

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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August 20, 2012  
Start: 10:04 a.m.  
Recess: 11:00 a.m.

HELD AT: Council Chambers  
City Hall

B E F O R E:  
MARK S. WEPRIN  
Chairperson

COUNCIL MEMBERS:

Leroy G. Comrie, Jr.  
Daniel R. Garodnick  
Robert Jackson  
Jessica S. Lappin  
Diana Reyna  
Joel Rivera  
Larry B. Seabrook  
James Vacca  
Albert Vann  
Vincent M. Ignizio

## APPEARANCES (CONTINUED)

Oliver Kremer  
Owner  
Dos Toros Taqueria

Steve Shlomo Wygoda  
Architect/Representative  
Doyle's Corner

Robert Callahan  
Representative  
Groove Enterprises

James McGown  
Owner  
Buschenschauk

Michael Freedman Schnapp  
Director of Policy  
Council Member Brad Lander's Office

Gary Reily  
Permits and Licenses Chairman  
Community Board 6

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2 CHAIRPERSON WEPRIN: Okay. We're  
3 going to get started now that Ms. Reyna is here.  
4 - - . Okay. Good morning, everyone. My name is  
5 Mark Weprin. I am chair of the Zoning and  
6 Franchises Subcommittee of the Land Use Committee  
7 of the City Council and we are here today with my  
8 colleagues: Council Member Al Vann, Council Member  
9 Dan Garodnick, the chair of the Land Use Committee  
10 Leroy Comrie, James Vacca from the Bronx, Joel  
11 Rivera and Diana Reyna. Did I miss anybody?  
12 That's it for now. We have on our agenda today  
13 five sidewalk café applications, so we're going to  
14 start with Land Use number 654 Dos Toros Taqueria  
15 in Speaker Quinn's district, and I'd like to call  
16 up Oliver Kremer [phonetic]. There he is in the  
17 back. Come on up, Mr. Kremer. Sit at the table.  
18 Make sure the mic is on 'cause it's a little  
19 confusing 'cause the light goes off, the light  
20 goes on. Make sure to state your name and then  
21 describe the application that you have.

22 OLIVER KREMER: Sure. My name is  
23 Oliver Kremer. The application is for a sidewalk  
24 café for 11 Carmine Tacos, LLC d.b.a Dos Toros  
25 Taqueria. I'm just going to read my letter for

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the record, if that's alright.

CHAIRPERSON WEPRIN: Please do.

OLIVER KREMER: Dear Council Member Quinn, this letter serves as our agreement with the chair, Council Member Mark Weprin, and the encompassing members of the Subcommittee on Zoning and Franchises that we will commit to the following: number one, the pavers that surround the tree in front of our establishment will be corrected in order to ensure a level surface so as to reduce impacts on pedestrians; number two, in order to allow for the unobstructed use of the fire escape, we will have a fly away awning to allow for fire escape access; three, we agree to adhere to any future or present New York City fire Department regulations and will amend plans with the New York City Department of Consumer Affairs as necessary; four, we will relocate our delivery bicycles currently located in front of the 11 Carmine Street store and our sidewalk café to allow for clear passage along the sidewalk; five, we will abide by New York City Department of Consumer Affairs regulations with respect to serving beer and wine to patrons in outdoor

1  
2 seating area, including required wait service. If  
3 there are any questions, please call my office.

4 Thank you.

5 CHAIRPERSON WEPRIN: Thank you very  
6 much, and Speaker Quinn I think her office—is it  
7 Julia? Julia who is here from Speaker Quinn's  
8 staff will be working on these items now, and she  
9 gives me the head nod which means they have agreed  
10 to this with you. I apologize, Mr. Kremer for  
11 calling you Kremer. Council Member Vann used to  
12 have a colleague spelled the same way, used to  
13 pronounce it Kremer.

14 OLIVER KREMER: Don't worry about  
15 it.

16 CHAIRPERSON WEPRIN: I apologize  
17 for that. Does anyone on the panel have any  
18 comments or questions? I see none. Well, thank  
19 you very much. I'm glad we came to this agreement  
20 and thank you. Good luck.

21 OLIVER KREMER: Thanks.

22 CHAIRPERSON WEPRIN: Alright.  
23 We're going to move to 656. We're going to skip  
24 the next item and go to 656, which is Doyle's  
25 Corner in Council Member Van Bramer's District.

1  
2 Steve Shlomo Wygoda is here on behalf of this  
3 application. Whenever you are ready.

4 STEVE WYGODA: Good morning. My  
5 name is Steve Wygoda and this is a letter  
6 addressed to Council Member James Van Bramer.  
7 Dear Council Member Van Bramer, this letter should  
8 serve as our agreement with Council Member James  
9 Van Bramer and the chair, Council Member Mark  
10 Weprin, and the encompassing members of the  
11 Subcommittee on Zoning and Franchises that we will  
12 commit to the following: we will reduce the total  
13 size of the sidewalk café from 28 tables and 54  
14 seats to 17 tables and 33 seats; number two, we  
15 will cease operation of the sidewalk café at 10  
16 p.m. from Sundays through Thursday and 11 p.m. on  
17 Friday and Saturdays; number three, the side  
18 street door in response to the noise issues will  
19 be closed at 10 p.m. from Sunday through Thursday  
20 and 11 p.m. on Fridays and Saturdays; number four,  
21 a full kitchen serving a food menu is being  
22 implemented and the outdoor seating will include a  
23 full food menu; number five, the revised seating  
24 layout will allow wider pedestrian usage on  
25 Broadway and around the corner. The removal of

1  
2 five tables and nine seats at the end of the side  
3 streets will provide a greater distance to the  
4 residences on 47<sup>th</sup> Street. Number six, all the  
5 aforementioned changes will be reflected in  
6 revised plans submitted to the Department of  
7 Consumer Affairs. Sincerely--this original letter  
8 has been submitted signed Martin Hanrahan  
9 [phonetic].

10 CHAIRPERSON WEPRIN: Thank you, Mr.  
11 Wygoda. Sorry about that. I understand from  
12 Council Member Van Bramer's staff that they have  
13 agreed with this discussion and that you were very  
14 helpful in that negotiation. Does anyone on the  
15 panel have any comments or questions of this  
16 agreement? Seeing none. Thank you very much--

17 STEVE WYGODA: [Interposing] Thank  
18 you, sir.

19 CHAIRPERSON WEPRIN: --and please  
20 send our best. We have been joined by Council  
21 Member Robert Jackson. And I'd now like to move  
22 on to Land Use number 661, which is for Groove in  
23 Speaker Quinn's district. Robert Callahan is here  
24 representing this as well as the next item. So  
25 Mr. Callahan, Groove Enterprises on MacDougal

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Street, I believe?

ROBERT CALLAHAN: Yes. Good

morning.

CHAIRPERSON WEPRIN: Good morning.

ROBERT CALLAHAN: My name is Robert Callahan of Michael Kelly Inc. We're representing Groove Enterprises Inc. I'd like to read a copy of the letter of agreement that we have previously submitted to the Committee. Dear Council Member Quinn, this letter serves as an agreement with the chair, Council Member Mark Weprin, and the encompassing members of the Subcommittee on Zoning and Franchises that we will commit to the following: number one, we will arrange our sidewalk café tables and chairs according to the plans on file with the New York City Department of Consumer Affairs; number two, the use of a sandwich board and velvet ropes will be terminated; number three, all railings will be arranged according to the plans on file with the New York City Department of Consumer Affairs. If there are any questions, please call my office. Sincerely, Ran [phonetic] Morom [phonetic], President.



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2 CHAIRPERSON WEPRIN: Okay. We're  
3 good with Speaker Quinn's office again after  
4 discussion, so does any members of the panel now  
5 that we have put this on the record have any  
6 questions or comments? Seeing none, thank you  
7 very much, Mr. Callahan, on that item. Now we're  
8 going to move to the next item on the agenda,  
9 which is Land Use number 662, which is Yerba  
10 Buena, and that's on Waverly [phonetic], and Mr.  
11 Callahan, whenever you are ready, start on the  
12 next item.

13 ROBERT CALLAHAN: Yes, again, I'll  
14 read the letter of agreement into the record.  
15 Dear Council Member Quinn, this letter serves as  
16 our agreement with the chair, Council Member Mark  
17 Weprin and the encompassing members of the  
18 Subcommittee on Zoning and Franchises that we will  
19 commit to the following: number one, we will  
20 arrange our sidewalk café tables and chairs  
21 according to the plans on file with the New York  
22 City Department of Consumer Affairs; number two,  
23 in order to allow for the unobstructed use of the  
24 fire escape, we will have a flyaway awning to  
25 allow for fire escape access; number three, we

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2 agree to adhere to any future or present New York  
3 City Fire Department regulations and will amend  
4 the plans with the New York City Department of  
5 Consumer Affairs as necessary. If there are any  
6 questions, please call my office. Sincerely,  
7 Beatriz [phonetic] Rodriguez [phonetic],  
8 President.

9 CHAIRPERSON WEPRIN: Excellent, and  
10 once again, Speaker Quinn's office has helped work  
11 out this agreement, so does anyone on the panel  
12 have any comments or questions? I see none.  
13 Thank you, Mr. Callahan.

14 ROBERT CALLAHAN: Thank you very  
15 much.

16 CHAIRPERSON WEPRIN: Thank you.  
17 Okay, now we're going to go back to the one item  
18 that has some controversy, Land Use number 655,  
19 Buschenschauk in Council Member Lander's district.  
20 I'd like to call up Mr. James McGown. I hope I  
21 pronounced that right. Mr. McGown, would you  
22 please come up to the seat? Sergeant at Arms,  
23 make sure he gets set up. Mr. McGown, please  
24 restate your name for the record and describe what  
25 the application is you're asking for.

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JAMES MCGOWN: My name is James

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McGown.

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CHAIRPERSON WEPRIN: Just make sure

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to talk into the mic too.

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JAMES MCGOWN: --James McGown, M-C-

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G-O-W-N, and the application is to maintain an

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outside sidewalk café on Court Street in Brooklyn.

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CHAIRPERSON WEPRIN: Could you

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describe in more detail what the application is

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for? How many tables, how many chairs?

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JAMES MCGOWN: It's an unenclosed

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sidewalk café for I believe 48 chairs and 24

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tables on the west side of Court Street in

15

Brooklyn.

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CHAIRPERSON WEPRIN: There has been

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some issues raised I know with the Community Board

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and some other--and the Council Member in the area.

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Are you familiar with this and do you want to

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comment on those?

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JAMES MCGOWN: I think it would be

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nice if those were read into the record.

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CHAIRPERSON WEPRIN: Those being--

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you mean those complaints?

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JAMES MCGOWN: Those concerns be

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read into the record and me respond to them being read into the record.

CHAIRPERSON WEPRIN: Well, we have someone I know from Council Member Lander's here and from the Community Board who are going to speak afterwards describing those problems. Are you aware of any of these complaints that have happened? You probably know some of them I'm willing to guess.

JAMES MCGOWN: I'm aware. My history of the case is that I went to a Community Board meeting and the Community Board decided after a fairly lengthy discussion to deny our application, not to approve it with any conditions, but to deny it in its entirety. The reasons that were given by the Community Board was number one, that the windows in the front of the building violated City Code in that being open at all while there was air conditioning on was a violation of City Code. A second was that there was a City Code that required windows to be closed after 10 o'clock. The third was that there was a city noise ordinance that required there be no noise being able to be audible at all in front of

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2 an establishment after 10 o'clock at night. They  
3 also quoted that there were ECB violations in - -  
4 on the building, which was an indication of my  
5 unwillingness to cooperate with the Community  
6 Board and they indicated that my person was one  
7 that was indicative of someone who was unwilling  
8 to cooperate and work with the community. I went  
9 that night and I researched the law fairly in  
10 depth found that there was a code that required  
11 windows not to be open and doors not to be open  
12 when air conditioning was on, and it was for  
13 establishments over 4,000 square feet that were  
14 large block stores and specifically excluded  
15 establishments like my own. I researched the  
16 closing of windows at 10 o'clock and found that  
17 there was no such law. I researched the noise  
18 ordinance of such establishments and found that  
19 there were two that were potentially burdensome  
20 and of concern to the Community Board. One is  
21 that no audible music can be heard within 15 feet  
22 of the front door of an establishment after 10  
23 p.m. 7 decibels over the ambient noise was number  
24 one, and the second one was that no noise can be  
25 heard within 3 feet of a neighboring apartment 45

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2       decibels above the ambient noise. I reviewed  
3       these and bought a decibel meter and pointed out  
4       that we were not with anywhere near within these  
5       requirements, and when I met with Mr. Lander's  
6       office, the following day, he advised—not the  
7       following day, a few weeks later—he advised me  
8       that the Community Board has approved my  
9       application so long as I would close my windows at  
10      10 o'clock. That was explicitly not what the  
11      Community Board had told me and I believe it a  
12      gross misrepresentation to represent to Mr.  
13      Landers [phonetic] something that was not reviewed  
14      or discussed at the Community Board meeting. Mr.  
15      Landers then wrote me a letter and advised me that  
16      the community—that he was inclined to approve the  
17      application pursuant to an agreement that our  
18      windows be closed at 10 o'clock and proceeded to  
19      review the application after that. He then sent  
20      me an e-mail last week and asked me to withdraw  
21      the application, and I said, "Why?" and he said  
22      that he has to now—because he has re-reviewed the  
23      application, he's checked the 311 log and he has  
24      spoken to the police department and found that  
25      there are more complaints than he is comfortable

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2 with, so he is going to deny the application. He  
3 assured me that his Council Members around the  
4 city would also support his recommendation to deny  
5 it, and he offered me withdraw it. I asked him to  
6 put his proposal in writing. He did, and after  
7 reviewing it for the evening, the following day I  
8 realized that it was an unreasonable request for  
9 me to withdraw it. It's an eight month process.  
10 It's extremely expensive. The architectural costs  
11 are expensive. The time costs are expensive.  
12 It's not a simple process and to withdraw it at  
13 this late stage and reapply with the assurance  
14 that I'll get support did not seem reasonable. I  
15 also believed that I was well within the  
16 requirements and was happy to make concessions on  
17 the size of the café, on the operation, on the  
18 method of application and would certainly consider  
19 any recommendations or any restrictions on how we  
20 use it. So I said, I will not consent to  
21 withdrawing it and I'd rather go through the  
22 process and see what the City Council - - says and  
23 I'm also happy to—and he also advised me that  
24 there was sufficient defects in the drawing to  
25 deny the application in its entirety solely on the

1 drawing, and I offered that any mistakes or any  
2 inaccuracies in the drawing, I'd be happy to  
3 correct. When we spoke on Friday and I advised  
4 him I wouldn't withdraw it, he said I should  
5 reconsider, and that if I didn't withdraw it, he  
6 was sure that the City Council would vote with him  
7 to deny it, and that further he would not support  
8 it next year. I asked him if he should review my  
9 application in its entirety on the face of its  
10 validity following year not based on his  
11 relationship with me this year, and he said, "I  
12 won't be able to support it regardless next year."  
13 I thought that was inappropriate, so now we stand  
14 here—I also asked him specifically if he was able  
15 to do any tests on the emission of noise with  
16 regard to the law. Interestingly, he responded  
17 this was not an issue of tests and it was not an  
18 issue that science could solve and that was  
19 concerning particularly because the specificity  
20 with which the City Council had denied me was the  
21 fact that I was violating three laws: the air  
22 condition, the any noise outside the premises and  
23 the fact that the windows had to be closed at 10  
24 o'clock by statute. Those were the three reasons I  
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2 was given—reasons of law—that I was given that I  
3 should be denied, and then when I raised the law  
4 in my defense, I was told it was not about the  
5 law, it was about an ongoing willingness and  
6 commitment to deal with the community. Mr. Landers  
7 further said that I was not responsive to my  
8 community. Whoever of you are bar owners know  
9 this fully, whoever are not bar owners, you live  
10 and die by your community. The people who are in  
11 your community are your customers. The people who  
12 are in your community are your adversaries. The  
13 people in your community are all of what you are.  
14 There is nobody that knows that corner of Court  
15 Street better than me. I know the drug dealers.  
16 I know the neighbors. I know the noise. I know  
17 everything going on on that corner. When the cops  
18 have an issue with drug dealers, they come to me  
19 and say help us out. Who is doing what? Where  
20 are they doing it? Door is open. It's wide open.  
21 That's true with a lot of agencies. They call a  
22 bar owner 'cause a bar owner is intimate with that  
23 neighborhood. The 311 complaints that are coming  
24 from that establishment are largely focused—  
25 clustered around two individuals, both of which

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2 have a personal vendetta against me because one of  
3 them was a former tenant of mine and didn't pay  
4 his rent for a long time. We have a longstanding  
5 adversarial relationship. We have an e-mail from  
6 him to our manager expressing that his campaign of  
7 311 calls will continue because of his  
8 relationship with me, and he apologizes that if  
9 that affects her business. I asked Mr. Landers if  
10 he checked whether the 311 complaints were from  
11 different sources or whether they were clustered.  
12 He did not. I asked him if the police or any  
13 other agency that he'd reviewed the complaints  
14 with had done any tests and find out if I'm within  
15 the compliance or if I am not, he did not. I  
16 think that what we have here is very important.  
17 What the Council has here as an opportunity to  
18 allow or deny or at least try to allow or deny is  
19 a very important part of the new quality of life  
20 development in New York City. That new quality of  
21 life and development is new competing interests of  
22 families, of neighbors, of people trying to do  
23 things in New York that they didn't previously do.  
24 You used to leave the city instead of raising  
25 kids. We're trying—I have three kids myself, and

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2 I live in the city. I want to live in the city.  
3 We're trying to balance the obvious noise of any  
4 establishment with the obvious want of one  
5 neighbor not wanting anything. This is a very  
6 important case and the case before us is very  
7 important and why it's important is because it has  
8 to be reviewed and not be arbitrary and  
9 capricious. This establishment was previously  
10 license. Mr. Wygoda here was the architect on the  
11 deal. Three years ago, it was previously  
12 approved. For it not to be previously approved or  
13 for it to be denied without the proper due  
14 diligence being done to find out if we have rogue  
15 neighbors or if we have a valid nuisance is not  
16 responsible and for us to leave here and have a  
17 denial and then me to go to court, and if I win,  
18 that really limits the ability of City Council,  
19 and I think the City Council has to have the  
20 ability to veto sidewalk cafes when there is a  
21 genuine and concise and real public nuisance.

22 CHAIRPERSON WEPRIN: Mr. McGown, we  
23 have a couple of questions on the panel, so you'll  
24 have a chance to continue when these questions are  
25 asked. Council Member Garodnick will start.

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2 COUNCIL MEMBER GARODNICK: Thank  
3 you very much, and I just want to get some clarity  
4 on a couple of the points that have been raised to  
5 us. Certainly we have heard from Council Member  
6 Lander and he has expressed some real concern  
7 about noise issues, accuracy of the drawings and  
8 width of the sidewalk and things like that, so let  
9 me just probe you on a couple of these issues.  
10 Apparently, you all had a visit in April from the  
11 Assistant District Manager of Community Board 6  
12 and the 76<sup>th</sup> precinct's Community Affairs Officer  
13 to talk about the noise complaints, which I don't  
14 know how many people they came from, but there  
15 were a number of 311 complaints, that meeting  
16 happened. Is that right?

17 JAMES MCGOWN: When was this?

18 COUNCIL MEMBER GARODNICK: April?

19 JAMES MCGOWN: Yes. We were in  
20 touch with the precinct every day—

21 COUNCIL MEMBER GARODNICK: And then  
22 in June you got a noise violation from the police?  
23 Is that correct?

24 JAMES MCGOWN: Yes.

25 COUNCIL MEMBER GARODNICK: Okay.

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And in terms of the drawings themselves-

JAMES MCGOWN: [Interposing] Well,  
actually-

[crosstalk]

COUNCIL MEMBER GARODNICK: Have you  
gotten more than one?

JAMES MCGOWN: We got one noise at  
7 o'clock when there was no noise at the  
establishment.

COUNCIL MEMBER GARODNICK: Okay, so  
your position is the police-

JAMES MCGOWN: [Interposing] It was  
dismissed. The judicial record speaks for itself.  
It was dismissed in its entirety. The judge at  
the administrative hearing said, what was going on  
at 7 o'clock at night that could have possibly  
had-and the guy said, I go to Bar Tabac all the  
time. What were you guys doing to get a violation  
at 7 o'clock at night?

COUNCIL MEMBER GARODNICK: and what  
was the answer to that?

JAMES MCGOWN: The answer was I  
don't know, and the code violation was not a noise  
violation. There was nobody there doing any

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tests. There was no review of what the audible noise was and certainly not with respect to the underlying ambient noise.

COUNCIL MEMBER GARODNICK: Well, let's talk about the width of space between the proposed café and either the bike rack or you have some planters out front. Is that right?

JAMES MCGOWN: Yes.

COUNCIL MEMBER GARODNICK: And they are placed—I can't really see them—oh, maybe I can see them in the picture. Are they these boxes right here near the doors?

JAMES MCGOWN: Correct.

COUNCIL MEMBER GARODNICK: Is that was those are? Were those all included in the drawings?

JAMES MCGOWN: No, I don't believe so. I mean, the planters I didn't realize—Mr. Landers had advised me that it was illegal to have them and certainly, I didn't realize it was illegal because I see it in front of every establishment in New York, so if it's indeed you're not supposed to have them, I'm happy to remove them. They are not permanent structures.

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2 They're not necessary. They just help to beautify  
3 an otherwise concrete environment.

4 COUNCIL MEMBER GARODNICK: And do  
5 you believe that there is sufficient room between  
6 the end of the sidewalk café and the bike rack  
7 that is currently present on the street, which we  
8 can see in this picture?

9 JAMES MCGOWN: I don't know the  
10 code, and I don't know the dimensions of what's on  
11 the drawing, but I know that there has been three  
12 or four revisions anyway of the drawing and if  
13 there is anything that we missed, I'm happy to  
14 correct that and amend the plans so that it meets  
15 any code that I'm advised of.

16 COUNCIL MEMBER GARODNICK: Well,  
17 the problem for us is that we're at the last stage  
18 of the process here, so perhaps, the reason why  
19 Council Member Lander was suggesting what he was  
20 suggesting to you was in order to make sure we  
21 have a clean crisp set of accurate drawings so  
22 that we could actually consider to approve those  
23 drawings. The problem here of course is if there  
24 is ambiguity as to whether there is enough space  
25 or whether the drawings themselves are completely

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2 accurate that is what creates a problem for us at  
3 this stage. I'm sure we will either hear from him  
4 or from staff, but that's perhaps why he was  
5 suggesting to you what he suggested. I don't know  
6 the answer.

7

JAMES MCGOWN: There have been six  
8 reviews. It's an ongoing process they tell me at  
9 Consumer Affairs. They review a plan and when  
10 they find something they don't—that's  
11 inconsistent, they advise you, they give you a  
12 certain amount of time to fix it and—

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COUNCIL MEMBER GARODNICK:

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[Interposing] So you revised these plans six  
times?

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JAMES MCGOWN: No, I think it was  
twice, but there were things that we didn't see  
that Consumer Affairs had seen that thought should  
be revised and we revised them.

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COUNCIL MEMBER GARODNICK: Okay.  
Thank you, and by the way, some of these issues  
were identified not just by Council Member Lander  
or by people you with whom you might have an  
adversarial relationship with, but by our own  
staff here at the Council, so I just wanted to be



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2 clear that we have no particular agenda other than  
3 to make sure that we get the law right, and so  
4 that's certainly a concern. So thank you.

5

CHAIRPERSON WEPRIN: Thank you,  
6 Council Member Garodnick. Council Member Comrie?

7

COUNCIL MEMBER COMRIE: Good  
8 morning. Is this your only business?

9

JAMES MCGOWN: No, I have another  
10 business, a related business with similar  
11 finances, which you might know is in bankruptcy.  
12 It's all over the press on 1<sup>st</sup> Avenue in Manhattan.

13

COUNCIL MEMBER COMRIE: What's the  
14 name of that?

15

JAMES MCGOWN: It's called 122 1<sup>st</sup>  
16 Pizza, but it's operating under South Brooklyn  
17 Pizza, which is a sister of this establishment, a  
18 part of this establishment.

19

COUNCIL MEMBER COMRIE: Okay, and  
20 who did the architectural drawings and submissions  
21 for you to Consumer Affairs?

22

JAMES MCGOWN: Ashkin [phonetic]  
23 Arpeth [phonetic] Architects.

24

COUNCIL MEMBER COMRIE: And are  
25 they someone that does a lot of sidewalk cafes? I

1

2 don't understand why all these mistakes are—is  
3 this someone that has some experience in doing  
4 sidewalk cafes? How come you didn't use the  
5 gentleman that you used before?

6

7

JAMES MCGOWN: I just hadn't used  
him this time, and perhaps, I should have.

8

9

COUNCIL MEMBER COMRIE: Okay. Are  
you a lawyer?

10

11

JAMES MCGOWN: No.

12

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COUNCIL MEMBER COMRIE: Your other  
establishment was that closed down because of  
noise complaints as well or...?

14

JAMES MCGOWN: No.

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COUNCIL MEMBER COMRIE: Bankruptcy?  
What's the reason?

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JAMES MCGOWN: It's just financial  
troubles.

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COUNCIL MEMBER COMRIE: Okay. And  
when you have gotten these other noise complaints  
from the police department, can you give us—you  
said that they were—the one in June was dismissed.  
Could you bring us copies of the dismissal that  
you received from the courts on these noise  
complaints that you have gotten?

1  
2 JAMES MCGOWN: I have only gotten  
3 one noise complaint in the history of running six  
4 establishments. I have an establishment with  
5 approximately 200 seats outside also on Court  
6 Street and there has been no noise violations in  
7 the six years that I've run it or in the ten years  
8 before I ran it.

9 COUNCIL MEMBER COMRIE: Okay. And  
10 you're the owner of this establishment—

11 JAMES MCGOWN: {Interposing} Yes,  
12 and I didn't bring a copy of any supporting  
13 documents. I didn't know it was a request, but I  
14 can certainly do it. It's also of public record—

15 COUNCIL MEMBER COMRIE: That would  
16 be appreciated.

17 JAMES MCGOWN: Sure.

18 COUNCIL MEMBER COMRIE: And when  
19 you talked with Community Board 6 about these  
20 issues, did you get a sense that they were willing  
21 to work in a collaborative fashion with you?

22 JAMES MCGOWN: No. They said  
23 decisively, no, they cannot do it, and they will  
24 not approve it under circumstances. This was not  
25 one where they said, hey, drop the number of

1

2 chairs, which I'm happy—or any other series of  
3 possible compromises. It was, we can't work with  
4 you and we're going to deny it.

5 COUNCIL MEMBER COMRIE: Just flat  
6 out denial?

7 JAMES MCGOWN: Flat out denial and  
8 we recorded that meeting, so that is available.  
9 We can make a copy of that meeting available to  
10 Council.

11 COUNCIL MEMBER COMRIE: Their  
12 reasons for denial were primarily because of the  
13 complaints that they had on record or...?

14 JAMES MCGOWN: No, they said that  
15 there was a law that said I can't have windows  
16 open and air conditioning on and if I intended to  
17 do that, that was a smack in the face as to the  
18 law and as to them and that I shouldn't do that  
19 and that I can't do that, and when I reviewed the  
20 law, that wasn't the case, and there were three  
21 other laws that they quoted that were not  
22 applicable.

23 COUNCIL MEMBER COMRIE: And did you  
24 send in writing to Community Board and Council  
25 member Lander your desire to whatever

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modifications to be in compliance or was that a verbal conversation?

JAMES MCGOWN: It was a verbal conversation. It may have also been in writing in an e-mail.

COUNCIL MEMBER COMRIE: In an e-mail? If you could bring us copies of that or forward us copies of that also, we'd appreciate it. Do you have some record of your relationship with the police department? You alleged that you have had a positive relationship with the police department. You have been cooperative with them and local - - of crime and that type of thing, - - would the police department recommend you if they were asked?

JAMES MCGOWN: I don't know what-I mean, police departments and city agencies in general tend to be a little reluctant to put things in writing, but-

COUNCIL MEMBER COMRIE:  
[Interposing] - - ask the Community Affairs Office what would they say about your establishment?

JAMES MCGOWN: They would say that we have the biggest outdoor space in their

1  
2 precinct, and that it's not a problem and that  
3 they are with us all of the time, and if you got  
4 involved with the narcotics guys, they would say  
5 that we are huge contributor to there not being  
6 drugs in the neighborhood. We're a huge  
7 contributor to making sure that things are going  
8 well both—I'm not even sure how much I'm allowed  
9 to talk about that stuff—but we are huge in making  
10 sure that the negative aspects of the neighborhood  
11 are quiet on a federal and a state level and local  
12 level.

13 COUNCIL MEMBER COMRIE: Right. And  
14 you're alleging that these 311 calls are primarily  
15 from a disgruntled individual?

16 JAMES MCGOWN: Two.

17 COUNCIL MEMBER COMRIE: Two  
18 disgruntled individuals, both who had—one worked  
19 for you and what was the other one?

20 JAMES MCGOWN: One was a tenant of  
21 mine and one is his neighbor.

22 COUNCIL MEMBER COMRIE: And both—

23 JAMES MCGOWN: [Interposing] We  
24 could forward copies of those e-mails as well.

25 COUNCIL MEMBER COMRIE: Okay. I

1  
2 appreciate that. Alright, I think we should defer  
3 this is opposed to disapprove it and give this  
4 owner a chance to try to work these issues out. I  
5 don't think we should disapprove this application.  
6 Small businesses in New York do have to have an  
7 opportunity to make amends. He seems to at least  
8 verbally in his presentation in agreement to try  
9 to do whatever change is necessary to be in  
10 compliance. As you know, we can't track 311  
11 calls, so we don't know where they came from. It  
12 would be impossible to track that down, but if he  
13 does have two disgruntled people that are out to  
14 ruin his reputation, they could call 311 to the  
15 point - - problem, so I think-

16 CHAIRPERSON WEPRIN: [Interposing]  
17 Yeah, we have seen that before, but we actually,  
18 Council Member Comrie, have someone from the  
19 Community Board and from Councilman Lander's  
20 Office.

21 COUNCIL MEMBER COMRIE: I'd like to  
22 hear their side too, but - - .

23 CHAIRPERSON WEPRIN: Who are going  
24 to speak afterwards, so - - .

25 CHAIRPERSON COMRIE: - - work on

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modifying some of these issues.

CHAIRPERSON WEPRIN: Okay. Is that you or me that keeps doing that?

COUNCIL MEMBER COMRIE: I don't know who that is.

CHAIRPERSON WEPRIN: Okay. I'd like to now call on Council Member Reyna for a question. I think it's me. Yeah.

COUNCIL MEMBER REYNA: Thank you very much. I just wanted to ask as far as your establishment is concerned, is this the first time you are applying for a sidewalk café license?

JAMES MCGOWN: Thank you for the question. It's a great question. No. We applied before and it was approved, and that gives us a bigger problem when we get to review this is that—and again, I think it's really important that the Council can decide when to or not to.

CHAIRPERSON WEPRIN: At this location it was approved?

JAMES MCGOWN: At this location.

CHAIRPERSON WEPRIN: When was that?

COUNCIL MEMBER REYNA: Mark, you're taking away my questions.



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CHAIRPERSON WEPRIN: - - .

COUNCIL MEMBER REYNA: That's why I'm asking.

JAMES MCGOWN: It was approved I believe in 2008, and the reason that we didn't pull the permit was because the financial crisis of 2008 had caused us not to have enough money.

COUNCIL MEMBER REYNA: You withdrew the application?

JAMES MCGOWN: No, we didn't. It completely went through the entire process. It was fully approved. He probably has a copy of the approval in his office. It was fully approved. There was no issues with it because of the financial crisis, we couldn't finish buying the equipment. The space laid vacant for three years because we couldn't get the money together to put this building together. I mean this is not a simple case.

COUNCIL MEMBER REYNA: this is the second round you're applying for the same application-

JAMES MCGOWN: [Interposing] Yes, ma'am.

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COUNCIL MEMBER REYNA: --to be able to operate your business with the same number of tables and chairs.

JAMES MCGOWN: I don't remember what the previous one would be, but we would have applied for--

COUNCIL MEMBER REYNA:  
[Interposing] Can you supply us with that particular permitted application?

JAMES MCGOWN: It wasn't permitted because you need the health department permit and we couldn't the health department because we didn't have the equipment. We hadn't finished the construction, so while it was approved--I don't know how to get a copy of that from DCA.

COUNCIL MEMBER REYNA: Okay.

CHAIRPERSON WEPRIN: May I?

COUNCIL MEMBER REYNA: Yes.

CHAIRPERSON WEPRIN: Was the business you are talking about that got approved the same name, the same business?

JAMES MCGOWN: Yes.

CHAIRPERSON WEPRIN: It was under the same name Buschenschauk?

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JAMES MCGOWN: Well, it was

3

Huitres. It was the corporate name.

4

CHAIRPERSON WEPRIN: That was the

5

corporate name and it was the same exact type of

6

business?

7

JAMES MCGOWN: Everything was

8

exactly the same.

9

CHAIRPERSON WEPRIN: And it was how

10

many years ago? Four years ago.

11

JAMES MCGOWN: It was in 2009.

12

There's also—we have a huge amount of support in

13

the neighborhood, which you guys unfortunately

14

only hear the bad side. We have 500 signatures

15

that were submitted. The neighbors are

16

overwhelmingly—they want an outdoor space, so that

17

if they have a dog, if they have a child, if they

18

have—for whatever reason. We're not only

19

depriving us and our employees and the business

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and the possibility the building is in

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foreclosure. This is not a simple case, and to

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deny it—

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COUNCIL MEMBER COMRIE: [off mic]

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Can you bring that?

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JAMES MCGOWN: The foreclosure?

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Let me—

COUNCIL MEMBER COMRIE:

[Interposing] The letters of support or the petition.

JAMES MCGOWN: 500 signatures.

Yeah. - - .

CHAIRPERSON WEPRIN: Alright, Mr.

McGown, we're going to hear from the Community Board and Council Member Lander's office. You are welcome to stay. You mentioned you want to get this on the record, so let's see if we can hear from them and whether they have any other information for us. So thank you very much, Mr. McGown, you can step down and sit and listen. I'd like to call up the following two people together. They can both sit up on the panel: Gary Reily from Community Board 6 and Michael Freedman Schnapp, who is from Council Member Lander's office. Gentlemen, you can decide who wants to go first. - - give your testimony and try to keep within five minutes if you can. Okay? Whenever you are ready, whichever one of you wants to go first. Make sure to state your name.

MICHAEL FREEDMAN SCHNAPP: Thank

1  
2 you. My name is Michael Freedman Schnapp. I'm  
3 the director of policy for Council Member Lander.  
4 I'll be delivering a statement on behalf of  
5 Council Member Lander, who is out of town on a  
6 prearranged absence. This is a statement by  
7 Council Member Brad Lander to the City Council  
8 Land Use Subcommittee on Zoning and Franchises  
9 urging disapproval of the sidewalk café  
10 application for 320 Court Street, Brooklyn.

11 Dear Chair Weprin, members of the  
12 Subcommittee, thank you for considering the  
13 application from Huitres New York City  
14 Incorporated doing business as Buschenschauk for  
15 revocable consent to establish, maintain and  
16 operate an unenclosed sidewalk café at 320 Court  
17 Street in Brooklyn. After much consideration and  
18 negotiation and for the only time in my tenure  
19 thus far, I ask you to disapprove the application.  
20 In an extremely rare step, Brooklyn Community  
21 Board 6 voted unanimously to disapprove this  
22 application. In the last two years, there have  
23 been approximately 25 new or renewal sidewalk café  
24 license approved by Community Board 6. This is  
25 the only disapproval in that time. The vast

1  
2 majority were approved without conditions. My  
3 office has spoken with Buschenschauk's neighbors  
4 and reviewed the complaints they have logged,  
5 spoken with the Community Board 6 and the local  
6 police precinct and engaged in numerous  
7 conversations with the owner/manager of the  
8 establishment. There have been over two dozen  
9 calls to 311 since the spring about this location  
10 complaining about noise or loud music from the bar  
11 and/or from the sidewalk outside the bar. In  
12 April, the Community Board 6's Assistant District  
13 Manager and the 76<sup>th</sup> Precinct's Community Affairs  
14 Office visited Buschenschauk to discuss the large  
15 number of noise complaints; however, the condition  
16 did not change and in June the local police  
17 precinct issued Buschenschauk a noise violation.  
18 It is clear to me that this establishment has a  
19 sufficient record of complaints about its  
20 operation to warrant concern. Further, Peter  
21 Janosik from the City Council's Land Use Division  
22 visited the site had found several inaccuracies in  
23 the drawings submitted by the applicant to DCA  
24 that violate the requirements for a sidewalk café.  
25 These issues included inaccurate sidewalk width,

1  
2 an insufficient amount of room between the  
3 proposed café and the bike rack and three planters  
4 that are currently placed on the sidewalk,  
5 contrary to regulations. Thank you to Peter and  
6 his assistance in considering this matter.

7 Unfortunately, rather than work in a collaborative  
8 fashion with neighbors, Community Board 6 and my  
9 office to address these concerns, the owner has  
10 been uncooperative. He has declined to negotiate  
11 with our office. Last week after many  
12 communications with the owner, I urged him to  
13 withdraw the application and to reapply once they  
14 correct the application and show a better track  
15 record of operating responsibly and working  
16 collaboratively with their neighbors and CB6 to  
17 address concerns. Locally owned small businesses  
18 are a big part of what makes New York City a great  
19 place to live. Though CB6 and I work hard to  
20 enable businesses to thrive to balance the  
21 interest of restaurants and bars and their  
22 neighbors and to address the inevitable complaints  
23 and concerns in a collaborative manner, in the  
24 vast majority of cases, we have been able to do  
25 so. In this case, however, we feel strongly that

1  
2 this application is not in compliance with the  
3 sidewalk café guidelines and that if permitted, it  
4 would not be used responsibly by the applicant. I  
5 respectfully urge my colleagues to disapprove this  
6 sidewalk café permit. Again, thank you for your  
7 time and consideration.

8 I would just like add that the  
9 characterizations of the conversations with the  
10 Council Member and some of which I was present for  
11 and some of which I was not that were provided by  
12 the owner are not entirely within what I recall.

13 CHAIRPERSON WEPRIN: We will get to  
14 questions afterwards. I want to let Mr. Reily  
15 speak. Please state your name again for the  
16 record.

17 GARY REILY: Gary Reily, R-E-I-L-Y.  
18 Good morning, Mr. Chairman, members of the  
19 Committee. I am the permits and licenses chairman  
20 of Community Board 6. I've been the chairman  
21 since last year. I've been on the Committee for a  
22 number of years—also the treasurer of the Board  
23 and unfortunately one of our staff couldn't come  
24 out today, so I made the appearance myself. I  
25 presided over the meeting at which Buschenschauk



1  
2 came for the sidewalk café application as well as  
3 the meeting where we considered their liquor  
4 license several months before, which was approved.  
5 There were also some mischaracterizations I guess  
6 of our decision at the Board. I mean we take in a  
7 number of considerations. There was no reliance  
8 on any particular and no whereas in our motion to  
9 or resolution to reject the application. What we  
10 try to do and as noted there, we have pretty wide  
11 latitude when we're considering the sidewalk café  
12 permits. It is a feature that I personally  
13 greatly enjoy—being able to dine outside in nice  
14 weather, have a beer or have a burger or anything  
15 like that. It's kind of a nice thing you do.  
16 It's a nice neighborhood amenity, but you have to  
17 balance the needs of the neighbors and the  
18 community against the people who want to enjoy an  
19 outdoor space. To that end, typically we ask any  
20 operator before we will grant our approval to  
21 limit their hours to 10 p.m. to stop serving on  
22 weeknights, 11 o'clock to have everyone out of  
23 outdoor space or backyard space for that matter  
24 with an hour later on the weekends. The other  
25 thing is anyone who comes to us with an

1  
2 application we ask them to limit the number of  
3 seats to less than 50% of what is on the indoors.  
4 This is just a couple of things that we do to try  
5 to balance the needs of business owners who are  
6 seeking to expand their business with the  
7 neighbors. In this case, just a few months  
8 earlier, we had approved the liquor license for  
9 the application—fairly new operator—while they  
10 might have applied for a sidewalk café in the  
11 past, it was never open. The place has been  
12 vacant since it was an OTB place that closed a  
13 number of years ago. In that time, I mean, they  
14 only opened a short amount of time to our surprise  
15 the opaque windows that just seem like kind of an  
16 odd architectural choice all come out when the  
17 establishment is open, which opens up basically  
18 the entire front of the establishment and wraps  
19 around the corner open, which I imagine is quite  
20 nice from patron's perspective. It's practically  
21 like being in an outside café, but our  
22 consideration was with the number of noise  
23 complaints we had gotten from some neighbors  
24 already with a very limited few months of  
25 operation—not even, I mean this was only back in

1  
2 April—that the amount of noise that was already  
3 coming out of the establishment would be amplified  
4 if we were to further add a sidewalk café, and a  
5 number of concerns were expressed. One being  
6 primarily the noise and then also someone raised—  
7 and not as something we relied on—but somebody  
8 raised the issue of air conditioning, and if you  
9 have the air conditioning running, aren't you  
10 supposed to have the windows and doors closed  
11 anyway? And the response of the applicant or the  
12 representative of the applicant who was there  
13 anyway was, "Well, if we get fines, then we will  
14 pay them. That's just the cost of doing  
15 business." The overall attitude I have to say has  
16 been the least cooperative of any applicant that  
17 has been before the Committee in my tenure, and  
18 you know, when you have a diverse range of  
19 opinions on the Committee and you have some people  
20 who are sort of reflexively in favor of this type  
21 of application, some others who were reflexively  
22 sort of against it because they have issues with  
23 crowding of the sidewalks and noise and what have  
24 you, but generally we come to something and  
25 approve just about everything. In this case, it

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was unanimous that we voted it out.

CHAIRPERSON WEPRIN: Before I get to some questions from the panel, let me just ask Mr. Reily, the complaints that you received you mentioned you got at the Community Board, were they limited to just a couple of people or was it more than just a couple?

GARY REILY: There was a handful of people at the meeting who had complained about it from the immediate area on Court Street and then further down the block from one woman who was a block away down towards Smith Street and complained about the noise that she could hear all the way down the block.

CHAIRPERSON WEPRIN: Michael, you had mentioned you had looked at the 311 complaints-

MICHAEL FREEDMAN SCHNAPP:  
[Interposing] Yes.

CHAIRPERSON WEPRIN: --the applicant had said that he thought it was mostly these two people who had a vendetta against him. Was that what you found out?

MICHAEL FREEDMAN SCHNAPP: So we

1  
2 repeatedly requested the 311 log at that level of  
3 detail from the administration, and they do not  
4 provide the names of complainants in that, so we  
5 were able to get the type of complaint and their  
6 resolution, but we were not able to get who it was  
7 or was it from a few number of individuals.

8 CHAIRPERSON WEPRIN: And did you  
9 get calls in your office about this as well?

10 MICHAEL FREEDMAN SCHNAPP: Yes,  
11 there were several constituents who reached out to  
12 us about it.

13 CHAIRPERSON WEPRIN: So several  
14 being more than two?

15 MICHAEL FREEDMAN SCHNAPP: That is  
16 correct.

17 CHAIRPERSON WEPRIN: Okay. Mr.  
18 Garodnick had a question - - get a chance.

19 COUNCIL MEMBER GARODNICK: Thank  
20 you very much and very briefly I understand at the  
21 very end of the testimony that you gave, Michael,  
22 that you believe that if a sidewalk café were  
23 granted here it would not be used responsibly, but  
24 let me just focus you for a moment on the  
25 conclusion and your strong feeling and the

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Councilman's strong feeling that the permit is not in compliance with the guidelines.

MICHAEL FREEDMAN SCHNAPP: Yes.

COUNCIL MEMBER GARODNICK: Could you just set those out for us just so that we have it very clearly and separate from everything said before, what are the bases that lead you to make that conclusion?

MICHAEL FREEDMAN SCHNAPP: Sure.

So it may or may not be appropriate to bring Peter Janosik from the Land Use Committee who directly observed those to put those on the record?

COUNCIL MEMBER GARODNICK: We'll find out.

CHAIRPERSON WEPRIN: I apologize. Could you repeat that, Mr. Garodnick?

COUNCIL MEMBER GARODNICK: [off mic] whether or not - - Peter Janosik - - .

CHAIRPERSON WEPRIN: --talk about the size of the property?

COUNCIL MEMBER GARODNICK: [off mic]

MICHAEL FREEDMAN SCHNAPP: The technical basis is informed by our review by the

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Land Use Division to our office.

[pause]

CHAIRPERSON WEPRIN: Alright.

Pete, would you mind just answering that question? You can state your name, but not a formal testify, but just answer the question exactly how it wasn't compliant with size. Okay, Pete.

PETER JANOSIK: Pete Janosik, Land Use Division. I visited the site and found that in the plans that were submitted didn't portray the accuracy of the width of the sidewalk and that they basically--there was less sidewalk than what the actual plans show. The whole basis of the review was upon the self-certified plans which the architect gives us--goes through the entire process. Also, they didn't have the required clearance to the bike rack, which is pre-existing, so - - the whole review process is based upon the submitted plans, which is self-certified by the architect and in this case, I found that the plans are not accurate.

CHAIRPERSON WEPRIN: Okay. Mr. Garodnick has a follow up, then Ms. Reyna.

COUNCIL MEMBER GARODNICK: Sorry.

1  
2 Just two questions for you, Mr. Janosik; first, is  
3 on the drawings themselves; if the drawings  
4 themselves were accurate would there have been  
5 appropriate width and clearance of the sidewalk  
6 café and also if that bike rack were not present  
7 would that have allowed for the appropriate  
8 clearance? Does it matter at this stage of the  
9 game, I guess?

10 PETER JANOSIK: The plans as  
11 submitted on paper by the architect would meet all  
12 requirements for clearances and would have more  
13 than enough space as it is on paper. The reality  
14 is is that the sidewalk is not what they have  
15 stated what it is and because of that, they don't  
16 have the required clearances for this café to  
17 exist as stated.

18 COUNCIL MEMBER GARODNICK: Alright.  
19 Thank you.

20 CHAIRPERSON WEPRIN: Thank you.  
21 Council Member Reyna?

22 COUNCIL MEMBER REYNA: To Mr.  
23 Janosik, I just wanted to ask of the sidewalk  
24 cafes that are called up are the plans ever 100%  
25 accurate to the architectural plans? It's part of



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the question as far as...

CHAIRPERSON WEPRIN: Go ahead,  
Pete.

PETER JANOSIK: Unfortunately I  
find errors with plans too many times.

COUNCIL MEMBER REYNA: And so the  
plans that are filed are not technically being  
followed at the renewal process, which is where  
the action to correct occurs here when we raise  
them within the Council as far as the application  
process moving forward where we are able to  
mitigate a lot of these issues?

PETER JANOSIK: It's not unusual  
that once we call an item up and we actually visit  
the site and it's discovered that the plans are  
not accurate that the plans are modified to  
correct and make sure that everything is proper  
and legal and meets all [phonetic] standards,

COUNCIL MEMBER REYNA: And were we  
aware that there was an application filed prior to  
this?

PETER JANOSIK: I honestly do not  
remember another application for this site, but  
obviously, I take care of the city wide and it's

1  
2 upon hundreds upon hundreds, and I honestly do not  
3 remember this one.

4 CHAIRPERSON WEPRIN: Okay.

5 COUNCIL MEMBER REYNA: Chair  
6 Weprin, I just wanted to ask Council Member  
7 Lander's Office, were you aware of an application  
8 filed with DCA to this establishment to the same  
9 owner, to the same corporation?

10 MICHAEL FREEDMAN SCHNAPP: We were  
11 not. If it occurred it was several years before  
12 there was an operating bar at this location-

13 COUNCIL MEMBER REYNA:

14 [Interposing] The applicant said it was in 2009.

15 MICHAEL FREEDMAN SCHNAPP: Right.  
16 That was before Council Member Lander's tenure and  
17 so we would not be aware of that from this office;  
18 however, as Gary from the Community Board said it  
19 is our understanding that this business began  
20 operating at this location in the spring, which  
21 meant that that was when they developed their  
22 track record of-

23 COUNCIL MEMBER REYNA:

24 [Interposing] Thank you very much. I just wanted  
25 to ask the Chair were you aware having sat as a

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member of the Committee that there was an application filed for this particular business establishment?

CHAIRPERSON WEPRIN: I don't recall it, and-

COUNCIL MEMBER REYNA:

[Interposing] Okay. Thank you very much. That's it.

CHAIRPERSON WEPRIN: Okay. Mr.

Reily, let me just ask again, you had mentioned that you have had a number of applications in your tenure there; how many cafes would you say you have approved approximately?

GARY REILY: Dozens, maybe scores.

CHAIRPERSON WEPRIN: And this is the first one you have ever rejected?

GARY REILY: Yeah.

CHAIRPERSON WEPRIN: - - .

GARY REILY: We have had occasion to reject a number of liquor licenses, but generally, we come to some agreement on sidewalk café. Typically, regarding the size and one of the major things here and if this were one thing the Committee - - we're always trying to find a

1  
2 common ground compromise - - to say that if you  
3 were to close up the windows, then we would  
4 approve a sidewalk café permit subject to—and when  
5 I mean close up, I mean to leave the windows in,  
6 not to take them fully out as they do. Yes,  
7 because it seemed to the Committee that they were  
8 asking too much sort of like a have your cake and  
9 eat it too with the fully open windows and the  
10 sidewalk café was just asking too much and placing  
11 too much of a burden on the community.

12 CHAIRPERSON WEPRIN: Okay. Thank  
13 you.

14 [pause]

15 CHAIRPERSON WEPRIN: Mr. Vann has a  
16 question.

17 COUNCIL MEMBER VANN: Thank you,  
18 Mr. Chair. A point of clarity. In this process  
19 of approving outdoor cafes, whatever, is the final  
20 decision is whether or not they meet code or not  
21 meet code by Consumer Affairs or what city entity  
22 has the responsibility of saying that their plans  
23 are correct or not correct in terms of - - ?

24 CHAIRPERSON WEPRIN: Well, DCA  
25 looks at the plans, but they could be self-

1  
2 certified and DCA does that as far as whether the  
3 plans are accurate, but then our responsibility  
4 now is to make sure that the actual café when it  
5 is called up is appropriate for the community  
6 based on what they're asking for—how many tables,  
7 whether it's compliant with the city law. That's  
8 what we're looking at here today and if we were to  
9 reject this thing, they would have to withdraw and  
10 reapply—I mean, pull it out and reapply the  
11 process again.

12 COUNCIL MEMBER VANN: DCA approves,  
13 correct? Community Board did not. My  
14 understanding from our Council staff is determined  
15 that what was presented is different from what  
16 actually exists.

17 CHAIRPERSON WEPRIN: I'm sorry.  
18 Just repeat that one more time.

19 COUNCIL MEMBER VANN: Don't listen  
20 to me. I've only been in government 38 years.

21 CHAIRPERSON WEPRIN: I'm not even  
22 going to respond. Repeat it again, Al.

23 COUNCIL MEMBER VANN: I'm trying to  
24 understand the role that we play as the City  
25 Council. Our staff went out and we determined

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2 that what was presented self-certified is  
3 different from what actually existed on the  
4 grounds.

5 CHAIRPERSON WEPRIN: Right.

6 COUNCIL MEMBER VANN: That does not  
7 necessarily determine whether it met code or not,  
8 right? It may be different from what was-

9 [crosstalk]

10 CHAIRPERSON WEPRIN: --file at DCA  
11 isn't necessarily what goes down on the ground.  
12 Right. And things like planters and stuff are not  
13 in there and the window issue is not in there, but  
14 looking at the actual size of the sidewalk, he  
15 claims that it was a different than it actually  
16 was filed.

17 COUNCIL MEMBER VANN: Right.

18 Right. The DCA approved it.

19 [crosstalk]

20 CHAIRPERSON WEPRIN: --other  
21 issues.

22 COUNCIL MEMBER VANN: DCA approved  
23 what was submitted or DCA also makes a visitation  
24 to the site? Do we know?

25 CHAIRPERSON WEPRIN: What was

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submitted, they submit their application and DCA approves. They generally approve most everything.

COUNCIL MEMBER VANN: Okay.

CHAIRPERSON WEPRIN: And then the Council calls up when they see an issue that they want to have resolved or discuss.

COUNCIL MEMBER VANN: Alright, so our staff—do our staff make a recommendation to you as Chair? They just report. They don't make a recommendation.

CHAIRPERSON WEPRIN: Right. They just give their report and we discuss it with the Council, local Council Member and see what the issues are, community board issues with the applicant and see if there are issues that we can resolve and whether we think it deserves approval.

COUNCIL MEMBER VANN: Got you.  
Thank you.

CHAIRPERSON WEPRIN: Okay?

COUNCIL MEMBER VANN: I'm clear.

[pause]

CHAIRPERSON WEPRIN: Alright, so here's what we are going to do. We are going to make a motion to approve the following items—the

1  
2 ones that we heard earlier today that had full  
3 agreement, which was Land Use number 654 Dos Toros  
4 Taqueria, 656 Doyle's Café, 661 Groove and 662  
5 Yerba Buena. Those items will be marked for  
6 approval. This item, Land Use number 655,  
7 Buschenschauk, we are going to hold over until  
8 tomorrow the Land Use meeting. We are on a  
9 timeframe, so we are going to have this held over  
10 until tomorrow morning, which will be 9:30 before  
11 the Land Use meeting, which is scheduled for 10 at  
12 which point over the next few hours we will see if  
13 there is some other issues that can be resolved  
14 here between us over the next 24 hours or so—a  
15 little less than 24 hours. So we are going to  
16 close this hearing. We are going to couple 654,  
17 656, 661 and 662 and the recommendation on those  
18 items is going to be an aye vote, and then on  
19 Buschenschauk 655 we are going to hold that one  
20 off until tomorrow morning. So I'm going to ask  
21 Christian Hilton to call the roll on the four  
22 approval items.

23 COUNSEL: Chair Weprin?

24 CHAIRPERSON WEPRIN: Aye.

25 COUNSEL: Council Member Rivera?



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COUNCIL MEMBER RIVERA: I vote aye.

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COUNSEL: Council Member Reyna?

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COUNCIL MEMBER REYNA: Aye.

5

COUNSEL: Council Member Comrie?

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COUNCIL MEMBER COMRIE: Aye.

7

COUNSEL: Council Member Jackson?

8

COUNCIL MEMBER JACKSON: [no

9

audible response]

10

COUNSEL: Council Member Vann?

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COUNCIL MEMBER VANN: Aye.

12

COUNSEL: Council Member Garodnick?

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COUNCIL MEMBER GARODNICK: Aye.

14

COUNSEL: Council Member Vacca?

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COUNCIL MEMBER VACCA: Aye.

16

COUNSEL: By a vote of seven in the

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affirmative, none in the negative and no

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abstentions, L.U. 654, 656, 661 and 662 are

19

approved and referred to the full Land Use

20

Committee.

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CHAIRPERSON WEPRIN: Alright. So

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again—oh, Council Member Jackson is here.

23

COUNSEL: Council Member Jackson?

24

COUNCIL MEMBER JACKSON: Aye on

25

all.

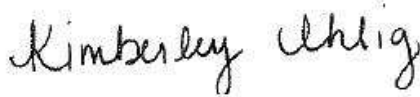
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2 COUNSEL: The vote now stands at  
3 eight in the affirmative, none in the negative and  
4 no abstentions.

5 CHAIRPERSON WEPRIN: Okay. So we  
6 have approved those items. We are going to hold  
7 over. Again, we are going to recess this meeting  
8 until tomorrow morning at 9:30 at this same  
9 location where we will discuss and consider the  
10 Buschenschauk application. With that in mind, we  
11 are now recessed until tomorrow morning. Thank  
12 you.

C E R T I F I C A T E

I, Kimberley Uhlig 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 \_\_\_\_\_September 2, 2012\_\_\_\_\_