

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

SUBCOMMITTEE ON ZONING & FRANCHISES

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March 20, 2012  
Start: 10:10 a.m.  
Recess: 11:05 a.m.

HELD AT: Committee Room - 16<sup>th</sup> Floor  
250 Broadway

B E F O R E:

MARK S. WEPRIN  
Chairperson

COUNCIL MEMBERS:

Leroy G. Comrie, Jr.  
Vincent M. Ignizio  
Robert Jackson  
Jessica S. Lappin  
Rosie Mendez  
Diana Reyna  
Joel Rivera  
Larry B. Seabrook

## A P P E A R A N C E S

Antonio Gomez  
Owner  
Spunto Restaurant

Susan McCarthy  
Owner  
Agave Restaurant

David Aigner  
Zoning Analyst & Planner  
NYC Department of City Planning

Beth Lebowitz  
Deputy Director Zoning Division  
NYC Department of City Planning

Alison McCabe  
Assistant Counsel  
NYC Department of City Planning

Daniel Walsh  
Director  
Mayor's Office of Environmental Remediation

Mark McIntyre  
General Counsel  
Mayor's Office of Environmental Remediation

Daniel Cole  
Assistant Director  
Mayor's Office of Environmental Remediation

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2 CHAIRPERSON WEPRIN: Good morning  
3 everyone, hi, I'm Mark Weprin, I'm Chair of the  
4 Zoning & Franchises Subcommittee, I apologize for  
5 the delay. We are joined this morning by Council  
6 Member Larry Seabrook, Council Member Vincent  
7 Ignizio, Council Member Joel Rivera ... uh oh, that  
8 may be a real one, a real fire drill, I mean.  
9 This is Council Member Jessica Lappin. Our dumb  
10 luck, the fire marshal for the floor happens to be  
11 Gail Benjamin. Okay, hello again. So as I  
12 mentioned, we had a quorum and we were joined by  
13 Council Member Rivera, Comrie, Seabrook, Lappin  
14 and Ignizio, and I am Mark Weprin. We have ... on  
15 the agenda we have four cafes listed, and we will  
16 go through them. One has been ... is off, and one  
17 we already had the hearing on, so what we'll do  
18 is, we're going to start ... let me start with Land  
19 Use #578, which is Casa Bella, which is going to  
20 be off the agenda pursuant to a letter filed with  
21 the Department of Consumer Affairs. The Land Use  
22 number, we'll now call 579, which is Spunto  
23 restaurant, in Speaker Quinn's district, I'd like  
24 to call up Mr. Gomez. Please, Mr. Gomez, come to  
25 the table, the sergeant-at-arms will show you,

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2 give you an idea of how that microphone sometimes  
3 is confusing, and what I'd like you to do is  
4 please describe what the café request is you're  
5 making, what the application is, and state your  
6 name for the record when you start. Okay? Thank  
7 you.

8 MR. GOMEZ: Yes, good morning, sir,  
9 my name is Antonio Gomez, I'm the owner of Spunto  
10 on 65 Carmine Street, and I'm here to read a  
11 letter that we have drafted. "Dear Council Member  
12 Quinn, this letter serves as our agreement with  
13 the Chair, Council Member Mark Weprin, and the  
14 encompassing members of the Subcommittee on Zoning  
15 & Franchises, that we will commit to the  
16 following: 1. We will insure that we have a  
17 representative from our restaurant at any future  
18 meeting of Manhattan Community Board #2 at which  
19 an application pertaining to our restaurant will  
20 be heard; 2. We will set up the café according to  
21 the plans approved by the New York City Department  
22 of Consumer Affairs, DCA; and 3. That we will  
23 remove the 14 picnic tables that are currently in  
24 use in the sidewalk café, as they have not been  
25 indicated on the DCA-approved plans."

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CHAIRPERSON WEPRIN: Okay. What are you doing with those picnic tables? EBay?

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MR. GOMEZ: Probably we'll ... yeah, maybe. We'll move them upstate maybe.

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CHAIRPERSON WEPRIN: Yeah, unfortunately they're not compliant with the Americans with Disabilities Act and they don't allow them to use them, but- -

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MR. GOMEZ: (Interposing) We just found out- -

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CHAIRPERSON WEPRIN: (Interposing) They're nice looking.

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MR. GOMEZ: They're very, very popular.

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CHAIRPERSON WEPRIN: So this is a letter which was negotiated with Council Member Quinn, Speaker Quinn's office, and I know from her staff, I got the Speaker Quinn nod of yes, we agree that this is the agreement that was made with the community, with the Speaker and with the owners of the restaurant. So we thank you very much, sorry about my name tag there, and that's it. We want to wish you luck, good luck with Spunto, thin-crust pizza, right, at Carmine

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Street?

MR. GOMEZ: That's correct.

CHAIRPERSON WEPRIN: Okay, and we thank you, we're going to close this hearing, and you're free to go.

MR. GOMEZ: Thank you very much.

CHAIRPERSON WEPRIN: Okay, a little commercial there for Spunto. Land Use #580 is not here yet? Anyone here for Agave? Oh, you are. Did you fill out a card, a little piece of paper? Nick, just see if she's filled out a piece of paper. Did you fill out one of these little? Just fill it out quickly and then you can head to the table, and I won't have to ... this too is in Speaker Quinn's district, Community Board #2. Thank you. Now once again, please state your name for the record.

MS. McCARTHY: I'm Susan McCarthy, the owner of Agave Restaurant.

CHAIRPERSON WEPRIN: Okay. Would you please describe what it is ... what discussions you've had with Speaker Quinn's office and what is the application you're asking for?

MS. McCARTHY: The application is

1  
2 for the permit to operate an outdoor café, and we  
3 discussed with Council Member Quinn's office  
4 adjustments we must make. I have a letter, sure.

5 CHAIRPERSON WEPRIN: Would you read  
6 it into the record, please?

7 MS. McCARTHY: "Dear Council Member  
8 Quinn, this letter serves as our agreement with  
9 the Chair, Council Member Mark Weprin, and the  
10 encompassing members of the Subcommittee on Zoning  
11 & Franchises that we commit to the following: we  
12 will permanently remove the tall electronic menu  
13 box that is located on the outer edge of the  
14 eastern portion of the sidewalk café in accordance  
15 with the New York Department of Consumer Affairs  
16 regulations; all sidewalk café furniture and  
17 railings will be brought up against the façade of  
18 the building daily when the café is not in use, in  
19 accordance with DCA regulations; a railing that  
20 was anchored in the ground by a previous owner on  
21 the western edge of the café will be unanchored,  
22 so that it may also be brought against the façade  
23 daily; the café will be set up according to the  
24 DCA-approved plans."

25 CHAIRPERSON WEPRIN: Thank you.

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Looking at the picture, you're on Seventh Avenue?

MS. McCARTHY: Yes.

CHAIRPERSON WEPRIN: I see the St. Vincent Hospital site in the background right there up the road.

MS. McCARTHY: Yes.

CHAIRPERSON WEPRIN: I won't bring that up.

MS. McCARTHY: No.

CHAIRPERSON WEPRIN: We spent a lot of time with that last week. And I know Speaker Quinn's office is okay with us and these changes, so we wish you luck.

MS. McCARTHY: Thank you.

CHAIRPERSON WEPRIN: With the business and continued success. Does anybody have any comments or questions? No, thank you very much.

MS. McCARTHY: Thanks.

CHAIRPERSON WEPRIN: We're going to move to close this one, this hearing. Please leave ... could you leave the letter with us? If you want, you could ... no? Do you need a copy? Okay, all right, fine. Thank you very much.

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2 Okay, that leaves, we have ... last week we had a  
3 hearing already, and it's closed already, those  
4 who came wanted to testify, we had already closed  
5 the hearing on Khim's Café, that's Land Use #567  
6 in Council Member Reyna's district, and we've been  
7 joined by Council Member Reyna and Council Member  
8 Jackson, and what I'd like to do now is call on  
9 Council Member Reyna, who wanted to make a  
10 statement before the vote later in the meeting.  
11 So Council Member Reyna.

12 COUNCIL MEMBER REYNA: Thank you so  
13 much, Mr. Chair, for your indulgence, I apologize  
14 to the Committee for my tardiness, dealing with a  
15 meeting in my district prior to. I'd like to just  
16 read this statement as follows. "Jhu Jhu Corp.,  
17 aka Khim's Café, is located in my district, 324  
18 Graham Avenue. Khim's Café's questionable and  
19 negligible business practices and their lack of  
20 attention to community concerns put me in this  
21 unusual position. As Chair of the Small Business  
22 Committee, I encourage supporting all of our small  
23 businesses and advocate for helping them in any  
24 opportunity. However, this business is a  
25 reflection of a dishonest nature of an owner who

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2 puts his business above all else, threatening the  
3 health and safety of neighbors and patrons. A  
4 sidewalk café is a privilege extended by the city  
5 to businesses, and I believe this privilege should  
6 be earned, not handled blindly to every business,  
7 good or bad. Khim's Café has received numerous  
8 violations from the Department of Buildings,  
9 including various stop-work orders and a partial  
10 stop-work order. The community considers this  
11 business a bad neighbor, so much so that they have  
12 received signatures for a petition with over 50  
13 community members." I'd like to submit the  
14 petition as part of the record.

15 CHAIRPERSON WEPRIN: If I can  
16 interrupt for a second.

17 COUNCIL MEMBER REYNA: Sure.

18 CHAIRPERSON WEPRIN: The members  
19 all have a 106-page document on their desk from  
20 Council Member Reyna's office, including  
21 Building's violations as well as the names and the  
22 petitions that were signed by these residents.

23 COUNCIL MEMBER REYNA: As you can  
24 see, we did not take this lightly. In addition to  
25 the Community Board voting no to disapprove this

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2 sidewalk café application, Khim's Café has also  
3 been found in violation, various structural  
4 requirements not complying with Americans with  
5 Disabilities Act requirements, as well as creating  
6 an inappropriate fire exit door. The owner has  
7 indicated that he refuses to close the windows at  
8 10:00 p.m. or limit the hours of operation to 20  
9 hours a day. The DOB, Department of Buildings,  
10 has received 19 complaints regarding this building  
11 and six violations, the complaints range from work  
12 with a permit to the scaffolding falling onto the  
13 sidewalk, and damaging property. Violations and  
14 stop-work orders have related to the fencing for  
15 the construction site falling over two cars parked  
16 nearby and structural stability issues. There are  
17 complaints that even though a stop-work order has  
18 been issued, work continued on the site. The  
19 history of this business and the long list of  
20 violations and complaints are a testament to the  
21 nature of how they do business, that is why I'm  
22 requesting a motion to disapprove this  
23 application. Thank you very much.

24 CHAIRPERSON WEPRIN: Thank you,  
25 Council Member Reyna, I just want to acknowledge,

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2 there were other people here who wanted to testify  
3 against this item, but we had closed the hearing  
4 last week, so we are unable to have them speak  
5 today, but I know they are in the audience. Thank  
6 you, Council Member Reyna, does anybody else have  
7 any comments on this? We'll be voting on it later  
8 on in the meeting. All right, thank you very  
9 much. And now we're going to move to the Land Use  
10 item of the day, this is Land Use #581, this is  
11 the E designation throughout the City of New York,  
12 and who's here from Land Use ... from City Planning?  
13 Come on up, so I can sort through the names. Wow,  
14 look at all these names you guys have got here,  
15 okay. I'll tell you what I'll do, why don't you  
16 each ... is everyone who's testifying coming up now?

17 MS. LEBOWITZ: Yes.

18 CHAIRPERSON WEPRIN: And it's all  
19 going to be all at once, right?

20 MS. LEBOWITZ: Yes.

21 CHAIRPERSON WEPRIN: You're here in  
22 the audience. So what I'll ask you to do is, if  
23 you could each identify yourselves, and then if  
24 there's anyone in the audience who is here that  
25 you may be calling on, if you just identify them

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2 at the time that they speak, or you can  
3 acknowledge them in your opening statement of the  
4 presentation. So please, just state your names  
5 for the record, and I know you have a slide show,  
6 a PowerPoint and we'd like to do that afterwards.  
7 So thank you, go ahead.

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MR. AIGNER: My name is David  
9 Aigner, I'm the project manager of the E-  
10 designations text amendment.

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MS. LEBOWITZ: My name is Beth  
12 Lebowitz, I'm the Deputy Director of the Zoning  
13 Division at City Planning.

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MS. McCABE: Good morning, my name  
15 is Alison McCabe, and I am Assistant Counsel at  
16 the Department of City Planning.

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MR. WALSH: Good morning, my name  
18 is Daniel Walsh, I'm the Director of the New York  
19 City Mayor's Office of Environmental Remediation,  
20 I'm joined by Mark McIntyre, our general counsel,  
21 and Dan Cole, Assistant Director.

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CHAIRPERSON WEPRIN: Great,  
23 whenever you're ready.

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MR. AIGNER: Thanks. This E-  
25 designations text amendment is a revision to

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Section 1115- -

CHAIRPERSON WEPRIN: (Interposing)

Just go right up to the microphone, because you're ... okay.

MR. AIGNER: Better? This E-designations text amendment is a revision to Section 1115 of the zoning resolution, completed the public outreach process this winter, and was approved by the City Planning Commission on February 29<sup>th</sup>. What are E-designations? An E-designation provides notice to property owners as well as the Department of Buildings that special environmental requirements exist for a tax lot. These are in response to environmental laws both on the state and local level that require that during a proposed rezoning projected development sites be evaluated for potential environmental impacts. An E-designation assigned to a tax lot by the lead agency for the seeking of a review of a rezoning application when there are non-industrial uses that may be permitted with this action, and this is in order to apply environmental requirements specific to potential hazardous materials, air quality or noise impacts.

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2 E-designations are a mechanism to insure that  
3 these specific environmental conditions on a  
4 projected development site will be addressed prior  
5 to, or during, development, as most projected  
6 development sites don't develop at the time of the  
7 rezoning application. The E-program utilizes both  
8 E-designations and environmental restrictive  
9 declarations to apply these environmental  
10 requirements to tax lots, and I'll talk a little  
11 more about that later. The E-program is  
12 coordinated among multiple city agencies and was  
13 established in zoning by City Planning in 1983  
14 initially, it's currently administered by the  
15 Office of Environmental Remediation, having  
16 accepted this responsibility in 2009 from the  
17 Department of Environmental Protection, and the  
18 program is currently enforced by the Department of  
19 Buildings primarily through the withholding of  
20 building permits. It's important to note that the  
21 program is not a comprehensive environmental  
22 protection program, it does not seek to identify  
23 potential conditions throughout the city and  
24 restrict them. It is a limited tool within the  
25 seeker environmental review process for specific

1 rezonings, that allows rezoning to proceed by  
2 meeting seeker environmental review mandates.

3 This E-designation text amendment is one of  
4 several recent updates to the E-program by city  
5 agencies. The Office of Environmental Remediation  
6 is currently updating their program rules related  
7 to the administration of the program as well.

8 However, this text amendment, the purpose is to  
9 streamline the administration of the program, to  
10 enhance the existing enforcement mechanisms within  
11 the program, as well as to update and clarify all  
12 E-program-related provisions in the zoning text.

13 It is believed that this amendment will result in  
14 greater efficiency and transparency in the  
15 administration of the E-program, benefiting all  
16 the parties involved. It's also important to note  
17 that the scope and degree of environmental  
18 protections in the E-program are not changing as a  
19 result of this amendment, it is primarily  
20 administrative and is meant to improve the  
21 efficiency and transparency of the program. I'm  
22 going to give an example here of when an E-  
23 designation would be likely to be used. This is  
24 an example here of special mixed-use district #8,  
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1 surrounding McCarren Park in North Brooklyn.

2 Here's an area that had a history of industrial

3 uses over the years, and when this new mixed-use

4 zoning was proposed, it would have allowed new

5 residential, commercial and community facility

6 uses that previously weren't allowed. During this

7 rezoning, any site that had a history of

8 industrial uses or potential contamination, was

9 likely to receive an E-designation to insure that

10 at some future date of development these

11 conditions would be addressed. I'm going to talk

12 quickly about the three different types of E-

13 designations and give examples of when they might

14 be used, and what they would do. For a hazardous

15 material E-designation, it would be likely to be

16 assigned for a site with a history of automotive

17 uses. The environmental requirements of this E-

18 designation would attempt to address the potential

19 for petroleum contamination from surface spills,

20 leaking tanks from the ground, as well as if there

21 was a history of hydraulic lifts on the site.

22 These requirements require testing and remediation

23 of the site if necessary. The second kind of E-

24 designation is an air quality E-designation, these

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2 would be likely to be applied to a site that is  
3 adjacent from an existing emissions source, or if  
4 the site was itself likely to become an emissions  
5 source once developed. The environmental  
6 requirements of such an E-designation could  
7 include specifications for windows that are not  
8 operable in a new building, as well as other  
9 restrictions related to ventilation of a building,  
10 or restrictions for a new development, what type  
11 of boiler fuel would be allowed to be used, as  
12 well as where you could locate a smokestack on  
13 that site. The last kind of E-designation is for  
14 noise. As you might imagine, a noise E-  
15 designation would be likely to be assigned to a  
16 site adjacent to an elevated railway or a heavily-  
17 trafficked roadway. The environmental requirements  
18 with such an E-designation would include  
19 specifications for walls and windows that provide  
20 a certain degree of noise attenuation for interior  
21 spaces which would protect interior noise levels.  
22 If you have a property with an E-designation, you  
23 will not be able to receive a permit from the  
24 Department of Buildings for most types of  
25 construction activities. What you would need to

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2 do is follow the guidance of the specific  
3 requirements, you would need to submit  
4 documentation to OER showing you have done this,  
5 and once OER has approved and ... approved the fact  
6 that these conditions have been addressed, then  
7 they would issue a notice to proceed ... or notice  
8 of satisfaction, sorry. Once City Planning  
9 receives this OER notice of satisfaction, if on  
10 this tax block all E-designations have been met,  
11 requirements have been met and satisfied, City  
12 Planning would administratively update appendix C  
13 to strike out the specific tax lots in that table.  
14 A little bit about how you could find information  
15 on E-designations, here's a screen shot from City  
16 Planning's online map-based zoning and land use  
17 tool, it's called ZOLA. On the right where the  
18 data layers are, there's a data layer called  
19 environmental requirements. When you click on  
20 this, and if you are zoomed in close enough to see  
21 the tax lot boundaries, you will see whether or  
22 not you have a little white E with a circle around  
23 it, and that would indicate whether or not a  
24 property has an E-designation. In addition to  
25 this, there are other resources throughout the

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2 city, the Department of ... or OER has their SPEED  
3 database, which is online, and also the Department  
4 of Buildings has their BIS, building information  
5 system, where you can find the information on E-  
6 designations. I'm going to go through the six  
7 issues that were identified with the E-program,  
8 and after each we'll talk about the solution that  
9 was proposed in this amendment. Issue one, zoning  
10 resolution section 1115, as well as many special  
11 district chapters, contain duplicative regulations  
12 in outdated language. The fix in this case was to  
13 essentially just go and clean up the text, clarify  
14 existing regulations, and remove anything that was  
15 not accurate any longer. Issue two, section 1115  
16 is unclear regarding the jurisdiction of the  
17 Department of Buildings over air and noise E-  
18 designations as well as all environmental  
19 restrictive declarations. This amendment would  
20 modify section 1115 to clarify that the Department  
21 of Buildings does in fact have the jurisdiction to  
22 enforce air and noise E-designations citywide,  
23 also as well as all existing environmental  
24 restrictive declarations. Issue three, existing  
25 regulations do not allow for the environmental

1 requirements associated with an E-designation to  
2 be modified once adopted. The amendment would  
3 give OER the authority at the request of a  
4 property owner, along with the consent of the lead  
5 agency, to modify the environmental requirements  
6 of an existing E-designation, provided that the  
7 resulting requirements are equally protective of  
8 the environment. So this is a mechanism that  
9 would allow OER the flexibility to apply a rule  
10 with the commonsense approach, but would not allow  
11 them to either lower the degree of protection or  
12 increase the degree of protection in the  
13 requirements. An example of this might be if  
14 there was a noise E-designation with a certain  
15 specification for window, and you were proposing a  
16 20-story building next to a ground noise source,  
17 an owner might be able to petition OER by  
18 providing noise testing results that the upper ten  
19 stories on the building didn't actually require  
20 that high-spec window in order to maintain  
21 interior noise levels, so OER would be able to say  
22 yes, this meets the intent of this rule. Issue  
23 four, existing regulations do not insure the  
24 ongoing monitoring of environmental control  
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2 technologies post-occupancy. An example of this  
3 is on a partially-remediated site for a new  
4 building, it might be required to install a vapor  
5 barrier beneath the foundation, and this is  
6 something that would need to be checked for  
7 effectiveness over time to make sure it was still  
8 working well. The amendment would enable the city  
9 to enforce ongoing monitoring of such  
10 environmental control technologies as needed case  
11 by case. Issue five, currently E-program rules  
12 only allow the placement of E's on non-applicant-  
13 controlled properties. This was true from the  
14 beginning in the 80's when the program was  
15 created. And over the years the city for  
16 applicant-controlled properties has developed a  
17 practice of using environmental restrictive  
18 declarations to insure that further testing and  
19 remediation is taking place. Having these two  
20 different mechanisms that essentially achieve the  
21 same results is unnecessary. Environmental  
22 restrictive declarations are cumbersome to prepare  
23 and difficult to track and administer. In  
24 conjunction with this text change, OER is updating  
25 its E-program rules to allow the city to assign

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2 hazardous materials E-designations to applicant-  
3 controlled properties, this will essentially  
4 consolidate the two mechanisms for environmental  
5 requirements, and further streamline the program  
6 in this regard. Last issue six, the E-program  
7 limits the use of E-designations to zoning map  
8 amendments, E's cannot be used in connection with  
9 other types of zoning actions such as special  
10 permits and authorizations. This is actually  
11 needed in response to issue five, now that we are  
12 allowing E-designations to be assigned to  
13 applicant-controlled properties, an applicant-  
14 controlled property is much, much more likely to  
15 be involved in a special permit or an  
16 authorization, so this is basically to take care  
17 of that change. It is the intent that this  
18 amendment will improve the efficiency and  
19 transparency in the administration of the E-  
20 program among all agencies, and we believe that a  
21 streamlined and more predictable land use process  
22 and environmental review process will benefit land  
23 use practitioners, property owners, as well as the  
24 public and city agencies. I'll speak very briefly  
25 about the public review results. We received 27

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2 letters from the 59 community boards; 26 of those  
3 community boards effectively passed resolutions in  
4 support of the amendment, and five issued  
5 comments, and I'll walk through these comments  
6 quickly. Manhattan Community Board #5 suggested  
7 that we retroactively apply the E's where in the  
8 past restrictive declarations were placed to  
9 insure appendix C is all-inclusive. Our response  
10 to this was, we are in fact going to list all  
11 historical restrictive declarations in the same  
12 appendix C along with E-designations, so we won't  
13 need to re-assign the E's, they'll all be managed  
14 in the same location. They also suggested that we  
15 consider the creation of a designation similar to  
16 the E-designation for other types of impacts,  
17 including school seats, sanitation, open space and  
18 traffic. This is outside of the scope of this  
19 proposal, though we did respond that, you know,  
20 these types of impacts are very different from,  
21 you know, hazardous materials, impacts looked at  
22 in E-designations, for E-designations the way that  
23 hazmat works is that you are essentially  
24 addressing the potential impact on one site, so  
25 it's a very site-specific designation, whereas all

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2 these other types of impacts which are, you know,  
3 evaluated during environmental review, are  
4 important but these are fundamentally more  
5 density-based cumulative-type impacts, which  
6 wouldn't really benefit from a mechanism like the  
7 E-program. The third recommendation was to look  
8 at these types of issues more proactively, and to  
9 not wait for seeker review. Our response was  
10 again that this is not a citywide environmental  
11 clean-up program, and it's very limited in its  
12 applicability to specific rezonings and sites that  
13 are projected to develop. There are other city,  
14 state and Federal programs that are geared towards  
15 addressing environmental conditions on sites,  
16 outside of this program. The Brooklyn borough  
17 board, as well as Brooklyn Community Board #6,  
18 made the suggestion that OER should be fully  
19 accountable to community boards, as are other  
20 agencies, pursuant to the city charter. This is a  
21 result of OER status as a Mayoral agency, so they  
22 lack some of the same language, the city charter-  
23 mandated language, as far as responding to  
24 community boards on a regimented kind of basis,  
25 where I think they need to attend specific

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2 meetings over time. This is also outside the  
3 scope of this amendment, but we believe that since  
4 the administration of the program has been moved  
5 from DEP to OER, the smaller functional unit is  
6 very effective in the role of administrating the  
7 program, and they are also ... they work very hard  
8 to be responsive to community concerns when  
9 they're approached. Lastly, Brooklyn Community  
10 Board #10 and Queens Community Board #3 suggested  
11 that the city give community boards the  
12 opportunity to comment on, and be notified in the  
13 event of, a modification of an environmental  
14 requirement. Our response to this was that this  
15 is really, you know, a technical matter that  
16 allows OER to enforce an environmental requirement  
17 with a commonsense approach and make sure that the  
18 intent of a rule is met. It's not something that,  
19 you know, will either lower the degree of  
20 protection or increase the degree of protection,  
21 and because of that, we don't believe that any  
22 special comment or notification is necessary. Now  
23 the City Planning Commission made no significant  
24 changes to the proposal, modification in response  
25 to public comments, there was some clarifying

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2 changes that were made, including reorganization  
3 of the text and some word changes, and there were  
4 two technical clarifications the Commission made.  
5 One was to replace the term "ongoing monitoring"  
6 with "ongoing site management", and this was at  
7 the request of OER. Ongoing site management is a  
8 more-inclusive term, and more accurately reflects  
9 the type of work that they do. We also clarified  
10 language in the provision relating to what happens  
11 to an environmental requirement once a lot either  
12 merges with a second lot, or a lot subdivides.  
13 And so this clarification makes clear that if you  
14 merge with another lot or subdivide, these  
15 environmental requirements carry with the land and  
16 the tax lot, so you would not be able to subdivide  
17 your lot in order to avoid any designation in any  
18 case. And we're all happy to take any questions  
19 you might have.

20 CHAIRPERSON WEPRIN: Fascinating.  
21 No. No, it's great. I have a question, actually.  
22 So if you have this zoning application, you have  
23 an ... you get an E-designation, what is the process  
24 for testing, who looks at the testing of the  
25 ground, and if the ground soil and everything is

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2 found to be okay, how do you get the E-designation  
3 removed?

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MR. WALSH: Well, the process that  
5 we use is fairly standardized. The first step is  
6 to do a background search of the property, it's  
7 called a phase one. It looks at the historical  
8 land usage dating back to probably the beginning  
9 of the 20<sup>th</sup> century, and sometimes earlier. That  
10 work is typically followed with actual ground  
11 truth, sampling of soil, of groundwater and soil  
12 vapor. And that's one of the adjustments that  
13 we've made.

14

CHAIRPERSON WEPRIN: Who does that  
15 sampling?

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MR. WALSH: The sampling is done by  
17 the land owner or the developer, the party that's  
18 advancing the project. The work is not done until  
19 it's proposed directly to my office, to the Office  
20 of Environmental Remediation, we review the work  
21 plans, evaluate the sufficiency of that work,  
22 usually finalize a plan, approve it and they go  
23 out and take those samples. Then they report  
24 those results to us, often we'll be on hand when  
25 the samples are collected, they're run through a

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state-certified laboratory, so we're confident of the quality of the results, and then we evaluate those results.

CHAIRPERSON WEPRIN: And if they come back clean, the soil sample?

MR. WALSH: If they come back clean, what we can do is allow the construction to occur. We issue a notice to proceed and the work can begin. And when it's complete, typically they'd report on the final summary of any type of soil management that was done on that project, and we'd issue a notice of satisfaction.

CHAIRPERSON WEPRIN: And the E-designation stays on the property until you issue this notice of satisfaction?

MR. WALSH: The E-designation typically stays on the property.

CHAIRPERSON WEPRIN: It will always be an E-designation, at one time this was a site, even if it is proven that there was no, you know, leakage and- -

MR. WALSH: (Interposing) Well, what I can say is, there are provisions for- -

CHAIRPERSON WEPRIN: (Interposing)

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... leaching.

MR. WALSH: There are provisions for an E to be removed. It usually requires, since E's are often placed because of, not just site but area-wide impacts, it would require all of the E's within an area, or within a block, to be removed. We are working to also enable applicants to demonstrate that a site is completely cleaned and enable the removal of the E, and this is actually one of the updates, it allows us to encourage the highest level, the highest quality of cleanup on properties.

CHAIRPERSON WEPRIN: I understand. Council Member Reyna has a question.

COUNCIL MEMBER REYNA: Thank you, Mr. Chair. You say that with no surprise. I just wanted to get some clarity along the lines of how Council Member Weprin was just mentioning, the issue of removing what would be an E-designation and taking an example of what would be an old gasoline station, and an E-designation would automatically merit a gasoline station, is that not correct?

MR. WALSH: That's correct.

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2 COUNCIL MEMBER REYNA: So moving  
3 forward, if and when there is a rezoning  
4 application, is only when there's an E-  
5 designation, or are all gasoline stations moving  
6 forward going to be E-designated?

7 MR. AIGNER: It would only be in  
8 connection with the specific rezoning.

9 MS. McCABE: Just to add to that,  
10 if it were identified as a projected or potential  
11 development site within a rezoning, then it would  
12 get the E-designation. Or if it came in under the  
13 ... in the new world under the proposed text, if an  
14 owner was applying for a special permit, and the  
15 site was a prior gas station.

16 COUNCIL MEMBER REYNA: A special  
17 permit through the Department of City Planning.

18 MS. McCABE: Right.

19 COUNCIL MEMBER REYNA: And what in  
20 the case of the Board of Standards and Appeals?

21 MS. McCABE: BSA as well, because  
22 they are- -

23 COUNCIL MEMBER REYNA:  
24 (Interposing) I didn't hear it recognized in the  
25 presentation, so I wasn't too clear.

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2 MS. McCABE: That's a good  
3 question. BSA special permits and variances are  
4 also covered by this, because they're under the  
5 zoning resolution, so yes, the E-text would extend  
6 the application of E's to BSA's special permits  
7 and variance and City Planning Commission special  
8 permits and authorizations, whereas today we apply  
9 environmental restrictive declarations. So since  
10 now we're streamlining the program so that E's can  
11 be tracked in bids, and there's one program, we  
12 will no longer have to use environmental  
13 restrictive declarations for hazmat, air and noise  
14 requirements, they'll be handled under the E  
15 program with E's.

16 COUNCIL MEMBER REYNA: And so the  
17 E-designation will replace the environmental  
18 restrictive declarations?

19 MS. McCABE: Yes.

20 COUNCIL MEMBER REYNA: When it  
21 deals with the environment impact.

22 MS. McCABE: For hazardous  
23 materials, air and noise, yes.

24 COUNCIL MEMBER REYNA: And how is  
25 this particular E-designation affecting what would

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2 be a physical impact to the development of a site?

3 So is this going to be negatively looked upon by  
4 financial institutions for lending opportunities,  
5 bonding issues ... I'm trying to think, just the  
6 security of a financial package that will perhaps  
7 remain the same or that's going to shoot up what  
8 would be now speculation amongst insurers and  
9 lenders?

10 MR. WALSH: Yeah, I'll begin the  
11 answer to that. I think ... I'm not so sure that  
12 the E itself would be responsible for those types  
13 of concerns, I think it's the past environmental  
14 usage that would come up in a phase one that those  
15 lending institutions would require that would  
16 elicit concern. I think the E is a way of kind of  
17 more formally recognizing that. I think, though,  
18 in our experience, and we've managed many  
19 projects, the government oversight that we provide  
20 through the E-program addresses those concerns and  
21 addresses those issues and actually eases the  
22 concerns that lenders have, because at the end of  
23 the process we issue a notice to proceed and a  
24 notice of satisfaction, and that actually  
25 satisfies their concerns about risk.

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2 COUNCIL MEMBER REYNA: A notice to  
3 proceed does not necessarily mean that the E-  
4 designation has been lifted.

5 MS. LEBOWITZ: Can I just address  
6 that?

7 COUNCIL MEMBER REYNA: Sure.

8 MS. LEBOWITZ: The appendix in the  
9 zoning resolution that lists all the E's does at  
10 the end of the process of cleanup indicate, can  
11 indicate that the lot has been remediated, and the  
12 lot is noted for the date and the specific lots  
13 that have done that, performed their remediation,  
14 to the satisfaction of OER. So there is a record  
15 of the completion of requirements. The more  
16 complicated thing about removing an E altogether  
17 is that the E is assigned by lot, and so every lot  
18 within an E-designation would need to satisfy its  
19 requirements for the E to be totally removed from  
20 the zoning resolution, and that frankly has not  
21 happened. But individual lots have satisfied  
22 requirements, and they are listed in the zoning  
23 resolution as having satisfied their ... each  
24 individual property owner has that legal record.

25 COUNCIL MEMBER REYNA: And this may

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sound a little absurd, but would the structure like the BQE be designated with an E-designation.

MS. LEBOWITZ: Because the E-designations are used in connection with rezoning action or a special permit action, it's unlikely, because I don't imagine we'd be rezoning the BQE any time soon. Should it be rezoned, then yes, I mean, should property right next to it be rezoned, then probably yes.

CHAIRPERSON WEPRIN: I ride the BQE all the time, and I often give it an F-designation.

COUNCIL MEMBER REYNA: Duly noted. I think we can all concur with that, and you know, in the past we have experienced what has been a rezoning along the BQE.

MS. LEBOWITZ: Yes.

COUNCIL MEMBER REYNA: And you had shown one of the examples in your presentation in the Williamsburg-Green Point 2005 rezoning. And so I would gather that, had this been in place, you would have designated the BQE along with that rezoning action?

MS. LEBOWITZ: For noise, is that

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what you're- -

COUNCIL MEMBER REYNA:

(Interposing) Noise and air.

MS. LEBOWITZ: Air.

COUNCIL MEMBER REYNA: Which are two of the biggest contributors to the issues of health impact.

MS. McCABE: Yeah, I'll just clarify that it's not the source of the problem that gets the E, it's not the BQE or it's not the factory that's emitting the- -

COUNCIL MEMBER REYNA:

(Interposing) It's the hazardous- -

MS. McCABE: (Interposing) ... fluorocarbons or whatever, it's the development sites.

COUNCIL MEMBER REYNA: Okay.

MS. McCABE: So that to insure that the buildings that are developed are protected from the BQE. So in a rezoning we would identify those sites that are likely to be developed as a result of the rezoning, and those that are close enough to the BQE to warrant an E, would get an E-designation for noise, and probably air as well,

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in order to insure that they have the correct window.

COUNCIL MEMBER REYNA: Right.

MS. McCABE: Wall attenuation to protect from the noise and so forth. So it's not the noise source itself that gets the E, it's the development site.

COUNCIL MEMBER REYNA: And the ... what if there's a situation where there's a rezoning and it doesn't take into account what would be in the application, the actual structure itself that impacts the development, would this take into consideration expanding that boundary to include the structure?

MS. McCABE: Structure doesn't need to be within the rezoning area.

COUNCIL MEMBER REYNA: Okay.

MS. McCABE: It's all dependent on whether that source or structure impacts the development site. So it could be outside of the rezoning area.

COUNCIL MEMBER REYNA: Okay.

MS. McCABE: But the plume from the factory is carrying over into the rezoning area,

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so there needs an inoperable window condition through the E's on the development site. So it really, it will come up in the environmental review whether or not that source affects the development sites in the rezoning area.

COUNCIL MEMBER REYNA: For greater action.

MS. McCABE: For placement of ... consideration for placement of E-designations.

COUNCIL MEMBER REYNA: For placement. Which requires greater action.

MS. McCABE: Yes.

MS. LEBOWITZ: Yes.

COUNCIL MEMBER REYNA: Okay.

MS. LEBOWITZ: When the site is developed.

COUNCIL MEMBER REYNA: Okay.

MS. LEBOWITZ: It requires greater action.

COUNCIL MEMBER REYNA: And my last question as far as the existing manufacturing and industrial zoned areas, is that considered to be an impact on the residential side, or not likely?

MS. McCABE: It depends on what's

1  
2 disclosed in the environmental review, and you  
3 know, I think more likely than not, you know,  
4 residential areas on the border of ... on high, you  
5 know, manufacturing-intense industrial areas there  
6 will be noise impacts, there will be air quality  
7 impacts, or potential impacts. So the E is there  
8 to avoid impacts.

9 COUNCIL MEMBER REYNA: So I wanted  
10 to share with you why I asked, because in the 2005  
11 Green Point-Williamsburg rezoning, much of that  
12 land was M-zoned, now what would be a combination  
13 of mixed and residential, and we have a designated  
14 industrial business zone that's protected and  
15 maintained as manufacturing, and the surrounding  
16 developments since that have been constructed, are  
17 now trying ... the businesses are trying to be good  
18 neighbors, but entertaining what would be noise  
19 complaints, knowing that they were pre-existing.  
20 And so I wanted to understand how the E-  
21 designation will take into consideration the  
22 protection of the small business, not just the  
23 residential side of dealing with an E-designation,  
24 when it comes time to balancing what would be the,  
25 you know, co-existing of these communities.

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2 MS. LEBOWITZ: Well in fact for a  
3 noise issue, it would be ... the balancing would  
4 take place in the sense that the development was a  
5 residential building that goes up near to the  
6 noise sources of the businesses, should be  
7 providing window-wall attenuation, which cuts down  
8 on the ambient noise and creates a quieter  
9 environment within the dwelling units that were  
10 developed. So yes, that should happen. If you're  
11 talking about- -

12 COUNCIL MEMBER REYNA:

13 (Interposing) I'll give you an example, Acme  
14 Smoked Fish, a 24-hour operation, seven days a  
15 week, our Chair accompanied me to go to a tour  
16 there, and heard from its owners, along with the  
17 Committee for Small Business, issues that were  
18 encroaching on his business, the business pre-  
19 existing the development, since then now  
20 surrounded by development, has had to deal with  
21 what would be complaints of air quality and noise.  
22 And so would the E-designation be retroactive to  
23 assist a small business, so that the development  
24 that continues to be built around it will be held  
25 to actions that are as you've described as E-

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designations?

MS. McCABE: The E's are placed at the time of the rezoning, and they're for purposes of analysis, the lead agency does its best to identify projected and potential development sites, and those are the sites that get the E's. So those close to Acme that are developed, those will have the protections. If there are other residences that have noise issues or have noise complaints, there are other, you know, the noise code will still govern, regardless of the E-program, in addition to the E-program. So I think that in the situation that you described, I think that's beyond the scope of the E-program, and that other city enforcement- -

COUNCIL MEMBER REYNA:

(Interposing) Right, it's not the enforcement issue.

MS. McCABE: ... codes would come into play.

COUNCIL MEMBER REYNA: But the construction of the development surrounding the small business, to make sure that ... the issue of making sure, yeah, whether or not it's a hotel as

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well, just making sure that E-designation ... so my question is, is it retroactive?

MS. McCABE: No.

COUNCIL MEMBER REYNA: And it's not, so clearly moving forward, all of the area within Williamsburg-Green Point would continue to coexist as is. The actions that are called upon for developmental fights moving forward with E-designations will not assist what has already occurred.

MS. McCABE: Some of those sites I'm assuming did get E's and maybe not all of them, but the new development sites in Green Point-Williamsburg, some of them would have gotten E's, in all likelihood, as part of that rezoning, but- -

COUNCIL MEMBER REYNA:

(Interposing) Would you be able to supply us with a list of those E-designated areas? That would be helpful, just to understand exactly- -

MS. McCABE: (Interposing) Sure.

COUNCIL MEMBER REYNA: ... what has been E-designated since 2005 and moving forward everything will.

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2 CHAIRPERSON WEPRIN: Council Member  
3 Reyna, I want to ... I will arrange for you to have  
4 lunch with these people too, if you want, anything  
5 you want, but I know- -

6 COUNCIL MEMBER REYNA:  
7 (Interposing) Thank you, Mr. Chair.

8 CHAIRPERSON WEPRIN: ... a couple of  
9 members have a couple of meetings to get to.

10 COUNCIL MEMBER REYNA: Absolutely.

11 CHAIRPERSON WEPRIN: And I'm going  
12 to ask if anybody else has any questions? With  
13 seeing none, I want to thank you all, and I just  
14 want to say I'm glad you're on our side. I don't  
15 know what that means, but you seem to love your  
16 job and God bless you all. And thank you very  
17 much to the panel. Anyone have any questions  
18 beyond that? No? Okay, well, thank you. We're  
19 going to move to vote now on the items that were  
20 on the agenda today. Our first item is Land Use  
21 #567, that's Khim's Café, the recommendation is  
22 going to be a nay vote on that, a motion to  
23 disapprove the application. Five ... that would be  
24 ... oh, sorry, okay, I'm going to couple all of  
25 these, and I'm going to say the motion is to

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2 disapprove on 567, the Land Use #579, the motion  
3 is to approve, the Land Use #580, Agave Café, the  
4 motion is to approve, and then Land Use #581, the  
5 E-designation, will also be coupled, and Casa  
6 Bella, Land Use #578, is a motion to withdraw,  
7 withdraw the motion pursuant to a letter filed  
8 with the Department of Consumer Affairs. So then  
9 on all of those together are now coupled, and I  
10 will call on Christian Hylton to call the roll,  
11 and my vote is yes on all of those items,  
12 including the disapproval. So, Mr. Hylton.

13 MR. HYLTON: Chair Weprin.

14 CHAIRPERSON WEPRIN: Aye.

15 MR. HYLTON: Council Member Rivera.

16 COUNCIL MEMBER RIVERA: I vote aye  
17 on all.

18 MR. HYLTON: Council Member Reyna.

19 COUNCIL MEMBER REYNA: Aye on all.

20 MR. HYLTON: Council Member Comrie.

21 COUNCIL MEMBER COMRIE, JR.: Aye on  
22 all.

23 MR. HYLTON: Council Member  
24 Jackson.

25 COUNCIL MEMBER JACKSON: May I be

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2 excused to explain my vote? So I vote aye on all,  
3 but in listening to our colleague, Diana Reyna, in  
4 her descriptive statement that she read into the  
5 record, and based on the documentation that we  
6 have here, it clearly we have to disapprove this,  
7 but I'm very concerned that this employer, based  
8 on the documentation presented and what was said,  
9 continuously violates the law and rules and  
10 regulations of our city, and I respectfully  
11 request that everything be done to put this owner  
12 in check, to understand that there are laws, rules  
13 and regulations that must be followed concerning  
14 the safety and security of all of our residents of  
15 our city, and I wanted to say that loud and clear,  
16 because no one, no matter who you are, no matter  
17 what position you're in, is above the law, and I  
18 vote aye on all. Thank you.

19 MR. HYLTON: Council Member  
20 Seabrook.

21 COUNCIL MEMBER SEABROOK: I vote  
22 aye on all.

23 MR. HYLTON: Council Member Lappin.

24 COUNCIL MEMBER LAPPIN: Aye.

25 MR. HYLTON: Council Member

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COUNCIL MEMBER IGNIZIO: Yes.

MR. HYLTON: By a vote of eight in the affirmative, none in the negative and no abstentions, LU 579, 580 and LU 581 are approved and referred to the full Land Use Committee, the motion to disapprove LU 567 is approved by a vote of eight in the affirmative, none in the negative and referred to the full Land Use Committee, and LU 578, a motion to file pursuant to a letter of withdrawal, is approved by a vote of eight in the affirmative, none in the negative and referred to the full Land Use Committee.

CHAIRPERSON WEPRIN: Thank you, Mr. Hylton, and with that the meeting is now adjourned.

C E R T I F I C A T E

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



Signature \_\_\_\_\_

Date March 27, 2012