929 and all but 12 of them are  
7 landmarked theaters. Now in 1984 there were only  
8 landmarked theaters; then in 1988 there were 30.  
9 Predominantly the reason why there are not more  
10 landmarked theaters is that the 42nd Street  
11 development project rehabbed a number of the theaters  
12 which are on 42nd Street, so those were rehabbed and  
13 did not need to be landmarked.

14 So in 1998 the City, working with LPC,  
15 Broadway Initiative, the theater industry, and many  
16 different groups, established the 1998 Zoning Text  
17 Amendment which established a new mechanism for  
18 transferring development rights from these listed  
19 theaters throughout the Subdistrict in exchange for  
20 retaining, preserving and maintaining the theater for  
21 legitimate theater use. Also, there was a  
22 contribution into the Theater Subdistrict Fund and so  
23 while the land use was circumci... circumscribed  
24 [laughter] for these theaters -- check that --  
25 [background comments] yeah, that was my performance

1 piece -- circumscribed for the theaters, they were  
2 allowed to transfer those TDRs in an unprecedented  
3 way throughout the Subdistrict, which was unheard of  
4 at that time, so this provided more opportunities to  
5 preserve the theaters and to give them a legitimate  
6 theater use. And when I say legitimate theater, it  
7 just means live theater, musical performance; no  
8 movies or TV shows.  
9

10 So these are the current regulations for  
11 the transfer through Section 81-744, so these are all  
12 basic administrative provisions, you know you have to  
13 have the available TDRs to transfer and once you  
14 transfer you lose those TDRs to transfer again, you  
15 have to have a continuation of legitimate theater  
16 use, and the one that we're predominantly focused on  
17 here is the final one on the bottom, the appropriate  
18 funds are deposited into the Theater Subdistrict  
19 Fund.

20 So the Fund itself, the methodology. So  
21 the Fund was created to promote and develop the  
22 production of new theatrical work, cultivate new  
23 audiences for the theater and to support and showcase  
24 Broadway, and as the Commissioner likes to say -- he  
25 gave an excellent presentation to the City Planning

1 Commission, last week I believe it was -- it's a  
2 cultural ecosystem. So you not only need to have a  
3 theater -- and in this case, landmarked, beautifully  
4 preserved, historic theaters -- but you have to  
5 develop the audience to go to the theater and you  
6 have to develop the plays and the musicals to put on  
7 to perform at the theater. So the current  
8 methodology for determining the contribution rate  
9 into the Fund is based on a dollar value multiplied  
10 by the total amount of square footage transferred.  
11 So if you transferred 10,000 square feet and the  
12 dollar value is \$10 per square foot, then you have  
13 \$100,000 going into the Fund; this is regardless of  
14 whatever price is paid by the receiving site for the  
15 TDRs.

17 So the original \$10 per square foot rate  
18 was based on 20% of the average sales of property  
19 value in the Theater Subdistrict -- this is clearly  
20 stated in the City Planning Commission report -- and  
21 the contribution rate is required to be adjusted  
22 every three to five years and at the end of last  
23 year, 2016, will be the end of the fifth year mark.

24 So the Department undertook the previous  
25 adjustments by using Department of Finance data and

1 taking all the assessed property values within the  
2 Subdistrict and then dividing by the total built  
3 square footage in the Subdistrict. Since the  
4 original rate of \$10 per square foot it's been  
5 adjusted twice and since 1998 there have been 23  
6 transfers, 20 authorizations and 3 certifications  
7 from 9 granting theaters to 15 receiving sites, and  
8 that transferred approximately 600,000 square feet of  
9 TDRs and contributions in the Fund is approximately  
10 \$9.6 million into the Fund.  
11

12 Again, this is just the list of the eight  
13 members of the Council that were already reviewed;  
14 the Council is a 501(c)(3) not-for-profit  
15 organization; they meet regularly; all the meetings  
16 are open to the public; the Department of City  
17 Planning has data on our website; we have  
18 organizational documents, reports, who's getting  
19 funding, why they're being funded; it's all up on our  
20 website and open to the public and can be viewed at  
21 any time.

22 So the Fund grants. Since 1998 there  
23 have been five rounds of grant-making totaling  
24 approximately 50 grants for \$8 million to over two  
25 dozen different groups. The numbers here are very

1  
2 impressive I think -- thousands of discounted or free  
3 tickets and arts development program for students and  
4 schools, new productions, etc. Now the fifth round  
5 of funding for \$2 million was announced in March of  
6 last year and the recipients were just announced I  
7 think a few weeks ago and the focus of those round  
8 five grant funds are development and training of  
9 nonprofessional professionals with the idea and focus  
10 of creating more diversity within the theatrical  
11 field.

12 So our proposal here, the first part of  
13 the proposal is the Chairperson Certification. So  
14 the existing transfer of development rights pursuant  
15 to the certification allows the transfer of  
16 development rights by the Commission, provided that  
17 that list of items that I showed you previously on  
18 page six, which is in your handout, are met;  
19 discretion here is limited. So the Department of  
20 City Planning confirms the numbers, we review the  
21 documents, our counsel reviews the legal documents,  
22 and we make sure everything is in order. So what  
23 we're proposing is to streamline the process and try  
24 to create some efficiencies which I hope the Broadway  
25 theaters are happy with and we think it's a good

1 idea. So we are proposing to make the Commission's  
2 Chairperson Certification; this is also in line with  
3 how the Department of City Planning does  
4 certifications, transfer of air rights now as a  
5 Chairperson Cert, and in some cases, for example, in  
6 Hudson Yards; in some areas they don't even have the  
7 Chair Certifications and Notice of Intention, but we  
8 think a Chair Certification is certainly appropriate  
9 in this case. This does not affect the Commission  
10 authorization, which is for transfers along the 8th  
11 Avenue Corridor; it's just for the certification.

12  
13 In addition to that, all applicants we  
14 require to send applications to the council member,  
15 both council members, the borough president and the  
16 community boards, so every time there's an  
17 application for these, these are sent out to these  
18 individuals and groups for 60 days; we are retaining  
19 that, we're not removing that. All of these transfer  
20 for certifications, and as well as the  
21 authorizations, will still go out to all of these  
22 members of the community and the council members.

23 So our second part of the proposal is  
24 that we clarified the goals of the Theater  
25 Subdistrict Council and general provisions of 81-741.

1 So during the public review process we only got  
2 positive feedback about round five of the grant  
3 funding proposal for nontheatrical personnel,  
4 everybody was on board with it. However, there were  
5 some questions about how it met with the existing  
6 goals of the Theater Subdistrict Council, so we added  
7 some text broadening it slightly saying that the  
8 activities that the TSC and the Fund could support  
9 assist activities that support and strengthen the  
10 Subdistrict in general.

12 We also added some language acknowledging  
13 that small theatrical groups and organizations should  
14 receive funding or could receive funding; this was  
15 acknowledging concerns from the community board and  
16 the borough president.

17 Our third part of the proposal is the  
18 administration of funds. Within the general  
19 provisions of the Zoning Regs there is a requirement  
20 to reserve 20% of all funds in the Theater  
21 Subdistrict Fund for periodic inspection and  
22 maintenance reports; these are done to make sure that  
23 the theaters are being operated appropriately and  
24 they're being maintained. The Department concluded  
25 that reserving 20% of funds for this purpose was

1 excessive, so the proposal simply states that it's up  
2 to the Subdistrict Council to determine how much  
3 money they need to reserve in the Fund for these  
4 reports.

6 So our final proposal here, our final  
7 slide here. So while we were undertaking the three-  
8 five-year review of the adjustment for the  
9 contribution rate, the Department reviewed all the  
10 transfers using this mechanism and we found that the  
11 contribution amount to the Fund expressed as a  
12 percentage of the actual amount paid for the transfer  
13 of development rights ranged from about 4% to 9%.  
14 And as I mentioned earlier, in the 1998 Commission  
15 report it clearly states that the rate is based --  
16 the \$10 per square foot is based on 20% of the  
17 average of sales price of property in the Theater  
18 Subdistrict. So clearly the 4% to 9% that we have  
19 been achieving was not envisioned by the Commission  
20 or the members who participated in that project.

21 So the Department is proposing that the  
22 contribution rate be set at 20% of the price paid for  
23 the TDRs; this should be a more rational methodology  
24 for determining the contribution rate to the Fund  
25 instead of using assessed property values, which we



1 know are not based on fair market value or sales  
2 price.  
3

4 In tandem with that, because there were a  
5 few arm's length transactions in this area and there  
6 are many variables that can go into and influence the  
7 price paid for TDRs that are typical for any type of  
8 land sale transaction in the City, these things may  
9 not be directly related to the fair market value, the  
10 Department is proposing to establish a minimum  
11 contribution rate amount for TDRs in the Subdistrict.  
12 This price per square foot will be adjusted very  
13 three to five years and will established via a market  
14 study undertaken by a certified valuation and  
15 appraisal company, the proposed Zoning Text is  
16 written so that the contribution into the Fund from  
17 this action would then be the higher of the two  
18 numbers, either the market study valuation price or  
19 the 20% of the TDR price. The City Planning  
20 Commission will continue to review adjustments to the  
21 minimum contribution rate as it is currently in the  
22 text.

23 Now the proposed minimum contribution  
24 rate amount is \$347, which originated from our Avison  
25 Young market study of TDR values that the Department

1 of City Planning initiated. Avison Young looked at a  
2 number of variables in the report and the Department  
3 took the information from this report and arrived at  
4 the following methodology for determining this  
5 minimum contribution rate or floor price. So we took  
6 the ten most TDR sales, the last ten within the  
7 Theater Subdistrict, adjusted them for time and then  
8 the range of the sale price for these TDRs varied  
9 from a high of \$556 to a low of \$298; we then took  
10 the lower core tile of these numbers as the minimum  
11 contribution amount. So the lower core tile is the  
12 number which accounts for the bottom 20% of the  
13 numbers, of the data points, which can be found  
14 there, so the Department believes and the Commission  
15 believes this accounts for a very reasonable floor  
16 price, a very reasonable minimum contribution rate  
17 that gives the industry flexibility in negotiating a  
18 deal for TDRs.

19  
20 Now we also -- during the public review  
21 process of this project one of the modifications that  
22 the Commission made from the original proposal came  
23 out of concerns from the theater industry and from  
24 the borough president about fluctuating real estate  
25 markets and possible downturns in the economy that

1 could happen not within the three to five-year  
2 window, so as a result of this, we proposed allowing  
3 the applicant to request a new market study before  
4 the three-year to five-year window and this market  
5 study would be paid for by the applicant; it must be  
6 completed within a year and it must be completed  
7 using the Department of City Planning methodology  
8 that is being established with this proposal.

10 And finally, also in response to concerns  
11 from the theater industry, they sent us a letter  
12 proposing a phase-in process to the 20%, because  
13 there were concerns about the size of the increase  
14 and the rapidity of the increase and the Commission  
15 concurred on this point, so the Commission modified  
16 the proposal to include a gradual phase-in to the 20%  
17 number, the TDR sale price, so the proposed phase-in  
18 is up on your screen as follows:

19 So an applicant who files and closes by  
20 June 30th of this year shall contribute the current  
21 rate of \$17.60 per square foot, using the methodology  
22 that we have now. An applicant who files and closes  
23 by the end of the year 2017, the contribution rate  
24 will be set at 10% instead of the 20%, and in  
25 addition to that, if they go through the City

1 Planning certification review process and they file  
2 by the end of the year, then they can keep that 10%  
3 for one year after they file their application. And  
4 then on the first of January 2018, that's when the  
5 contribution rate will go up to the 20% of the sale  
6 price of the TDRs or the minimum contribution rates.  
7 And that wraps up the proposal.

8 CHAIRPERSON RICHARDS: Thank you, sir.

9 So I'm going to just ask a few questions and then  
10 we'll turn to Council Member Johnson.

11 Okay, so let's just start with the 20%;  
12 can you just go through what was the justification in  
13 1998 for the 20%?

14 STEPHEN JOHNSON: So the 20% -- we know  
15 from the Commission report, it clearly states that  
16 the 20% was based on the average lands sales price  
17 within the Theater Subdistrict; now there weren't a  
18 lot of TDR sales, things to base the price on or a  
19 discount for the TDRs, so what the Department of City  
20 Planning did was, they looked at the average sales  
21 price, which was about \$100, they gave it a 50%  
22 discount because the number of potential buyers for  
23 TDRs within the Subdistrict are -- there are fewer  
24 people who can buy into that because you have to have  
25

1 the property within the Subdistrict, so they gave it  
2 a discount of 50% and then that's where they got the  
3 \$10 from 20% of \$50. So that's what was negotiated  
4 and approved by the Commission and the people who  
5 contributed to the -- I don't know if the Theater  
6 Advisory Council played a part in that, but...

8 CHAIRPERSON RICHARDS: And why is 20% the  
9 right number? Like did that number just magically  
10 appear or was there some rationale for 20%; why not  
11 30%; why not 40%?

12 STEPHEN JOHNSON: They agreed to that at  
13 the time; there's nothing within the [inaudible]...  
14 [crosstalk]

15 CHAIRPERSON RICHARDS: So in 1998 you  
16 agreed to 20%, so that number just came from  
17 anywhere?

18 STEPHEN JOHNSON: They looked at what  
19 they thought would be a reasonable price and they  
20 said this was a reasonable price, they discussed it  
21 amongst all the groups that were working on the  
22 project and they all agreed to it.

23 CHAIRPERSON RICHARDS: So 20%, from what  
24 I'm hearing, is just a magical number; there's no  
25 rationale for 20%, it was just a number that..

2 STEPHEN JOHNSON: There's nothing magical  
3 about it; it's a straightforward number and everybody  
4 agreed to it, including the Broadway Initiative, the  
5 Commissioners and everybody who played a part in it.

6 CHAIRPERSON RICHARDS: How many theaters  
7 do you foresee being able to sell air rights every  
8 year... [crosstalk]

9 STEPHEN JOHNSON: Every year...

10 CHAIRPERSON RICHARDS: or what have we  
11 seen... I meant... well, give me what have we seen so far  
12 over the past three [sic] years... [crosstalk]

13 STEPHEN JOHNSON: So there's been 23  
14 transfers since 1998 involving I think 9 theaters;  
15 there's currently 17 theaters that have available air  
16 rights; some of those are nominal, I think one of the  
17 theaters has 1,000 square feet.

18 CHAIRPERSON RICHARDS: So in the past  
19 five years, how many transactions have we seen?

20 STEPHEN JOHNSON: Well they started with  
21 the Martin Beck Theatre, so we've gotten all 23 since  
22 I think 2002.

23 CHAIRPERSON RICHARDS: So you spoke of  
24 obviously raising contribution costs and you're  
25

1 supposed to raise it, I believe, based on the text,  
2 every three to five years...

3  
4 STEPHEN JOHNSON: That's correct, yeah.

5 CHAIRPERSON RICHARDS: so can you run  
6 through from 1998 how often was this raised and was  
7 it done consistently over the three to five-year  
8 window... [crosstalk]

9 STEPHEN JOHNSON: Sure. So I can tell  
10 you it wasn't consistent because nobody used a  
11 transfer until the Martin Beck did it, I think in  
12 2002 the Martin Beck Theatre did it, which was in the  
13 Clinton District. So the theater, from my  
14 understanding of it, there was no adjustment to that  
15 point because nobody had used the transfer mechanism  
16 at that point. So since then they adjusted it twice  
17 and we've been on that schedule since that first...

18 CHAIRPERSON RICHARDS: So the text says  
19 you're supposed to raise it every three to five years;  
20 correct?

21 STEPHEN JOHNSON: That's correct.

22 CHAIRPERSON RICHARDS: And because people  
23 weren't using it, there was this lapse in raising it?

24 STEPHEN JOHNSON: That's correct.  
25

1  
2 CHAIRPERSON RICHARDS: But the text says  
3 you were supposed to do it every three to five years.  
4 So do you get why people -- and our friends in  
5 theater are a little antsy because this was not done  
6 consistently on a regular basis as the text stated it  
7 was supposed to be and now you're coming with...

8 STEPHEN JOHNSON: Sure.

9 CHAIRPERSON RICHARDS: you know this...

10 STEPHEN JOHNSON: So...

11 CHAIRPERSON RICHARDS: big...

12 STEPHEN JOHNSON: Sure.

13 CHAIRPERSON RICHARDS: Is there a  
14 justification for the inflation now is the big  
15 question?

16 STEPHEN JOHNSON: So actually the lag in  
17 the first adjustment benefited the people who were  
18 buying the transfers because if it had been adjusted  
19 sooner, the price would've gone up sooner, so it  
20 benefited the Broadway theaters. The 20% is  
21 justified because that's what everybody agreed to...

22 CHAIRPERSON RICHARDS: In 1998.

23 STEPHEN JOHNSON: in 1998 and that's what  
24 it clearly states in the Commission report, so that's



1 what our marker is. The marker says 20% and that's  
2 how we're moving forward with... [interpose]

3  
4 CHAIRPERSON RICHARDS: So why the drastic  
5 change now?

6 STEPHEN JOHNSON: Because this is the  
7 first time we looked at the historic transfers, the  
8 previous two transfers we just took the assessed  
9 property values -- we did the math; we came up with  
10 those two adjustments to \$14.91 in 2006 and \$17.60 in  
11 2011. This time we took the initiative to see how  
12 well the adjustment rate was working and that's when  
13 we found this mismatch, and clearly there is a  
14 mismatch when you're... the last transaction from the  
15 Helen Hayes Theatre, there were two transactions,  
16 they transferred a number of square footage and that  
17 was only... came to about 4% of the \$27 million that  
18 the theater got for that transfer. The Theater  
19 Subdistrict Fund got 4%.

20 CHAIRPERSON RICHARDS: And why can't the  
21 market appraisal simply determine this all on a case  
22 by case basis?

23 STEPHEN JOHNSON: Well if we had to do an  
24 appraisal every single time that would create delays  
25 into the process, it would create...

2 CHAIRPERSON RICHARDS: How much of a  
3 delay?

4 STEPHEN JOHNSON: I'm not sure how much  
5 of a delay if we did one for every single transfer,  
6 but we think basing it on the 20% is very  
7 straightforward; if we know how much they're paying  
8 for the sales price of the TDRs, then that gives us  
9 the number that we are looking for.

10 CHAIRPERSON RICHARDS: Right. And do we  
11 just not trust applicants to be able to do this on  
12 their own and file accurate information; is that the  
13 reason... [crosstalk]

14 STEPHEN JOHNSON: We absolutely trust  
15 them. I mean we have no... we're not saying that  
16 there's been any wayward activity here or anything  
17 that shouldn't be done, but this is just how business  
18 is done with land transactions, TDR sales, fee sales,  
19 and we're saying that there's different variables  
20 that go into this process and that's... [crosstalk]

21 CHAIRPERSON RICHARDS: So I get you're  
22 saying you trust them. Has there been any history of  
23 applicants lying about any deals or has there been  
24 any information that has been filed that has not been  
25

1 accurate that would make you proceed in the fashion  
2 that you are?

3  
4 STEPHEN JOHNSON: We don't have any  
5 details, but we don't go out and try to prove the  
6 applicant is lying to us on any..

7 CHAIRPERSON RICHARDS: So Department of  
8 Finance, they have not found any cases of people  
9 filing misinformation?

10 STEPHEN JOHNSON: I'm sure they have, but  
11 you mean in the Theater Subdistrict?

12 CHAIRPERSON RICHARDS: Yes.

13 STEPHEN JOHNSON: I'm not aware of the  
14 Department of Finance finding any specific illegal  
15 activities going on within the Theater Subdistrict.  
16 But the point that I think we're trying to establish  
17 here is that this is not illegal activity, this is  
18 how transactions take place -- there's multiple  
19 variables going into a transaction, there's land  
20 swaps, there's stocks, there's cash, there's  
21 different properties, and there's non-arm length  
22 transactions and these are all the different variable  
23 that can influence the price of the TDRs.

24

25

2 CHAIRPERSON RICHARDS: Right, but you're  
3 saying you have not found any cases where that has  
4 happened.

5 STEPHEN JOHNSON: We haven't...

6 CHAIRPERSON RICHARDS: And if that did  
7 happen, it would be the job of the Department of  
8 Finance obviously to find out these things, correct?

9 STEPHEN JOHNSON: Right. But again,  
10 we're not saying that anything illegal is happening,  
11 this is just how business is done. You know if  
12 there's a land swap and there's other variables going  
13 into the project, City Planning doesn't track that;  
14 these things come up... [crosstalk]

15 CHAIRPERSON RICHARDS: But wouldn't it be  
16 the Department of Finance's job to track that is what  
17 I'm...

18 STEPHEN JOHNSON: Department of Finance  
19 could track that, but some of these things happen  
20 over years. So if you negotiated a land swap or a  
21 property, you know, in Hudson Yards and that takes  
22 place two years down the road, you've paid for your  
23 TDRs and then that transaction could happen two years  
24 down the road and that comes in two years down the  
25 road, but...

2 CHAIRPERSON RICHARDS: And you're saying  
3 Department of Finance wouldn't be able to go back and  
4 reevaluate that and..

5 STEPHEN JOHNSON: Well they might at that  
6 point..

7 CHAIRPERSON RICHARDS: Right.

8 STEPHEN JOHNSON: but they wouldn't see  
9 that up front.

10 CHAIRPERSON RICHARDS: Right. Alright,  
11 I'm going to just.. I'm going to go to Council Member  
12 Johnson in a second.

13 Question on process -- so you're swapping  
14 from commission to chairperson and what is the  
15 reasoning behind that recertification...? [crosstalk]

16 STEPHEN JOHNSON: Well there's a couple  
17 reasons; the main reason is this is how the  
18 Department does these types of transfers; this is how  
19 we do it in Hudson Yards... [crosstalk]

20 CHAIRPERSON RICHARDS: But no, we haven't  
21 done it this way, so we're trying..

22 STEPHEN JOHNSON: Well that's why... how we  
23 did it..

24 CHAIRPERSON RICHARDS: Right, so..  
25

STEPHEN JOHNSON: so this was 1998; this is one of the first ones...

CHAIRPERSON RICHARDS: Uhm-hm.

STEPHEN JOHNSON: that was on the regs and now how we do it, the process is doing it as a Chair Cert because we're just looking at numbers and that's the main reason and it helps increase the efficiency for the granting side and the receiving side; can speed up the process for them.

CHAIRPERSON RICHARDS: And how much time would you save?

STEPHEN JOHNSON: It can vary, you know we have projects that sail through and some that take years to get through, but it would probably minimum save a month, maximum it could probably save uh...

CHAIRPERSON RICHARDS: Okay. Now you are familiar; there have been concerns raised I believe by the borough president and the community board on changing this process, swapping it...

STEPHEN JOHNSON: Yes. Yeah.

CHAIRPERSON RICHARDS: yes, so and the Council also has concerns... [crosstalk]

STEPHEN JOHNSON: Sure.

CHAIRPERSON RICHARDS: with that as well.

STEPHEN JOHNSON: Yes.

CHAIRPERSON RICHARDS: Last question; how will DCP ensure that the dollar amount stated by the applicant, whether in the contract or sale or other documents submitted at the time of application is actually the amount that get paid for the development rights at the time of the future closing? So we sort of see in your process -- and you could run through it, if you wish... [crosstalk]

STEPHEN JOHNSON: Sure.

CHAIRPERSON RICHARDS: where they come in and they certify..

STEPHEN JOHNSON: Sure.

CHAIRPERSON RICHARDS: but they haven't closed, so... [crosstalk]

STEPHEN JOHNSON: So typ..

CHAIRPERSON RICHARDS: things can change..

STEPHEN JOHNSON: Sure.

CHAIRPERSON RICHARDS: Yeah.

STEPHEN JOHNSON: So typically what would is, the applicant would come in to us and say we have this.. we want to transfer these rights to this landing site, these are the parties, this is what we want to do; we look at it, we ask about the pricing

1 and then we kind of schedule out the land use process  
2 of how long the applicant would take likely to get  
3 through. So what is envisioned for this is similar  
4 to what we're doing at Hudson Yards, whereas  
5 everything gets signed, everything gets approved, the  
6 legal documents executed, transfer instrument, all  
7 these things are done, and we have the letter, the  
8 Chair Cert, which is a letter, and we go to the  
9 closing or we know of the closing and then we bring  
10 the letter or send it to them when they have the  
11 closing, so we hold on to the letter that they're  
12 looking for that says these rights have been  
13 transferred until... [interpose]

14  
15 CHAIRPERSON RICHARDS: But there's a lot  
16 that can change in-between when they come, I believe,  
17 to certify and towards the end... [crosstalk]

18 STEPHEN JOHNSON: Sure.

19 CHAIRPERSON RICHARDS: so how are you  
20 going to...

21 STEPHEN JOHNSON: Well...

22 CHAIRPERSON RICHARDS: how are you  
23 addressing that?

24 STEPHEN JOHNSON: If the rate... So  
25 typically if the applicant comes in and they have...



1 historically they have a rate... we say well we're not  
2 changing the rate until the end of 2016 and they're  
3 like, alright, well we're coming through at the  
4 beginning of 2016, so we'll be through. If they came  
5 in to us in November, we'd say well we're changing  
6 the rate so you're going to have to pay the new rate,  
7 so then they would be aware of it at the time. If  
8 the project doesn't actually close, we haven't given  
9 them the letter yet, we haven't said here's your  
10 letter that you have the TDRs, so we're not going to  
11 give them the letter if they take years and years and  
12 years to close and there's a price adjustment, if  
13 something has changed, and that can also be a  
14 downturn. If their 20% is say \$1 million and  
15 everything's almost done and they take three years to  
16 close and then they say well, there's been a crash in  
17 the real estate market; we haven't closed, we haven't  
18 been able to close, you know, what's the new minimum  
19 contribution rate and then if they wanted... 'cause we  
20 didn't close, the documents weren't given away, given  
21 to the applicant, then they could pay for a new --  
22 either if it's in the three to five-year window, City  
23 Planning would do it and if it's not within that  
24

1 window, they could then pay for their own new market  
2 study.

3  
4 CHAIRPERSON RICHARDS: Okay, I'm going to  
5 go to Council Member Garodnick, followed by Johnson;  
6 then I'll come back, 'cause I have questions for you,  
7 Commissioner. [background comment] Oh, we'll do it  
8 reverse? Okay, Council Member Johnson first,  
9 followed by Garodnick.

10 COUNCIL MEMBER JOHNSON: Thank you,  
11 Mr. Chair. I'm going to be quick, but I'm going to  
12 have a second round of questions; I'm going to go to  
13 my colleague and friend Dan Garodnick, 'cause I know  
14 he has to run to something else.

15 I want to start off with Commissioner  
16 Finkelparl. Thank you for being here, thank you for  
17 your testimony, very, very helpful. How much is  
18 currently in the Fund?

19 TOM FINKELPEARL: I think it's a little  
20 bit under a million dollars [sic].

21 COUNCIL MEMBER JOHNSON: If you could  
22 turn your mic on... [crosstalk]

23 STEPHEN JOHNSON: One point five.

24 [background comments]

COUNCIL MEMBER JOHNSON: If you could  
turn your mic on.

[background comments]

TOM FINKELPEARL: I'm glad I didn't have  
it on, 'cause I had the wrong answer. Over a million  
dollars, \$1.4, \$1.5. Okay.

COUNCIL MEMBER JOHNSON: So a fifth round  
was just made... [crosstalk]

TOM FINKELPEARL: Yeah. Yeah.

COUNCIL MEMBER JOHNSON: So how come we  
still have a million dollars left?

TOM FINKELPEARL: When we decided on that  
this... [background comments]

CHAIRPERSON RICHARDS: You're gonna have  
to pay for that.

[background comments]

TOM FINKELPEARL: I'm good. Okay, I'll  
try not to touch it. [background comment] Alright.  
I mean it was a judgment call, a decision that \$2  
million... we ended up with \$2.2 million given out in  
that round; that that would be a good amount of money  
to address this issue in the wake of the diversity  
study that we did related to the cultural field.

2 STEPHEN JOHNSON: There also needs to be  
3 a reserve, some part of reserve in the funds for the  
4 inspection and maintenance report.

5 COUNCIL MEMBER JOHNSON: How much?

6 STEPHEN JOHNSON: It's up to the... well  
7 this proposal is to let that be up to the discretion  
8 of the district counsel; that's one of the changes  
9 we're making.

10 COUNCIL MEMBER JOHNSON: So there's \$1  
11 million sitting in the Fund?

12 TOM FINKELPEARL: One point five.

13 COUNCIL MEMBER JOHNSON: One point five.  
14 One point five?

15 TOM FINKELPEARL: Yes. [background  
16 comment] Yes, I'm sure.

17 COUNCIL MEMBER JOHNSON: Okay. So... I  
18 don't really... [interpose]

19 TOM FINKELPEARL: There is this  
20 requirement the reserve fund... [crosstalk]

21 COUNCIL MEMBER JOHNSON: I don't really  
22 understand that. I mean it doesn't... there is such a  
23 huge need, you guys have done great things in the  
24 five grant-making rounds; the number of, as you  
25 mentioned, Commissioner in your testimony, the number

1 of Off-Broadway theaters and Off-Off-Broadway  
2 theaters that have closed in the last 10 or 15 years  
3 is astronomical, especially... [pause] especially in  
4 the area adjacent to the theater district...

5  
6 TOM FINKELPEARL: Little bit downtown,  
7 Chelsea...

8 COUNCIL MEMBER JOHNSON: Yeah, I mean the  
9 number of small theaters has... is like evaporating; we  
10 had the Zipper Theater, the Belt; I mean I could keep  
11 naming all these great theaters that closed,  
12 [background comment] so there's a huge need, so why  
13 are we holding on to \$1.5 million when these theaters  
14 continue to struggle with rent increases, and cost  
15 increases and all of these things?

16 STEPHEN JOHNSON: Yes. So there's no  
17 guarantee that there would be any more transfers of  
18 TDRs within the Subdistrict; that's why the previous  
19 four rounds of funding have... it's not like clockwork  
20 where it happens, you know, every year there's  
21 another announcement and another round of funding, it  
22 depends on TDRs being transferred and like I  
23 mentioned, the first transfer took eight years to  
24 happen and we don't know why, but that's how long it

2   took for the Martin Beck to transfer, so we don't  
3   know if there's going to be... [interpose]

4                   COUNCIL MEMBER JOHNSON:   The sun comes up  
5   every morning and air rights transfers are going to  
6   happen until the end of time.

7                   STEPHEN JOHNSON:   And we have to keep  
8   some amount of money in reserve the maintenance and  
9   inspection report.

10                  COUNCIL MEMBER JOHNSON:   \$1.5 million is  
11   not needed for maintenance.   So who... [crosstalk]

12                  TOM FINKELPEARL:   So by the way, so...

13                  COUNCIL MEMBER JOHNSON:   who makes that  
14   decision, what amount of money [**inaudible**]...  
15   [crosstalk]

16                                   [background comment]

17                  TOM FINKELPEARL:   It's a joint decision,  
18   I mean it's a Planning decision made with our  
19   consent, but we also... it's not over, we can do  
20   another round of grants; there are other subjects --  
21   I mean this is, by the way, not the end of the whole  
22   question of the workforce development and diversity  
23   within the theater sector, absolutely the issue of  
24   the small theaters, creating a round that could  
25   create partnerships between small theaters and large

1 theaters is one that we've been thinking about; the  
2 idea that there are these theaters closing is  
3 absolutely imperative to address, absolutely agree  
4 with that. So we did this round relatively quickly;  
5 we can do another round quickly; it's not that we're  
6 sitting on this; that seemed like the appropriate  
7 amount of money, keeping the reserves to address this  
8 issue at that point.

10 COUNCIL MEMBER JOHNSON: So I'm glad you  
11 guys did the -- I think it's great and especially  
12 under your leadership at DCLA, the diversity in the  
13 cultural sector and in the theater, it's awesome that  
14 you did that, but I think as DCP said in their  
15 testimony, that wasn't in the text to do something  
16 like that.

17 TOM FINKELPEARL: The... [background  
18 comment] go ahead.

19 STEPHEN JOHNSON: It was in the text that  
20 you're required to preserve... have 20% on reserve...  
21 [crosstalk]

22 TOM FINKELPEARL: But it looks like that  
23 the actual... [crosstalk]

24 COUNCIL MEMBER JOHNSON: No, I was talk...  
25

2 TOM FINKELPEARL: the grant site..

3 [crosstalk]

4 COUNCIL MEMBER JOHNSON: I'm talking  
5 about what the grant went to, which was diversity and  
6 workforce development; that wasn't in the 1998 text,  
7 doing that type of work.

8 STEPHEN JOHNSON: There was some broad  
9 language within the.. [interpose]

10 COUNCIL MEMBER JOHNSON: What language in  
11 the text could in any way relate to that?

12 STEPHEN JOHNSON: I think we took the  
13 idea that adding diversity into the Theater  
14 Subdistrict would broaden and strengthen the  
15 Subdistrict. We thought that putting in diversity  
16 into the Subdistrict was beneficial to everybody.

17 TOM FINKELPEARL: So by the way, six of  
18 the grantees are within the subdistrict; it's more  
19 than half the grants.

20 COUNCIL MEMBER JOHNSON: So I agree that  
21 it strengthened it, but it's not in the text; I mean  
22 we can interpret the text any way we want to  
23 interpret it; it's not in the text.. [interpose]

24 STEPHEN JOHNSON: So it...

25



1 COUNCIL MEMBER JOHNSON: so.. just let me  
2 just finish...

3 STEPHEN JOHNSON: I'm sorry, yes.

4 COUNCIL MEMBER JOHNSON: Again, I support  
5 it, but to come here today and to say that you know  
6 we're going by what was done in 1998, we're looking  
7 at 1998, we're using 1998 as a basis, I mean I don't  
8 think that's accurate, based on the testimony that  
9 I've heard today. I think there has been some  
10 interpretation that has gone on and you know if  
11 you're telling me that when the adjustments are made,  
12 the original rate in 1998 and the adjustments in 2006  
13 and 2011, why weren't these changes or text  
14 modifications made back in 2006 and 2011? I mean it  
15 seems like the Department of City Planning's position  
16 is that this needs to be fixed to ensure that, you  
17 know, the appropriate amount of money is going to the  
18 Theater Subdistrict Fund and that there are  
19 appropriate measures in place to ensure that, but  
20 what I feel like you're saying is that the previous,  
21 you know 19 years, even in years where there weren't  
22 TDRs taking place it was like a loophole, it was like  
23 it wasn't done appropriately; it was like there was  
24 some major defect in how it was done originally. So  
25

1 I don't really understand why now in 2017, 2016 when  
2 you all started doing thins, why all these changes  
3 have to happen now. Were the 19 years before.. did  
4 all these loopholes exist? Could people have been  
5 doing things that they shouldn't have been doing,  
6 non-arm's length transactions, where they could've  
7 been structuring deals to benefit themselves? I mean  
8 it just... I don't understand the timeliness of this  
9 and I'm wondering -- not to overinterpret or step on  
10 my colleague's toes -- if this has to do with other  
11 large-scale land use actions that are coming up  
12 elsewhere in the Borough of Manhattan that in any way  
13 could be influenced by this in saying that we need to  
14 set precedent in the Theater District because  
15 something else is going to happen on the east side of  
16 Manhattan. So I mean I'm not fully on board with  
17 what I'm hearing today, I still have a lot of  
18 questions; I know Council Member Garodnick has to  
19 leave in a few minutes, so I'm going to turn it over  
20 to him... [crosstalk]

22 TOM FINKELPEARL: Can I take a...  
23 [crosstalk]

24 COUNCIL MEMBER JOHNSON: Yeah, go ahead.  
25

2 TOM FINKELPEARL: really quick fact [sic]

3 **[inaudible]**... [crosstalk]

4 CHAIRPERSON RICHARDS: Don't all [sic]  
5 answer that question at once.

6 CHAIRPERSON RICHARDS: and not on the  
7 land use side, but in terms of the goals of the  
8 Theater Subdistrict Council funding, including  
9 enhancing long-term viability of Broadway and  
10 facilitating production of new theater work and  
11 developing new audiences. So I think if those are  
12 the goals of the Theater Subdistrict Council funding;  
13 that enhancing the diversity of the workforce in the  
14 theater does those things, it's enhancing the long-  
15 term viability of Broadway; we have to have the best  
16 talent from the entire city working in Broadway. And  
17 I have the very strong held opinion that having a  
18 diverse workforce creates diverse audiences, and so  
19 I... and I think that that is inherent in the original  
20 answer today [sic].

21 COUNCIL MEMBER JOHNSON: I agree with  
22 you, Commissioner, I just... part of me feels like the  
23 Off-Broadway theater community, the Off-Off-Broadway  
24 theater community; the Broadway theater community,  
25 many of those folks live and work in my district,

1 they live in Hell's Kitchen, they live in Chelsea;  
2 they've lived there for a long time, Manhattan Plaza,  
3 one of the largest, you know, buildings in the City  
4 of New York, 43rd Street and... [interpose]

5  
6 TOM FINKELPEARL: Yeah.

7 COUNCIL MEMBER JOHNSON: 9th Avenue and  
8 10th Avenue, one of the biggest homes for artists and  
9 actors -- it's another question to come back to  
10 later, but where is their local representation on  
11 this council?

12 TOM FINKELPEARL: So... [interpose]

13 COUNCIL MEMBER JOHNSON: Is the community  
14 board involved; are they invited; are they asked to  
15 participate? Are the local elected officials -- in  
16 three years on the Council, no one's ever come to me  
17 and said hey, your district is hugely impacted by  
18 Broadway, a lot of the folks live in your district  
19 who don't just perform, but who are involved in the  
20 whole broad range of the industry; we'd love to hear  
21 your feedback on what you think needs to happen with  
22 the Fund and how it relates to the local neighborhood  
23 to both contribute to Broadway and theaters'  
24 diversity and the needs moving forward and to

1 contribute to the whole community. No one's come to  
2 me and asked me that.  
3

4 TOM FINKELPEARL: So I... the way that we  
5 did this this time, you know followed all the rules,  
6 and there was City Council representation in the  
7 person of the Speaker, and so again, we did  
8 everything we were supposed to do; that doesn't mean  
9 that we shouldn't in the future invite you for that  
10 kind of consultation, absolutely, and I feel  
11 strongly; we've talked about this amongst ourselves,  
12 that you know better communication with you in the  
13 future, inviting you to the meetings; these are open  
14 meetings, absolutely.

15 CHAIRPERSON RICHARDS: Alrighty. I just  
16 want to acknowledge we've been joined by Council  
17 Members Torres and Williams and we'll go to Council  
18 Member Garodnick.

19 COUNCIL MEMBER GARODNICK: Thank you very  
20 much Mr. Chairman and thank you, Council Member  
21 Johnson for the opportunity to jump in here. We  
22 appreciate the testimony; my questions are really for  
23 City Planning, because we heard the basis for the  
24 calculation of \$347 as a minimum contribution rate,  
25

1  
2 and it's pretty complicated -- take ten TDR  
3 transactions... [interpose]

4           STEPHEN JOHNSON: Last ten.

5           COUNCIL MEMBER GARODNICK: the last ten,  
6 ranging from 556 down to 298, get the bottom core

7 tile of those and then essentially set that as the  
8 minimum contribution rate. But I want to talk a

9 little bit more with you about is the need for a

10 minimum contribution of any number, let alone 347.

11 Can you just say a little bit more about why City

12 Planning believes that we need to have a minimum

13 contribution as opposed to say just allowing the

14 market to decide what the sale price will be and have

15 20% of that sale price go toward the Fund that the

16 Commissioner has articulated the need for, why do we

17 need the minimum contribution?

18           STEPHEN JOHNSON: Well the crux of the  
19 minimum contribution is to just ensure that there is

20 a minimum value that's brought into the fund. There

21 could be a transaction where -- so we know that... say

22 that the average sales price is \$400 per square foot

23 and a deal was negotiated at \$200 per square foot, so

24 we know that that's not meeting what we would

25 consider a reasonable fair market value for that

1 property, so we think there's other variables; in a  
2 sense we're kind of closing potential loopholes, but  
3 nothing that's illegal, it's just how transactions  
4 are made in the process. So... [interpose]

5 COUNCIL MEMBER GARODNICK: But if  
6 somebody transacts at 200 instead of 400; isn't that  
7 the fair market... isn't that what the market is  
8 bearing for that transaction?  
9

10 STEPHEN JOHNSON: Well it wouldn't be if  
11 they got a, you know, a KFC in Atlanta or you know,  
12 some other sites, you know some other property in New  
13 York City, in some other area...

14 COUNCIL MEMBER GARODNICK: So something  
15 that's not an arm's length transaction, as you said  
16 before, a situation in which you're dealing with...  
17 [crosstalk]

18 STEPHEN JOHNSON: **[inaudible]**

19 COUNCIL MEMBER GARODNICK: multiple  
20 properties in multiple places; is that what you're  
21 saying?

22 STEPHEN JOHNSON: That's one of the  
23 potential...

24 COUNCIL MEMBER GARODNICK: Okay. So as I  
25 understand it, to calculate the real property

2   transfer tax here you need to include all value that  
3   is exchanged for a piece of property; that's the  
4   total consideration; [background comment] is that  
5   your understanding too?

6                   STEPHEN JOHNSON:   That's my understanding  
7   of the check boxes in the form and -- the DOF form --  
8   and I don't know... we don't think that that accounts  
9   for all potential transactions taking place...  
10  [crosstalk]

11                  COUNCIL MEMBER GARODNICK:   Well wait a  
12  second; if you and I have a transaction for air right  
13  sales in a Broadway deal and another deal for a KFC  
14  in Atlanta; was it Atlanta?

15                  STEPHEN JOHNSON:   Yeah.

16                  CHAIRPERSON RICHARDS:   KFC still exists?  
17  Okay.

18                  COUNCIL MEMBER GARODNICK:   We have  
19  another deal and I give you an added benefit in  
20  Atlanta so as to reduce the price paid in Midtown;  
21  the law says that the total consideration here is all  
22  of the value that was exchanged for a piece of  
23  property here, so in that situation, the  
24  consideration includes all of the value that you got  
25



1 for the deal, so you would have to throw in your KFC;  
2 wouldn't you?  
3

4 STEPHEN JOHNSON: I don't think what  
5 we're saying is that we don't think all transactions  
6 are accounted for in these forms; we talked  
7 Department of Finance and they said their focus is on  
8 the TDR, the focus is on whatever the sale price of  
9 the TDR is and doesn't necessarily mean that they're  
10 picking up other things in the transaction and that's  
11 completely legal [sic]... [crosstalk]

12 COUNCIL MEMBER GARODNICK: Ah, so your  
13 point is that the Department of Finance may not  
14 immediately see it, but... [crosstalk]

15 STEPHEN JOHNSON: That's one potential.

16 COUNCIL MEMBER GARODNICK: but do you  
17 concede that as a matter of law it is part of the  
18 total consideration?

19 STEPHEN JOHNSON: It could eventually be  
20 -- if you're doing multiple transactions and one  
21 takes place at a future two years' time, for example,  
22 that doesn't necessarily mean it's going to be  
23 showing up on the property tax page of the document  
24 for the TDRs.  
25

2 COUNCIL MEMBER GARODNICK: So you think  
3 that that is a way to hide consideration potentially?

4 STEPHEN JOHNSON: Not really hide; we  
5 just think that's the way the transactions are being  
6 done.

7 COUNCIL MEMBER GARODNICK: Well tell us  
8 of some of those transactions that you have seen done  
9 in that fashion.

10 STEPHEN JOHNSON: Well during the public  
11 hearing for this project, the rep from the theater  
12 industry came out and spoke about the project and he  
13 mentioned the multiple variables that could go on  
14 within the transaction, so they were speaking as to  
15 why they did not want a floor price or a minimum  
16 contribution rate, because they said there are so  
17 many different variables that go in a transaction  
18 that it would reflect differently on what's being  
19 recorded.

20 COUNCIL MEMBER GARODNICK: Did they cite  
21 any example of one of the multiple considerations  
22 that could be in play here or has the Department of  
23 City Planning identified any actual additional  
24 considerations that are in play here that would  
25

1 necessitate the minimum contribution rate set by the  
2 City in the zoning document?

3  
4 STEPHEN JOHNSON: We haven't identified  
5 any transactions of that nature; the representative  
6 of the industry which deals heavily in real estate  
7 spoke about them and they've included them in some of  
8 the documents that they've sent us referring to some  
9 of these things. But we didn't go out looking for  
10 these different considerations that happened..

11 [interpose]

12 COUNCIL MEMBER GARODNICK: Okay. So I  
13 mean this is a question, right, I mean it's a  
14 relevant question for the Council, it's a relevant  
15 question for our land use policies, because you know,  
16 this is obviously an open question here. Perhaps if  
17 it's a matter of whether the Department of Finance  
18 has the ability to see it; perhaps this Council  
19 should find ways to require additional review of air  
20 rights transactions when we're dealing with them in  
21 these contexts; would that satisfy you that perhaps  
22 there was no consideration hidden here or not  
23 accounted for?

24 STEPHEN JOHNSON: That's an esoteric  
25 argument; I can't, you know, say whether -- that

1 would be something the Commission would go for or not  
2 go for, but any proposal that you have for us, we  
3 will definitely take a look at.

4 COUNCIL MEMBER GARODNICK: Yeah, well  
5 we'll just... you know, that's right, well I mean it's  
6 something we could also, you know, do legislatively  
7 or whatever. But I don't really think it's an  
8 esoteric question, really what I'm trying to get at  
9 is, if you're concerned about either -- well you're  
10 not really concerned about fraud, you're concerned  
11 about just other ways to depress the sale price of  
12 TDRs in the Theater District and if we can find a way  
13 to ensure that all consideration is being included,  
14 then presumably City Planning's concern here is, and  
15 our concern, frankly, is alleviated. Is that a fair  
16 point?

17 ANITA LAREMONT: So... I'm sorry; I'm Anita  
18 Laremont; I'm the Counsel at City Planning, and I  
19 just wanted to just sort of clarify a little bit what  
20 the concern really is with respect to. You know  
21 there are transactions that occur every day that are  
22 fully lawful that involve parties who are engaged on  
23 a myriad of levels in a myriad of different ways and  
24 when they decide to value any particular one aspect  
25

1 of a relationship that they have -- in this case,  
2 TDRs -- they can be influenced by what's going on in  
3 other aspects of their relationship. So the simple  
4 -- I was trying to think of a simple example to give  
5 and this is not really with respect to TDRs, but I  
6 think it does sort of make the point -- if you have  
7 two apartments side by side and the owners both want  
8 to sell those apartments -- they have the same square  
9 footage, they have the same view -- so from a market  
10 perspective their price value would really be the  
11 same, but one owner has a desire maybe to get out  
12 fast or he's selling it to his brother-in-law; the  
13 fact that he may sell his apartment for a lower price  
14 than the guy next door is not in any way something  
15 that... that difference in price would not be something  
16 that the Department of Finance could value, but there  
17 is a market price for an apartment that really would  
18 be reflected by what the average is of what these  
19 apartments cost and we're really just saying that we  
20 want to try to capture, at least as a base, what  
21 really would be an average price here so that all  
22 these other considerations; there's nothing unlawful  
23 whatsoever about them, really are put aside in terms  
24 of us having at least a floor as to what would be  
25

1 appropriate. And as Stephen testified previously,  
2 the fact is that you know this floor price is far  
3 lower than we actually have seen these TDRs traded  
4 at, which to us is evidence of the fact that it  
5 probably won't be used really in anything other than  
6 a very failsafe fashion.  
7

8 COUNCIL MEMBER GARODNICK: We got it, and  
9 we understand the point, but there is... the question  
10 about whether the Council and the Mayor should be  
11 putting particular dollars into the Zoning Resolution  
12 is an open question and the reason why we're  
13 struggling with it is because there are market forces  
14 at play here and ones which we don't actually have  
15 any evidence that people are manipulating or even,  
16 you know, exchanging with their family members or  
17 doing anything in a non-arm's length capacity. But  
18 you have raised an important issue about how to  
19 ensure that the public gets its necessary and  
20 appropriate share in these transactions and I think  
21 that -- you know we're sensitive to the argument  
22 you're making; what if there would be something where  
23 if there were a deviation of what a periodic  
24 evaluation of the market was that it would prompt an  
25 audit from the Department of Finance; how about that?

2 ANITA LAREMONT: My concern with that is  
3 really, you know, based on the example that I gave,  
4 which is that there are sort of factors **[inaudible]**...  
5 [crosstalk]

6 COUNCIL MEMBER GARODNICK: So let's say  
7 that a guy wants to sell it to his brother,  
8 [background comment] quickly, [background comment] so  
9 you would say in that case there has to be a bear  
10 minimum to the public.. [crosstalk]

11 ANITA LAREMONT: Has to; that's what I  
12 would say. Yes, that's what I would say because..  
13 [interpose]

14 COUNCIL MEMBER GARODNICK: so that you  
15 could audit it as much as you want to.. [interpose]

16 ANITA LAREMONT: Never be able to  
17 **[inaudible]**.

18 COUNCIL MEMBER GARODNICK: there's  
19 nothing inappropriate about it.. [crosstalk]

20 ANITA LAREMONT: Right. Right.

21 COUNCIL MEMBER GARODNICK: it's just that  
22 it's going to reduce... [interpose]

23 ANITA LAREMONT: Right.  
24  
25

2 COUNCIL MEMBER GARODNICK: the overall  
3 contribution to the public; is that... that's fair...?  
4 [crosstalk]

5 ANITA LAREMONT: Right, thi... Right, but  
6 this is really about ensuring sort of a minimum  
7 contribution rate to fulfill this public purpose that  
8 we're trying to fulfill [sic].

9 COUNCIL MEMBER GARODNICK: It's a fair  
10 point; also, it's an unlikely one...

11 ANITA LAREMONT: Yeah, that's my other...

12 COUNCIL MEMBER GARODNICK: and one... it's  
13 much more likely the... I think the KFC example, oddly  
14 enough, is more likely that sort of a transaction  
15 where you have multiple... [crosstalk]

16 ANITA LAREMONT: Yes.

17 COUNCIL MEMBER GARODNICK: deals going on  
18 contemporaneously, but in that case, City law  
19 requires that all the value be... [interpose]

20 ANITA LAREMONT: Uhm-hm.

21 COUNCIL MEMBER GARODNICK: lumped in and  
22 used for the calculation. So... Okay, let me just go...  
23 let me go on to my, just my last couple of questions  
24 here and then again, I thank the Chair and Council  
25 Member Johnson for a few minutes here.



2 The funds that are raised from this  
3 percentage, minimum contribution, etc.; as the  
4 Commissioner testified, it's a variety of cultural  
5 related benefits -- free, discounted tickets,  
6 productions, workshops, readings, etc. -- is there  
7 any portion of these funds that is used for  
8 infrastructure, streetscape, public improvements  
9 outside to the Theater District?

10 STEPHEN JOHNSON: No, there's nothing to  
11 do with infrastructure; I think we've -- I don't know  
12 what was envisioned back then, but I think now we  
13 could see that putting in a new sidewalk and some new  
14 planters would eat up the entirety of the fund in  
15 one, you know... [interpose]

16 COUNCIL MEMBER GARODNICK: So is anything  
17 related to mass transit improvements?

18 STEPHEN JOHNSON: No.

19 COUNCIL MEMBER GARODNICK: Anything for  
20 public spaces to accommodate increased development in  
21 the Theater District?

22 STEPHEN JOHNSON: No, this is focused on  
23 culture, arts and the theater.

24 COUNCIL MEMBER GARODNICK: Okay. Thank  
25 you very much, I appreciate it.

1  
2 CHAIRPERSON RICHARDS: Thank you. And  
3 just a question on process too before I go to Council  
4 Member Johnson. So the Theater Subdistrict Council  
5 is supposed to adopt a plan every three years and we  
6 have not seen it, so have you adopted a plan every  
7 three years and where can we access it?

8 STEPHEN JOHNSON: All the documents and  
9 plans and historical documents are on our City  
10 Planning website and can be accessed.. [crosstalk]

11 CHAIRPERSON RICHARDS: Okay. And you're  
12 supposed to, I believe, send us a copy of that and  
13 the Council hasn't historically received them, and we  
14 don't mind looking online, but a copy is supposed to  
15 be sent to us **[inaudible]**... [crosstalk]

16 STEPHEN JOHNSON: Okay. I don't know  
17 whether or not you receive copies of that..  
18 [background comment] we can look into it. But if  
19 you're supposed to get one, you should get one..

20 CHAIRPERSON RICHARDS: Yes.

21 STEPHEN JOHNSON: we'll do that.

22 CHAIRPERSON RICHARDS: Okay, go to  
23 Council Member Johnson, please.

24 COUNCIL MEMBER JOHNSON: Just to clarify  
25 that point; I believe that you're supposed to do a

1 report and the report has been late or not completed  
2 in a timely manner, as laid out by text... [crosstalk]

3  
4 STEPHEN JOHNSON: The...

5 COUNCIL MEMBER JOHNSON: is that your  
6 understanding that it's never been on time...?

7 [crosstalk]

8 STEPHEN JOHNSON: general report... a  
9 general report on the Council, those... I think those  
10 have all been done in a timely fashion; if they  
11 haven't been, we could check into that.

12 COUNCIL MEMBER JOHNSON: That's not our  
13 understanding; our understanding is that they haven't  
14 been done in a timely fashion and have not been  
15 transmitted to us the way they're supposed to be  
16 transmitted to us.

17 STEPHEN JOHNSON: We'll look into that  
18 and if we're falling down on that, we'll definitely  
19 correct it and we can forward you the documents  
20 and/or the website links...

21 CHAIRPERSON RICHARDS: We did look at the  
22 website and there's no consistency, so... yeah, so he's  
23 definitely raising an accurate point.

24 ANITA LAREMONT: We will commit that  
25 prospectively, which is where we're in charge at this

2 point now, we will commit that we will comply with  
3 all of the reporting requirements as they are laid  
4 out in the Zoning Resolution.

5                   COUNCIL MEMBER JOHNSON: So I just want  
6 to go back to Council Member Garodnick's point to  
7 City Planning. So you know the fear that exists  
8 around ensuring that the public is getting  
9 appropriately what it deserves, the market value, so  
10 the 23 transactions that have taken place previously,  
11 do we have some fear that that didn't take place?

12                  STEPHEN JOHNSON: I'm sorry, I'm not  
13 understanding the question.

14                  COUNCIL MEMBER JOHNSON: What you're  
15 proposing now didn't exist in the previous 23  
16 transactions?

17                  STEPHEN JOHNSON: It's a different value;  
18 all the transactions had a dollar value associated  
19 with it and all those took place and all those funds  
20 were secured and the TDRs were transferred, and  
21 there... [interpose]

22                  COUNCIL MEMBER JOHNSON: But are we  
23 concerned that the public didn't get its fair share  
24 in any one of those 23 transactions?

1  
2           STEPHEN JOHNSON: That's what the method  
3 was at the time in 1998 and I... [interpose]

4           COUNCIL MEMBER JOHNSON: Do we have any  
5 evidence to suggest that the public didn't get its  
6 appropriate fair market value share in the previous  
7 23 transactions? Is there any evidence...? [crosstalk]

8           ANITA LAREMONT: I... I... I don't know of  
9 any evidence, but what I would say as to the  
10 distinction between... that was one -- it was a  
11 different methodology that was based off of appraised  
12 value and that once we are going to an approach that  
13 is a percentage of the TDR sale value, there is...  
14 because of the ramping up of the percentage and the  
15 fact that it is keyed off of this price, I think  
16 possibly more of an incentive to try to find a way to  
17 lower the value that has to be paid. So I'm not  
18 accusing anyone of doing anything inappropriate;  
19 we're simply saying that we believe that, you know,  
20 to protect the public that it is appropriate to have  
21 a mechanism to just ensure a minimum, it's not saying  
22 that anyone's done anything wrong.

23           COUNCIL MEMBER JOHNSON: So the real  
24 property tax value that previously we were trying to  
25

1 capture in an appropriate way, we don't have a fear  
2 that the City got cheated in any way?

3 ANITA LAREMONT: We have no way of  
4 knowing whether or not it did, that **[inaudible]**...  
5 [crosstalk]  
6

7 CHAIRPERSON RICHARDS: What is the  
8 penalty if that does happen, by the way? Is there a  
9 penalty?

10 ANITA LAREMONT: There's no penalty in  
11 the zoning in that regard... [crosstalk]

12 CHAIRPERSON RICHARDS: Okay. Okay.

13 ANITA LAREMONT: I mean I'm sure there's  
14 tax penalties that would... [crosstalk]

15 CHAIRPERSON RICHARDS: What about from  
16 DOF? Right. Okay.

17 ANITA LAREMONT: Uhm-hm.

18 CHAIRPERSON RICHARDS: DOF is not here  
19 either; right? [background comment] Okay.

20 COUNCIL MEMBER JOHNSON: So I just wanna...  
21 there is a gentleman who submitted testimony, Frank  
22 Chaney; is he here? Is there -- He submitted it  
23 online. So he gave us some pretty in-depth testimony  
24 and he said, "At the current contribution rate of  
25 \$17.60 per square foot of TDR, the three recent TDRs

1 in which I was involved resulted in a total aggregate  
2 contribution to the Fund of \$1.3 million. If those  
3 TDRs had been subject to the proposed contribution  
4 rate of 20% of the sales price, the aggregate  
5 contribution would have amounted to \$7.2 million, a  
6 428% increase over the current contribution.  
7

8 According to the Department of City Planning's March  
9 28th presentation, since the establishment of the  
10 Theater Subdistrict in 1998, 23 TDRs resulted in \$8.6  
11 million," as you all said, "thus, at the proposed 20%  
12 contribution rate, the payments into the Fund of  
13 these three most recent transaction of TDRs by  
14 themselves would nearly equal all of the  
15 contributions paid over the course of the 18 years  
16 before." That seems like too much to me; that's...  
17 it's too much of an increase.. [interpose]

18 ANITA LAREMONT: Well...

19 COUNCIL MEMBER JOHNSON: and the point  
20 that Council Member Garodnick made; if this was going  
21 to -- this in no way me minimizing the arts and the  
22 theater, what I'm about to say, because I  
23 wholeheartedly.. I'm a huge theatergoer, I love the  
24 theater, I love Broadway, I love Off-Broadway, I love  
25 that it's in the district that I represent -- but if

1 this money was going to infrastructure upgrades,  
2 subway upgrades, public space upgrades; things that  
3 the public, the tens of millions of people were going  
4 to need that were coming to Times Square would say  
5 hey, you know what I need, this costs a lot of money,  
6 it makes sense to me, but because we still have \$1.5  
7 million sitting in a fund and because this would.. if  
8 these started to go through would be huge amount of  
9 money that would come in; it just doesn't seem  
10 justified to me to have a floor. I haven't been sold  
11 yet. So..

13 TOM FINKELPEARL: So I mean I could  
14 testify to the need. I mean I really think that the..  
15 you know the scale we've been working on has done  
16 good and hundreds of thousands of people have  
17 benefited from it; I think it, you know the value of  
18 arts and culture to the City, if you look at those,  
19 you know the statistics that the Broadway League put  
20 out, is tremendous that this is a huge industry and  
21 there are cracks in it; I think that.. you know, with  
22 the upgrade, and I don't know if we've verified those  
23 numbers by this, you know, we are understanding that  
24 there could be a significant upgrade or upscaling of  
25 this. Look, we have a theater industry that is both



1 thriving and has cracks and problems; we acknowledge  
2 together, that the scale of that reflects the  
3 enormous jump in values, real estate values since  
4 this was originally.. you know, legislation was  
5 originally passed, but I do think that the.. look, we  
6 have 70 million tourists coming to New York City;  
7 half of them, 35 million people name arts and culture  
8 as the first or second reason that they came; this is  
9 a tremendous part of our economy. When we go on the  
10 road with -- we, meaning NYC and company, goes on the  
11 road and says what's great about New York City; what  
12 do we bring? We bring theater, we bring Broadway; we  
13 bring the people from the Subdistrict **[inaudible]**..  
14 [crosstalk]

15  
16 COUNCIL MEMBER JOHNSON: You don't have  
17 to sell me.

18 TOM FINKELPEARL: I'm... but I'm saying  
19 it's not insignificant; it is as.. [crosstalk]

20 COUNCIL MEMBER JOHNSON: No, it's not.

21 TOM FINKELPEARL: important as subways;  
22 of course, I'm going to say it; I'm the Cultural  
23 Affairs commissioner. But I do believe that it.. and  
24 by the way, there is the tourism side, there's the  
25 economic side; there's the community side -- and

1 we're going to be coming out with a study very soon  
2 about that, and then there's the individual it's good  
3 for your soul argument... [crosstalk]

4  
5 COUNCIL MEMBER JOHNSON: But Tom,  
6 Commissioner, I agree with everything you just said..

7 TOM FINKELPEARL: Right. Right, I'll  
8 shut up.

9 COUNCIL MEMBER JOHNSON: everything you  
10 just said, but... [crosstalk]

11 TOM FINKELPEARL: But I'm... But... Yeah...

12 COUNCIL MEMBER JOHNSON: but I still  
13 don't understand; if that's true and there's such a  
14 high need, you don't need \$1.5 million for  
15 administration of the fund; that need exists right  
16 now. [background comments] That need exists right  
17 now, so why do we keep \$1.5 million sitting there?

18 TOM FINKELPEARL: So first of all, we  
19 will spend the amount of money that we have in that  
20 fund -- you know, we have some, I understand, some  
21 requirements for reserve, yes -- we did this  
22 relatively quickly, we can do it again quickly; the  
23 more new money comes into that fund, I absolutely --  
24 look, one of the things I did in preparing for this  
25 testimony is I read through every single grant that's

1  
2 been given out and I would love for the Council  
3 Members to see that; the power of what's been done  
4 with this money, what's been done for school kids,  
5 what's been done for the theater community all over  
6 the city is palpable, you can read those things, I  
7 promise you it would melt your heart.

8 COUNCIL MEMBER JOHNSON: So of the five  
9 rounds, what was the largest grant amount and the  
10 smallest grant amount?

11 TOM FINKELPEARL: I know the largest, I  
12 don't know the smallest.

13 COUNCIL MEMBER JOHNSON: What was the  
14 largest?

15 TOM FINKELPEARL: There were two... the  
16 last round was two \$500,000 grants; one went to the  
17 public theater; one went to **[inaudible]**, right?

18 [background comment] Smallest was \$50,000...

19 [crosstalk]

20 COUNCIL MEMBER JOHNSON: To who?

21 [background comment]

22 TOM FINKELPEARL: Broadway League.

23 COUNCIL MEMBER JOHNSON: And how is the  
24 frequency of the rounds determined?

1 TOM FINKELPEARL: By the availability of  
2 funding, as I understand it. Yeah.

3 COUNCIL MEMBER JOHNSON: But there is  
4 availability of funding.

5 TOM FINKELPEARL: We're going to do  
6 another round. Yes.

7 COUNCIL MEMBER JOHNSON: But who decides  
8 that? You... you... do you **[inaudible]**... [crosstalk]

9 TOM FINKELPEARL: It's usually decided  
10 between [background comment] the TSC.

11 COUNCIL MEMBER JOHNSON: So if the fifth  
12 round was permitted under the current goals of the  
13 TSC, what is the intention and need to modify the  
14 goals? When I asked before about diversity and  
15 workforce development, you all said that you believe  
16 that it currently does fit under the stated goals of  
17 the text; then why do we have to change the text?  
18 Why do we have to modify the goals?

19 STEPHEN JOHNSON: It was just to  
20 eliminate any doubts about the purposes of the  
21 Council and the Fund. We thought it was acceptable,  
22 but there were some questions brought up during the  
23 public review, so we did an a text to the original  
24 proposal and included that extra bit on broadening  
25

1 it, as well as allowing for the smaller theater  
2 groups to get access to funds.

3  
4 COUNCIL MEMBER JOHNSON: And what kind of  
5 projects would be included that aren't currently  
6 included? Are there other things that the reason why  
7 we're going to be more explicit that currently have  
8 been included but we want to include?

9 STEPHEN JOHNSON: I am not aware of..

10 TOM FINKELPEARL: No, I think the thing  
11 is that looking at the last five rounds, because we  
12 believe that you know these were all permitted and  
13 under the text as it exists, but to make it more  
14 explicit, to look at those rounds and understand what  
15 has been accomplished and just be very explicit about  
16 it. By the way, since I'm under oath, I will amend  
17 my previous testimony -- 60 million tourists, not 70  
18 million..

19 COUNCIL MEMBER JOHNSON: 60 million  
20 tourists.

21 TOM FINKELPEARL: but more than half of  
22 them **[inaudible]** and culture.

23 COUNCIL MEMBER JOHNSON: Yes. So I'm  
24 going to finish up here and then give it back to the  
25 Chair. But I just want to note that.. So City

1  
2 Planning I believe testified about the 1998 text and  
3 what the basis of that was and the interpretation of  
4 it, so in this gentleman's testimony -- again, I want  
5 to give him credit, Frank Chaney -- he said, "The  
6 principal basis iterated by the Planning Department  
7 for the proposed 20% contribution rate is that it  
8 would bring the text into line with what was asserted  
9 to be the original intent in 1998 when the initial  
10 contribution was set at \$10 per square foot" -- which  
11 you explained to us how they arrived at that number  
12 -- "the clear implication being that it was City  
13 Planning's intent that the contribution rate would be  
14 equivalent of 20% of the market value of TDRs,  
15 however, the 1998 Commission report approving the  
16 Theater Subdistrict text states that \$10 per square  
17 foot was "determined as approximately 20% of the  
18 average sales price of the land per square foot in  
19 the Theater Subdistrict" (page 17 of the report) and  
20 that "average sales of property in the Theater  
21 Subdistrict," (on page 52) Nowhere does the report  
22 reference the sale price of TDRs for the obvious  
23 reason that there was not yet any sales of theater  
24 TDRs to average. There were other types TDRs and the  
25 Department possibly could have estimated the value

1  
2 for theater TDRs, but then the report would have said  
3 that the \$10 rate represented 20% **[inaudible]**  
4 estimated value of TDRs." But the report didn't say  
5 that. Why is that?

6           STEPHEN JOHNSON: We... I don't have any  
7 knowledge of why certain, particularly words may or  
8 may not have been used or why perhaps they were  
9 erroneously used. We do know that the average sales  
10 price of land was \$100 and that's what it was based  
11 on, taking that \$100 per square foot and then the 50%  
12 discount for TDRs and then 20% of that number.

13           COUNCIL MEMBER JOHNSON: Okay. So I mean  
14 I'm still not sold on a floor price, I want, you know  
15 the Theater Subdistrict Council to get a lot of money  
16 so it can keep doing good work; I would ask that  
17 possible consideration be made when amending the  
18 goals to look at some of the Off-Broadway theaters  
19 and Off-Off Broadway theaters that are in the  
20 community, in the neighborhood; we've seen a major  
21 bleeding of them in some ways, to look at their rent  
22 in some ways or their space in some ways, because  
23 that's the biggest driver of them closing up shop  
24 because they can't afford their rent anymore, and so  
25 I don't know if any grants have been given for that

1 reason; I don't think so, and I think that should be  
2 something that should be looked at; if you have a  
3 great Off-Broadway theater with a long history that's  
4 been there a long time but all of a sudden their  
5 rent's going to double or triple; maybe there's a way  
6 to include that in there to be able to help them in  
7 some way. Are you open to that, Commissioner,  
8 looking at that?  
9

10 TOM FINKELPEARL: Yeah and I think that  
11 the... you know look, we're doing the Cultural Plan and  
12 we keep hearing over and over again that  
13 affordability is, you know, one of the biggest  
14 problems in this city, and by the way, for all New  
15 Yorkers, including the arts community, so anything  
16 that can address affordability, absolutely, I think  
17 it's extremely important.

18 COUNCIL MEMBER JOHNSON: And then the  
19 appointees to the Council, so I understand the Mayor  
20 has appointees and the Borough President's on there  
21 and you're the chair of it on behalf of the Mayor,  
22 the Speaker's on it and the Speaker has an appointee;  
23 do you think that there should be local  
24 representation from the community boards or folks  
25 that are involved in the theater industry locally?



2 TOM FINKELPEARL: So I mean I can't make  
3 that decision live in a Council hearing, but I can  
4 say... [crosstalk]

5 COUNCIL MEMBER JOHNSON: Well I'm asking  
6 for your opinion.

7 TOM FINKELPEARL: that... that my opinion  
8 is that we need to do a better job of communicating  
9 with you, inviting you to the meetings; these  
10 meetings are open, we are absolutely open and  
11 interested in the local opinion.

12 COUNCIL MEMBER JOHNSON: So should there  
13 be local representation?

14 TOM FINKELPEARL: I think I just can't...  
15 [crosstalk]

16 COUNCIL MEMBER JOHNSON: No, you didn't  
17 ans...

18 TOM FINKELPEARL: say yes or no to that  
19 question...

20 [background comment]

21 CHAIRPERSON RICHARDS: You get his point  
22 though?

23 TOM FINKELPEARL: I get your point,  
24 absolutely, alright ... [crosstalk]

2 CHAIRPERSON RICHARDS: Okay, you're  
3 reading between the lines? Okay.

4 COUNCIL MEMBER JOHNSON: I mean,  
5 Commissioner, don't take it personally, so what I'm  
6 about to say, but you know I think it's a little  
7 offensive, actually that this community which was not  
8 a destination community in the 70s and 80s and much  
9 of the 90s; you had artists and Off-Broadway theaters  
10 and actors and performing artists who decided to live  
11 here and they don't really have local representation;  
12 they... you know, I'm not saying that you don't  
13 represent them as Commissioner, because you run all  
14 over the city and I think you've done a tremendous  
15 job with your agency and I give you a lot of credit  
16 and it's been great to work with you; you've been a  
17 real advocate and I really value that, but the good  
18 folks that are listed here who are great folks, I'm  
19 not impugning their integrity or their qualifications  
20 in any way; I also think that we could add some other  
21 voices as well, some local voices, some folks that  
22 have been in the community, represent the community,  
23 have been running cultural institutions in the  
24 community and they could add to the expertise that  
25 already exists on the Council, and you get my point.

2 TOM FINKELPEARL: I absolutely do.

3 COUNCIL MEMBER JOHNSON: Thank you.

4 Thank you, Mr. Chair.

5 TOM FINKELPEARL: And when I **[inaudible]**...

6 [crosstalk]

7 CHAIRPERSON RICHARDS: Thank you Corey

8 and... oh, you wanted... [interpose]

9 TOM FINKELPEARL: I just wanted... Is Black  
10 Spectrum Theater in your district...? [crosstalk]

11 CHAIRPERSON RICHARDS: Absolutely. Well  
12 it's not in my district, but... no... no and yes.

13 TOM FINKELPEARL: No, okay.

14 CHAIRPERSON RICHARDS: No and yes.

15 TOM FINKELPEARL: I just wanted to...

16 [crosstalk]

17 CHAIRPERSON RICHARDS: I need a theater  
18 in my district though, but we'll talk about that  
19 offline.

20 TOM FINKELPEARL: So I'm just saying  
21 that... [interpose]

22 CHAIRPERSON RICHARDS: We're lobbying for  
23 everything in this area, right? [laughter]

24 TOM FINKELPEARL: Point here is also just  
25 simply that there's theater in all parts of New York

1 City and it all feeds back into the Subdistrict;  
2 there are talented people in every Council District  
3 all of whom have a stake in what happens in the  
4 district and it's, again, that whole ecosystem, so I  
5 absolutely get you about local representation as  
6 well; I do hear you.

8 CHAIRPERSON RICHARDS: Alrighty. Well I  
9 want to thank you all for your testimony; I think you  
10 got out just today -- 18 years was a long time ago;  
11 Corey was about, probably around 12 years old when  
12 this text was put into place. So you know, we do  
13 have concerns, you know about obviously some of these  
14 proposals, especially on the floor area, floor  
15 pricing and we look forward to continuing the  
16 dialogue as we move forward. Thank you all for your  
17 testimony; great to see you today. [background  
18 comments] Alrighty. Oh and I just want to say, if  
19 you're here for the Landmarks Committee, that that  
20 meeting has moved to City Hall, in the Committee  
21 Room.

22 Alright, we'll call our panel, first  
23 panel, second panel -- Robin Kramer, Michael  
24 Slattery, Ellen Lehman [sp?]. Alrighty, I'll say  
25 that again -- how are you? -- Ellen Lehman, Michael

1 Slattery; Robin Kramer. You may **[inaudible]**. You'll  
2 just state your name for the record; who you're  
3 representing and then you may begin. [background  
4 comment] We are going to be on a clock because we  
5 have to get out of here, so each person will have  
6 three minutes, so if you can just get directly in as  
7 precisely to...

8 [background comments, laughter]

9 ROBIN KRAMER: I'll start. [background  
10 comment]

11 CHAIRPERSON RICHARDS: Hit your mic... make  
12 sure it's lit up red.

13 ROBIN KRAMER: It is red.

14 CHAIRPERSON RICHARDS: Alrighty, there  
15 you go... [crosstalk]

16 ROBIN KRAMER: That's what I want, right?  
17 Okay. Good morning Chairman Richards and members of  
18 the Council. My name is Robin Kramer; I'm Partner at  
19 Duval & Stachenfeld and I'm here on behalf of the  
20 Jujamcyn, Nederlander and Shubert Organizations which  
21 together own most of the Broadway theaters.

22 Now to some degree I want to stop and  
23 talk about the last bit of discussion that you had  
24 with City Planning which relates to the pricing and  
25

1 the variables, since I'm the theater industry  
2 spokesperson that said something about there being  
3 variables in setting the price, but I think I'll wait  
4 and see if you have questions about it.

5  
6 The theater owners strongly support the  
7 portion of the proposed text change that would make  
8 the process for floor area transfers a Chair  
9 Certification instead of a Commission Certification  
10 and we thank City Planning for that. However, we do  
11 not approve of the change in the amount of the  
12 contribution from a flat fee to a percentage and in  
13 particular, to the establishment of a floor price.  
14 We believe that the proposed increase by almost 400%  
15 in the amount of the contribution that theater owners  
16 must pay to the City to make use of their undeveloped  
17 air rights is unfair. Further, there is no need for  
18 such an increase and there is no legitimate rationale  
19 for the institution of an artificial City-created  
20 floor or base price for determining the amount of the  
21 contribution which has only one purpose, as has been  
22 discussed, which is to ensure a certain amount of  
23 money goes to the public -- amount of money going to  
24 the public is not a valid basis for zoning.

1                   As the Council knows, the Broadway  
2 theater is part of what makes New York City a  
3 cultural giant; it is also an economic engine. As  
4 you have already heard from the Cultural Affairs  
5 Commissioner, the Broadway theater added about \$12.5  
6 billion directly and indirectly to the New York City  
7 economy in 2014 and 2015, as well as thousands of  
8 jobs.  
9

10                   Although there are several major Broadway  
11 hits, the majority of shows do not in fact recoup  
12 their investments. Theaters must continue to be  
13 maintained, pay real estate taxes, insurance, and  
14 other expenses even when shows fail and theaters sit  
15 empty.

16                   In 1998, in order to preserve the  
17 Broadway theaters for the presentation of legitimate  
18 theatrical attractions and to address fundamental  
19 land use problems facing the theater district, the  
20 City allowed theaters to transfer floor area beyond  
21 the zoning lot and throughout the Theater  
22 Subdistrict. The City recognized the problem of  
23 having theaters in the small confined areas where  
24 there were no available transfer sites, noting that  
25 no other class of building has been restricted by

1 zoning to preserve not only the structure but also  
2 the use that takes place in those structures. In  
3 exchange for the right to transfer, a theater owner  
4 was required to maintain and restore the theater as a  
5 legitimate theater. Theater owners were also  
6 required to contribute a portion of the proceeds of  
7 such sale into the Theater Subdistrict Fund. The  
8 amount of such contribution, originally \$10 per  
9 square foot of transferred [bell] floor area, was to  
10 be increased periodically, based on the assessed  
11 value. The Commission specifically rejected a  
12 proposal to make the contribution a percentage of the  
13 sale price and stating that a flat fee was  
14 appropriate, and it was this flat fee that the  
15 theater industry supported.  
16

17 As to the floor price, it is not needed,  
18 nor rational. All theater transfers are arm's length  
19 transactions; theater owners have no interest in the  
20 development sites and the developers do not own any  
21 portion of the theater; the transfers are arm's  
22 length.

23 The transfer are not needed because there  
24 are no unknowns about the real purchase price;  
25 verification of the price of a transaction is found



1 in the ACRIS transfer documents that are paid on  
2 every transfer of floor area; the taxes are based on  
3 the total consideration, as has already been  
4 discussed, whatever the form of consideration,  
5 whether cash or otherwise. All theater transfers  
6 have to date and will presumably continue to be cash  
7 transactions. Now this distinguishes a 1031  
8 transaction where after a theater owner or any owner  
9 receives cash it may turn that cash into land, it may  
10 acquire land; has nothing to do with the amount of  
11 the value that the theater owner receives, the amount  
12 of money is the cash.

14 Now setting a floor price by using an  
15 appraisal substitutes an imperfect theoretical price  
16 for the real estate market in that key variables used  
17 by appraisers in determining value are highly  
18 subjective -- you do an appraisal, then you put some  
19 factors in to increase or decrease; purely  
20 **[inaudible]**... [interpose]

21 CHAIRPERSON RICHARDS: Going to ask you  
22 to wrap up.

23 ROBIN KRAMER: Okay. It does not take  
24 into account the range of variables, which I'll be  
25 happy to discuss if you ask. While the current flat

1 fee system is most appropriate, the theater owners  
2 would support a 5% increase in 2017, followed by a 3%  
3 increase each in the next five years; this would  
4 produce the same 20% over time but more gradually and  
5 with acknowledgement that that would be much more  
6 reasonable. Thank you; I'm happy to answer  
7 questions.  
8

9 CHAIRPERSON RICHARDS: Thank you. Oh  
10 you're representing her? Oh, okay. [background  
11 comments]

12 ELLEN LEHMAN: Chair Richards and  
13 Committee members, my name is Ellen Lehman; this  
14 statement is submitted on behalf of the Archdiocese  
15 of New York and the trustees of St. Patrick's  
16 Cathedral. Although these entities are not directly  
17 impacted by the Theater Subdistrict zoning, there is  
18 an important zoning policy issue that is raised by  
19 the current proposal for this area and we see a  
20 commonality of interest between the landmarked  
21 cathedral and the owners of landmarked theaters.

22 In particular, we ask the City Council to  
23 reconsider the element of the Theater District  
24 proposal that would require owners of landmarks to  
25 make minimum contributions in connection with a

1 transfer of development rights regardless of the  
2 amount actually paid to a landmark owner. If this  
3 provision remains in the proposed zoning text, it  
4 will unduly limit the resources available for the  
5 upkeep of landmarks by inhibiting development rights  
6 transactions, particularly in the lower end of the  
7 price spectrum. We rely on the market to establish  
8 value in all other comparable context. Why is there  
9 not a credible measure in an air rights sale?  
10

11 A similarly misguided floor price has  
12 been included in the City's proposed rezoning for  
13 greater East Midtown, in addition to potentially  
14 limiting the resources available for landmark upkeep  
15 we expect the floor price to stifle the very  
16 redevelopment that the City is seeking to facilitate,  
17 which will also have the effect of actually  
18 decreasing funding available for public realm  
19 improvements.

20 An underlying rationale for a floor price  
21 is that owners will seek to circumvent reporting the  
22 actual consideration received from a transfer; this  
23 fails to recognize the established reporting systems  
24 in place for transaction value through the transfer  
25 tax filing system at the Department of Finance and

1 for the religious not-for-profit owners, such as the  
2 Cathedral, the requirement to seek approval for all  
3 real property sales from the New York Supreme Court,  
4 thus assuring the accuracy of the reported sale's  
5 consideration.  
6

7 To safeguard the City's policy goals in  
8 both the Theater Subdistrict proposal and the greater  
9 East Midtown rezoning, we urge that the requirement  
10 for a minimum contribution from landmarks be  
11 eliminated from the proposed text. Thank you for  
12 your consideration.

13 CHAIRPERSON RICHARDS: Thank you.

14 MICHAEL SLATTERY: I'm Michael Slattery;  
15 I'm representing the Real Estate Board of New York.  
16 REBNY strongly supports the purpose of the Theater  
17 Subdistrict; the relief provided to theater owners is  
18 necessary to ease the burden of very restrictive land  
19 use controls placed on them by the City. We have  
20 very serious concerns, however, about the concept of  
21 a floor price and the proposed percentages to  
22 determine the contribution.

23 For more than 20 years this has been a  
24 successful and efficient program whose contributions  
25 continue to adequately finance the purpose of the

1 Theater Fund without unduly stripping the theaters of  
2 financial relief needed to maintain their buildings.  
3 This new proposal is a radical departure from this  
4 very successful mechanism and would undermine the  
5 planning purpose for which this was established and  
6 which we support. We see no compelling reason for  
7 this change. Based upon the floor, the minimum  
8 contribution for future sales would be approximately  
9 \$70, nearly a 400% increase in the contribution;  
10 needless to say, we believe this minimum increase is  
11 onerous, excessive and unfair. In a weakening  
12 market, the actual percentage of a sale could exceed  
13 20%.  
14

15 Based on our analysis, we can find no  
16 sales evidence that establishes 20% as the intended  
17 percentage of the sale price of transfer of  
18 development rights when the City established this  
19 program and there was no adjustment and subsequent  
20 changes in the price to go to a percentage mechanism  
21 when there were TDRs available. By establishing a  
22 fixed amount it would appear that the City and the  
23 Council decided at that time that a fairer and more  
24 practical approach was necessary to encourage  
25 transactions, a fixed dollar amount is predictable in

1 advance and would not harm those properties burdened  
2 by the requirement to preserve these theaters and  
3 their use as theaters.  
4

5 A reason to establish a transfer  
6 mechanism in the Theater District was the inadequacy  
7 of the zoning mechanisms in place to provide relief  
8 for the burdens of landmark designation; in too many  
9 cases, the original rules for landmark transfers  
10 provided relief in theory and not in practice; it  
11 provided relief to some owners but not to others. In  
12 circumstances where a transfer occurred there was no  
13 direct financial contribution required, though a plan  
14 for continuing maintenance of the landmark was  
15 required.

16 As similar problem had confronted Grand  
17 Central, whose abundant unused development rights had  
18 very limited potential receiving sites; the  
19 establishment of the Grand Central Subdistrict  
20 expanded the mechanism for transferring development  
21 rights and introduced a 5% contribution toward the  
22 maintenance of the terminal; this is the percentage  
23 that should be our guide.

24 As an alternative to the City's proposal,  
25 we recommend the current contribution fund amount of

1 \$17.60 be adjusted by 47%, the same amount the market  
2 value of all properties in the Subdistrict that have  
3 increased since 2011, which would establish a fixed  
4 contribution of \$25. However, if a more supple  
5 mechanism that can capture a rising market or a high-  
6 price sale is preferred, we propose a percentage of  
7 between 7% and 9%; this percentage is based on the  
8 fixed price of \$25.87 if it were converted to a  
9 percentage for those recent sales. We firmly oppose  
10 the floor price and the drastic increase in the  
11 proposed text amendment.  
12

13 And lastly, the new amendment should  
14 allow for a grace period for contracts entered into  
15 before the effective date of the change and close  
16 within one year of the effective date. [bell] Thank  
17 you.

18 CHAIRPERSON RICHARDS: Thank you. Any  
19 questions? Okay, just one question. So what would  
20 you say to -- and I don't know if you can speak to it  
21 -- so there were concerns around variables, and I  
22 think you heard City Planning raise it -- can you  
23 speak to that and how do you perceive that?

24 MICHAEL SLATTERY: Well a couple of  
25 things; one, as Robin alluded to, is that in this

1 context there is going to be... these are arm's length  
2 transactions, and then the idea that you are selling  
3 to your brother for a lower price -- well I guess the  
4 question would be, why are you doing that; does your  
5 brother have a medical emergency that he needs the  
6 money for and if that's the case, should we be  
7 intervening and saying giving money to the Theater  
8 Fund is more important than that kind of purpose? So  
9 again I question that you know example as appropriate  
10 illustration for the issue here. And I think as the  
11 questions raised before, there are mechanisms in  
12 place through the DOF Transfer Fund that will  
13 justify, you know whether these are really arm's  
14 length transactions; whether they are fair priced.

16 CHAIRPERSON RICHARDS: So you believe DOF  
17 would actually **[inaudible]**... [crosstalk]

18 MICHAEL SLATTERY: Yeah...

19 CHAIRPERSON RICHARDS: and what is your...

20 MICHAEL SLATTERY: I think...

21 CHAIRPERSON RICHARDS: What would you say  
22 to... What would you say to the process in DOF if  
23 someone decided to hide, you know, a transaction?

24 MICHAEL SLATTERY: Well I mean there's a  
25 couple of things; one, I think they would be



1 penalized by not paying the fair amount of tax, so  
2 they now would be subject to both a penalty and an  
3 interest payment for the underpayment and I think as  
4 part of the mechanism here we should be also imposing  
5 a penalty as well for understating the value.

7 CHAIRPERSON RICHARDS: Okay, thank you  
8 all for your testimony. Thank you.

9 Alright, next panel -- Victoria Bailey,  
10 Eric Stern, [background comment] Rosalba... oh Rolon,  
11 Rolon, Rolon, Rosalba and Cora Ki... Ki... [background  
12 comment] Kateen... [background comments] she left.  
13 Okay, got it. Okay. [background comment] Alright.  
14 [background comments] You may begin; just state your  
15 name for the record and who you're representing and  
16 then you may begin.

17 VICTORIA BAILEY: Hi, Chair Richards and  
18 Subcommittee members, thank you for allowing me to  
19 speak this morning. I'm Victoria Bailey; I'm the  
20 Executive Director of Theater Development Fund.

21 Thank you for the opportunity to share  
22 with you the impact that the Theater Subdistrict  
23 Council funding has had on TDF.

24 We believe that going to the theater and  
25 dance is the birthright of every New Yorker and our

1 Theater Subdistrict Council funding has helped us in  
2 our efforts to build diverse audiences. Our first  
3 grant in 2009 allowed us to create our New Audiences  
4 for New York program. Working with groups of  
5 individuals throughout the city, in the program's  
6 first year we facilitated attendance at affordable  
7 prices by over 20 groups, from virtually all of the  
8 first-time theatergoers to 17 Broadway productions.  
9 Working with TDF teaching artists, groups met before  
10 and after the productions, discerning what  
11 productions would be best for their interests,  
12 preparing them and reflecting on their experiences.  
13 Participants were given TDF memberships afterwards,  
14 allowing them to continue to attend theater  
15 throughout the Subdistrict. New Audiences New York  
16 helped TDF deepen its understanding of and expertise  
17 in strategies for building new audiences for Broadway  
18 from underrepresented communities.

19  
20 For example, through the relationships  
21 that TDF staff and teaching artists build with  
22 participants, we were able to more deeply understand  
23 the importance of a welcoming atmosphere at a  
24 Broadway theater for all ticket buyers, regardless of  
25 whether or not their race or ethnicity matched the

1 expectations of the house staff and theater artists.  
2 When attendees felt unwelcome or like they were  
3 entering a club where they did not know the rules,  
4 they had to overcome a lot of negative feelings to  
5 enjoy the experience. We continued the program after  
6 the grant period, assessing its strengths and  
7 weaknesses; it evolved into Create New York, which  
8 creates deeper relationships with our participants.  
9 We work with community organizations as partners,  
10 currently working with the Dream Center of Harlem and  
11 Casita Maria in the Bronx. The organizations select  
12 participants, they lead the show selection and the  
13 curation of discussions; groups attend Broadway and  
14 Off-Broadway shows in the Theater Subdistrict as well  
15 as in their neighborhoods and they become ambassadors  
16 back to their own neighborhoods, advocating for  
17 theater and dance in the wider community. Shows  
18 attended in the first year include *Kinky Boots*, *White*  
19 *Rabbit Red Rabbit*, and *Skeleton Crew*. We have just  
20 received funding from the most recent TSC initiative  
21 to train ticket sellers in our TKTS booth; they will  
22 come from underrepresented communities and when they  
23 finish at the booth they will be able to work in any  
24 Broadway box office. I think this is a potentially  
25

1  
2 transformative program for the Theater Subdistrict  
3 workforce. We hear over and over that new  
4 theatergoers are significantly more likely to feel  
5 comfortable at the theater if some of the folks who  
6 work there look like them, and if we have a more  
7 diverse workforce in the Subdistrict, they will do  
8 what we all do -- talk about their work when they go  
9 home and in their neighborhood, and then the  
10 wonderful work that our artists do all over the  
11 Subdistrict will be on the minds of a much wider  
12 group of New Yorkers who will be much more likely to  
13 attend. Thank you.

14 CHAIRPERSON RICHARDS: Thank you.

15 ROSALBA ROLON: Good morning. My name is  
16 Rosalba Rolon and I am Artistic Director of Pregones  
17 Theatre, rooted in the Bronx and of the Puerto Rican  
18 Traveling Theater District, which is really in the  
19 Manhattan Theater District, and we have just  
20 completed our merger of the two organizations,  
21 establishing now a new mechanism for sustainability  
22 and growth.

23 Now our merger process coincided with the  
24 Theater Subdistrict Council's initiative that allowed  
25 us to dream big and to fulfill the promise we had

1 made to our audience, to our artists and to our  
2 community. DCS support allowed us to create our  
3 PLATFORMA project and PLATFORMA is just that, a  
4 platform for engaging seasoned and emerging Latino  
5 artists, though not exclusively, and production  
6 personnel in the comparative development of new  
7 theater work, enhancing the viability of their  
8 careers. A new Off-Broadway Latino **[inaudible]**  
9 theater showcased **[inaudible]** before thousands of  
10 audience members from diverse racial, ethnic; social  
11 backgrounds, and I should point out that the Puerto  
12 Rican Traveling Theater has been doing that for 50  
13 years and this allowed us to just go to a whole new  
14 level, a platform for engaging existing and future  
15 audiences in meaningful dialogue about **[inaudible]**  
16 diversity of Latino theater.  
17

18 One of the things... and before I just --  
19 I'm just going to go through some of the highlights  
20 of the residual value of our relationship with TSC is  
21 how our project, our funded project really allowed us  
22 to reach out to all five boroughs in unprecedented  
23 ways and their experience coming to the theater  
24 really fits back into the boroughs in significant  
25 ways, so we have seen a surge in the Bronx theater,

1 for example, because they will have experience, they  
2 had express their first real experience ever, even if  
3 it was in an Off-Broadway theater and not necessarily  
4 a Broadway theater, but it meant a lot for them to  
5 come to the district. So we have been [inaudible] to  
6 the changes [inaudible] of the City and the  
7 Subdistrict itself, generating new inter-borough  
8 participation by general and underserved populations,  
9 heightening our own status as a Broadway citizen,  
10 when years ago it used to be like the [inaudible] the  
11 district, and drawing attention to really [inaudible]  
12 the links between the personnel of Broadway, Off-  
13 Broadway and Off-Off-Broadway theater; now we have  
14 partnered with the Theater Development Fund and  
15 really addressing the needs of hundreds of audiences'  
16 with needs for accessible price and we've been able  
17 to do that with CDF, through our [inaudible] program  
18 which was actually awarded an innovation award by the  
19 Rockefeller Foundation years ago and that program  
20 itself allows theatergoers to come in for half the  
21 price if they live in the surrounding area of the  
22 theater, and I just want to remind ourselves, as the  
23 Council Member said before; that that district is the  
24

2 neighborhood, people live there, people work there  
3 and [bell] they're just part of the family.

4                   CHAIRPERSON RICHARDS: Thank you so much  
5 for your testimony. You may begin, sir.

6                   ERIC EDWARD STERN: Good morning Chair  
7 Richards; Council Member Johnson, thank you for this  
8 opportunity. My name is Eric Edward Stern and I  
9 chair the Land Use, Housing and Zoning Committee of  
10 Manhattan Community Board 5. On behalf of the entire  
11 Community Board I am testifying today in support of  
12 the Department of City Planning's proposed Theater  
13 Subdistrict Fund Text Amendment.

14                   A December 12, 2013 Community Board  
15 resolution states and I quote: "The Board urges the  
16 City Planning Commission to rethink the contribution  
17 into the Theater Subdistrict Fund so that the  
18 contribution is updated on a yearly basis and in a  
19 manner which reflects the increase in real estate  
20 value. We have reiterated this call numerous times;  
21 fortunately, the Department of City Planning has been  
22 responsive to the concerns of the Community Board and  
23 put forth a proposed mechanism that ensures greater  
24 public benefit in the Theater Subdistrict. Our Board  
25 strongly opposes any potential modifications by the

1 City Council that would erode the public benefit the  
2 de Blasio Administration and the Department of City  
3 Planning have worked to secure with their proposed  
4 amendment.  
5

6 In particular, we believe that a minimum  
7 contribution rate is essential; without this, we are  
8 concerned that a developer will find legal mechanisms  
9 to avoid or significantly reduce their fair  
10 contribution to the Fund. What if instead of selling  
11 development rights for cash a theater owner took a  
12 potential ownership stake in some property, would the  
13 City independently assess the value of that stake and  
14 require a contribution of 20% of that value? What  
15 mechanism would exist for a modification of that  
16 assessment if an owner or the Community Board or some  
17 other party believed that the analysis was flawed?  
18 Without a minimum rate, how would non-arm's length  
19 transactions be dealt with? If the owner of a  
20 theater with unused development rights also owned a  
21 development site in the Theater Subdistrict, the  
22 owner may want to simply transfer development rights  
23 and therefore there would be no sale, there would be  
24 no consideration. If there is no minimum  
25



1 contribution rate, will there be a contribution? If  
2 so, how would it be determined?  
3

4 Second point; we believe that the 20% cut  
5 is appropriate and Community Board 5 is on record in  
6 our May 12, 2016 resolution supporting this rate.  
7 Contribution of 20% is consistent with the original  
8 intent of the Theater Subdistrict text and the City  
9 Council should not lower this.

10 Lastly, Community Board 5 is on record  
11 supporting the addition of the Chair of Manhattan  
12 Community Board 5 to the Theater Subdistrict Council.

13 To respond to some of the issues that  
14 have come up earlier, I would really just like to  
15 underscore that City Planning has been responsive to  
16 the longstanding concerns of Community Board 5 in  
17 approaching this text; I do not believe CB5 had asked  
18 for this a decade ago; this is a request over the  
19 last several years and we truly believe that the  
20 Department of City Planning is responding to our  
21 concerns here. Thank you very much.

22 CHAIRPERSON RICHARDS: Thank you, Eric;  
23 this is certainly an historic moment when community  
24 boards [bell] actually agree wholeheartedly with City  
25 Planning, this is a... [laughter] this is a record day;

1 may we write this day in the history, January 24th of  
2 2017, we're going to have to frame this moment.

3  
4 But I want to thank you all for the work  
5 that you do and for certainly come down today; we  
6 really appreciate the work you're doing to really  
7 expand art opportunities in communities that  
8 historically probably would not have access, so I  
9 want to thank you for that. I'm going to go to  
10 Council Member Johnson. Oh Council Member Johnson,  
11 **[inaudible]**... [crosstalk]

12 COUNCIL MEMBER JOHNSON: I mean I don't  
13 have any questions; I just want to say that TDF does  
14 such amazing, amazing work and I had the real honor  
15 and privilege of going to see *The Lion King* last year  
16 as part of their autism program and it was extremely,  
17 extremely moving to watch hundreds of families with  
18 young people on the spectrum be able to be themselves  
19 and enjoy the theater in a welcoming and judgment-  
20 free environment and I know that's just one of many  
21 important programs... [crosstalk]

22 VICTORIA BAILEY: Thank you.

23 COUNCIL MEMBER JOHNSON: that they do and  
24 so I'm really grateful for that. Pregones is amazing  
25 and I'm so glad you guys had the merger and are

2   continuing the important work that you all do. And  
3   CB5 is CB5; what's there to say? So thank you all  
4   for being here; thank you for testifying, I  
5   appreciate it, and I look forward to working together  
6   in the future.

7                   VICTORIA BAILEY: Thank you very much.

8                   ROSALBA ROLON: You too. Thank you.

9                   CHAIRPERSON RICHARDS: Okay, alrighty.

10   Are there any other members of the public who wish to  
11   testify on this issue? Seeing none, I will now close  
12   the public hearing on Land Use Item No. 545. We are  
13   laying this item over to a future meeting. Meeting  
14   adjourned.

15                   [gavel]

16                   [background comments]

17                   CHAIRPERSON RICHARDS: Thank you.

18                   [background comments]

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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 February 6, 2017