

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON HOUSING AND BUILDINGS

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September 16, 2015
Start: 10:39 a.m.
Recess: 12:23 p.m.

HELD AT: 250 Broadway - Committee Room
16th floor

B E F O R E: JUMAANE D. WILLIAMS
Chairperson

COUNCIL MEMBERS:

Rosie Mendez
Ydanis A. Rodriguez
Karen Koslowitz
Robert E. Cornegy, Jr.
Rafael L. Espinal, Jr.
Mark Levine
Antonio Reynoso
Helen K. Rosenthal
Ritchie J. Torres
Eric A. Ulrich

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

Vito Mustaciulo
Deputy Commissioner
Enforcement and Neighborhood Services
NYC Housing, Preservation and Development

Anne Marie Santiago
Associate Commissioner
Enforcement and Neighborhood Services
NYC Housing, Preservation and Development

Rick Chandler
Commissioner
New York City Department of Buildings

Patrick Whaley
Assistant Commissioner of External Affairs
New York City Department of Buildings

Mona Sehgal
General Counsel
New York City Department of Buildings

Edwin Pemberton
Assistant Commissioner for Financial Management
New York City Department of Buildings

Annette Hill
Assistant Commissioner and City Register
NYC Department of Finance

Maria Becce
Second Vice President
Broadway-Flushing Homeowners' Association

Terri Pouymari
Auburndale Improvement Association

Rhea O'Gorman, President
Station Road Civic Association

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2 [sound check]

3 [gavel]

4 CHAIRPERSON WILLIAMS: Good morning, all.

5 My name is Jumaane Williams, Chair of the Council's
6 Committee on Housing and Buildings. I appreciate
7 everyone's patience. I was stuck in some good old
8 New York traffic for quite some time, but I
9 appreciate everyone holding on. We're joined today
10 with Council Members Cabrera, Koslowitz and Vallone.
11 We're here to discuss four bills. Our first bill
12 Intro No. 49 sponsored by Council Member Cabrera
13 requires the Department of Buildings to notify the
14 appropriate council members and community boards
15 whenever an application for a new building permit or
16 for an alteration that will require a new certificate
17 of occupancy for buildings received or denied.

18 Our second bill Intro No. 280 sponsored
19 by Council Member Vallone requires the Department of
20 Buildings to maintain a registry of all filed deeds
21 containing restrictive covenants and to make sure the
22 registry is available to the public.

23 The third bill, Intro No. 783 sponsored
24 by myself would change the rate of interest applied
25 by the Department of Finance on paid charges owed by

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2 landlords to the city for emergency repair work
3 conducted by the Department of Housing Preservation
4 and Development. Currently the rate is--of interest
5 is set at 7%. This bill would change the rate of
6 interest to whatever rate the Council adopts in
7 fiscal--in each fiscal year for the non-payment of
8 real property taxes.

9 The final bill Intro No. 831 sponsored by
10 myself by the request of the Mayor would also permit
11 filing fees for new buildings and alterations.

12 I understand that Council Members Cabrera
13 and Vallone would each like to make a brief statement
14 concerning the respective bills. So at this time, I
15 would like to introduce Council Member Cabrera
16 followed by Council Member Vallone.

17 COUNCIL MEMBER VALLONE: Council Member
18 Cabrera and I both say no, you don't, no you don't.
19 It's okay. Thank you, Chair. Thank you for allowing
20 us to address these bills today. Good morning
21 everyone and thanks to those who made it down from
22 the different community associations. It's a good
23 day, and Chair, I thank you for putting this bill on.
24 Intro 280 is allowing us to address something that
25 we've tried on many different occasions to--to

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2 address, and its simplicity creates the--the
3 foundation for being able to finally address the long
4 anticipated role of restrictive covenants in the City
5 of New York. So this will serve to thank the
6 residents and the civic associations and have helped
7 continue to fight for the protective of our
8 neighborhood through restrictive covenants especially
9 who are here today, the Broadway-Flushing
10 Homeowners'' Association, the Auburndale Improvement
11 Association, the Westmoreland Association, and many
12 more. I'd like to thank Ed Adkin for helping draft
13 this bill, and Jennifer Wilcox, Jonathan Szott, and
14 Ahmed Nazaar from my office.

15 Intro 280 would require the Department of
16 Buildings to maintain a registry of restricted
17 covenants that are filed with the Department of
18 Buildings. They shall make such registry available
19 to the public during regular business hours. And
20 what is a restricted covenant? It's a clause and a
21 lead to real property. It limits what the owner of
22 the land or the lease can do with that property. Too
23 often they've been ignored, and the restricted
24 covenants have been sought--have long sought
25 protection of enforcement by our city agencies. To

2 date, they have received none. As a result,
3 homeowners and civic associations are left to enforce
4 on their own using their own time and money that we
5 do not have. We have made a promise from day one
6 that we would help fight for our residential
7 neighborhoods, and today's legislation is a
8 fulfillment to that promise. In hear this--in
9 creating the next step we hope to have eventual
10 passage of legislation that will finally address
11 neighborhoods such as the Broadway-Flushing area that
12 have these restrictive covenants on them. Simply
13 put, we are addressing an issue that has yet to be
14 successfully legislated. It has failed at every
15 turn. Restrictive covenants are these private
16 agreements, and the city has an obligation in my
17 eyes, and many of the civic and homeowners' eyes to
18 acknowledge that they exist. And some have said,
19 just in closing, what does that create? Well, if you
20 don't have the fist step of saying that there's
21 restrictive covenant in place, how can you ever go
22 about knowledge to the public to future homeowners to
23 civic associations to say didn't know it was there?
24 Didn't you know you had to respect the property by
25 the boundaries that was created, and not have to

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2 constantly hear, "I didn't know" or "The other owner
3 didn't tell me" or "My lawyer didn't tell me at the
4 closing" or "The title company didn't inform me" or
5 "I wish I would have known before I pulled the
6 permit." By creating the registry, you're taking
7 away these basic arguments, and at least to say here
8 it is ,and at that point now we can take future steps
9 going forward. So thank you very much, Mr. Chair,
10 for allowing us to come forward today.

11 COUNCIL MEMBER CABRERA: Mr. Chair, thank
12 you so much for this long awaited introduction of
13 this bill, and having a hearing on it. I really
14 appreciate being given an opportunity. Basically,
15 I'll make it really short. Often, I get in our
16 community complaints about a building being erected
17 and built in our community, and community board
18 members, the community even the Council members don't
19 know that a particular building was--is to be built.
20 So this bill will basically require for that
21 information to whenever a building permit or a permit
22 for alteration that is required for a new certificate
23 of occupancy for a building, that basically that
24 information be related to the community board, and
25 also to Council members. And with that, I'll stop

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2 right now, and I thank you again for the opportunity.
3 I'm looking forward to hearing testimony today.

4 CHAIRPERSON WILLIAMS: Thank you all for
5 providing additional background on the bills. I'd
6 also like to thank my staff for the work they did to
7 assemble this hearing including Nick Smith, my Deputy
8 Chief of Staff, and Leslie, my Director; Jenn Wilcox
9 and Melaka Tobale [sp?] who is at her first Council
10 Hearing.

11 MELAKA TOBALE: Yes.

12 CHAIRPERSON WILLIAMS: Welcome.

13 MELAKA TOBALE: Thank you.

14 CHAIRPERSON WILLIAMS: Counsel to the
15 Committee Guillermo Patino and Jose Conde, Policy
16 Analyst to the Committee and Sara Gastelum, the
17 Committee's Finance Analyst. As a reminder, for
18 those of you who are testifying today, please be sure
19 to fill out a card with the sergeant. That said, we
20 have the first representatives from HPD on our panel,
21 Anne Marie Santiago and Vito Mustacioulo. Can you
22 please raise your right hand? Do you affirm to tell
23 the truth, the whole truth, and nothing but the truth
24 in your testimony before this committee, and to
25 respond honestly to Council Member questions?

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2 PANEL: Yes. [in unison]

3 CHAIRPERSON WILLIAMS: Thank you. You
4 can begin.

5 [pause]

6 DEPUTY COMMISSIONER MUSTACIUOLO: Good
7 morning Chairman Williams and members of the Housing
8 and Buildings Committee. My name is Vito Mustaciulo
9 and HPD's Deputy Commissioner for Enforcement and
10 Neighborhood Services. I'm joined by our Associate
11 Commissioner for Enforcement and Neighborhood
12 Services Ann Marie Santiago. We appreciate the
13 opportunity to testify regarding Intro No. 783
14 related to the interest rate applied by the
15 Department of Finance to unpaid charges for emergency
16 repairs. [coughs] Excuse me. HPD strongly supports
17 this bill. In Fiscal Year 2014, HPD conducted
18 emergency repairs and demolition through our
19 Emergency Repair Program, our Alternative Enforcement
20 Program and our Demolition Program in almost 9,500
21 residential properties. HPD conducts this work when
22 the property owner has failed to timely correct a
23 condition, which poses an immediately hazardous
24 situation and HPD has to expend resources to address
25 the condition. This work keeps tenants and the

2 public safe, and in many cases restores the
3 habitability of the entire building. An example of
4 the types of work performed under the program
5 includes restoring heat and hot water services,
6 hiring professionals to address electrical or
7 plumbing issues and also that tenants can continue to
8 live in their homes. This work would not be
9 necessary if owners maintained their buildings and
10 timely addressed safety and habitability conditions
11 that may arise.

12 As you know, although a vast majority of
13 owners are responsible and keep their buildings in
14 good repair, not all owners act responsibly and at
15 times HPD must take on this work. Once the agency
16 incurs a cost to hire a private vendor or to assign
17 agency staff to correct a condition that an owner has
18 failed to address, that cost is charged back to the
19 property through the Department of Finance. Under
20 current law, once that charge has passed its due and
21 payable date, a lien is placed on the property and
22 interest begins to accrue. In Fiscal Year 14 almost
23 \$30 million was billed through ERP, AEP and
24 demolition charges. \$5 million was paid timely by
25 the owner with no interest accruing. An additional

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2 \$14 million was paid after the lien was placed on the
3 property, and that \$14 million includes \$1 million
4 that is collected in interest. Almost \$12.5 million
5 remains pending from approximately 1,800 properties
6 citywide. Those unpaid charges currently accrue
7 interest at an annual rate of only 7%. This interest
8 rate has not changed since it was set through local
9 law in 1974. The current interest rate is less than
10 the interest rate for unpaid property taxes. We
11 believe that the rate does not provide a strong
12 enough incentive for property owners to either
13 conduct the repairs themselves and notify HPD of
14 corrections or to repay the costs timely. We
15 strongly support the bill with the intention of
16 incentivizing owners to take the responsibility of
17 providing safe and livable housing more seriously.
18 At the current time this bill will need an increase
19 in the interest rate on unpaid emergency repairs for
20 properties by 2 to 11%. The rate would increase from
21 7 to 9% for properties assessed up to \$250,000 and to
22 18% for properties, which are assessed at over
23 \$250,000. Revenue increases as a result of this
24 change are difficult to predict at this time. If the
25 ERP expenditures remain the same, and the average

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2 time to pay remains the same, an overall increase in
3 revenue to the city would look like approximately
4 \$35,000 annually.

5 Again, I would like to stress that the
6 intent of this bill is to change the behavior of
7 property owners to encourage prompt repairs, and not
8 rely on the City to perform the work. We expect that
9 this change would result in the decline in the number
10 of emergency repairs HPD would have to perform. Any
11 increase in revenue would be applied to the Community
12 Development Block Grant budget, which is used to
13 support the Emergency Repair Program and AEP, among a
14 host of other New York City programs, or to the
15 general fund where tax levy dollars were spent.

16 I also want to take this opportunity to
17 thank the Council for continuing to work closely with
18 HPD on legislation, which supports the agency's
19 mission to ensure that all New Yorkers live in safe
20 and decent housing. From the recent legislation
21 authorizing HPD to impose inspection fees on
22 properties where we conduct multiple inspections and
23 continue to issue Class B and C violations, to the
24 continued work in improving AEP with the new
25 amendments. Which gives HPD the flexibility it needs

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2 to make the program work more effectively, the
3 ability for HPD liens to qualify on a property to be
4 included in a tax lien sale. HPD and the Council
5 continue to work hand-in-hand to seek solutions. As
6 previously stated, HPD strongly supports Intro 783,
7 and look forward to its implementation. Thank you
8 again for the invitation to testify, and we will be
9 more than glad to answer any questions that the
10 Committee may have.

11 CHAIRPERSON WILLIAMS: Thank you very
12 much. We've been joined also by Council Member
13 Cornegy. The--the tax lien sale, what's the trigger,
14 the amount for it to go on?

15 DEPUTY COMMISSIONER MUSTACIUOLO: I don't
16 have the exact dollar amounts, but it does vary and
17 we'll get you that information. So it is a fixed
18 amount of open charges over a period of time.

19 CHAIRPERSON WILLIAMS: And since we--a
20 lot that has happened has it been ineffective? Has
21 it been working?

22 DEPUTY COMMISSIONER MUSTACIUOLO: It's
23 been extremely successful. In the first year that we
24 were authorized to sell ERP charges as a standalone
25 in the tax lien sale [coughs] that first year, which

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2 was in 2011, approximately \$12 million in unpaid
3 charges in the tax lien sale, which we collected
4 shortly--a little over \$10 million of that \$12
5 million. So it's been a very effective tool.

6 CHAIRPERSON WILLIAMS: And this--the
7 interest here would go--can go toward that tax lien
8 sale?

9 DEPUTY COMMISSIONER MUSTACIUOLO: Yes.

10 CHAIRPERSON WILLIAMS: And here are some
11 questions. No, questions. Oh, Council Member
12 Cabrera.

13 COUNCIL MEMBER CABRERA: I'm just curious
14 to know how many new building permits does the
15 department receive annually?

16 DEPUTY COMMISSIONER MUSTACIUOLO: I'm
17 sorry, sir, the new building permits would--that
18 would be--

19 COUNCIL MEMBER CABRERA: Yeah, the new
20 building permit applications? Do you happen to know?

21 DEPUTY COMMISSIONER MUSTACIUOLO: Yeah,
22 that would for the--on the--for the Department of
23 Buildings to answer.

24 COUNCIL MEMBER CABRERA: Got you. Okay.

25 DEPUTY COMMISSIONER MUSTACIUOLO: Yeah.

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2 COUNCIL MEMBER CABRERA: I'll wait until
3 then. Thank you so much.

4 DEPUTY COMMISSIONER MUSTACIUOLO: Thank
5 you.

6 COUNCIL MEMBER CABRERA: And thank you
7 for all the good work that you do.

8 DEPUTY COMMISSIONER MUSTACIUOLO: Thank
9 you, sir.

10 COUNCIL MEMBER CABRERA: All right.

11 [background comments]

12 CHAIRPERSON WILLIAMS: Would you--will
13 you completely recoup the costs of the ERP once the
14 interest rate goes up?

15 DEPUTY COMMISSIONER MUSTACIUOLO: Um, in
16 time we will even through tax lien sale, or the owner
17 repaying the charges.

18 CHAIRPERSON WILLIAMS: Council Member
19 Cornegy.

20 COUNCIL MEMBER CORNEGY: Good morning.

21 DEPUTY COMMISSIONER MUSTACIUOLO: Good
22 morning.

23 COUNCIL MEMBER CORNEGY: I just want to
24 know if you know, and if you don't now, if you would

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2 get back to us on how many ERP lien sales have
3 actually led to foreclosures?

4 DEPUTY COMMISSIONER MUSTACIUOLO: I don't
5 know that we would be able to actually correlate a
6 lien sale to a foreclosure. What we can look at are
7 the buildings that have outstanding charges that have
8 gone through a foreclosure action. I'm not
9 suggesting that they're related, but they may very
10 well be.

11 COUNCIL MEMBER CORNEY: Thank you.

12 CHAIRPERSON WILLIAMS: And just a
13 question on ERP. Basically, what trade is ERP. If
14 the owner is making a good faith effort, how long
15 before you come in and make the repairs and what
16 constitutes that good faith effort.

17 DEPUTY COMMISSIONER MUSTACIUOLO: It
18 really varies. A perfect example is just, you know,
19 this week a Council member from Washington Heights
20 contacted myself at 4:30 in the afternoon that two
21 buildings were without electric service to the entire
22 buildings. The owner had been served with a shut-off
23 notice by Con Edison back in August, failed to comply
24 with that shut-off notice for unsafe conditions. 150
25 apartments were left without power. So in that case,

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2 we initiated the Emergency Repair Program
3 immediately. Many of the tenants were seniors. A
4 lot of them were not on life support equipment, but
5 used oxygen nebulizers. So in that instance, we
6 didn't allow the owner any time at all to correct.
7 Those were to us like the highest level of life and
8 safety issues. The law allows for a certification
9 and a correction period based on the violation. So
10 most Class C violations allow the owner 24 hours to
11 correct. The owner has an opportunity then to
12 certify that correction to us. There are some
13 exceptions to that where the law allows for 21 days
14 to correct. Shortly after the correction period, and
15 I should--I'm sorry. I should say that throughout
16 the entire process we are notifying owners of their
17 obligation to repair, and informing them that if they
18 do not, we will stop in. So upon the issuance of a
19 Class C violation, we send a notice of violation to
20 the owner. We also send them--we send a notice
21 saying that if you do not correct, we may, and if we
22 do it's going to cost you substantially more. So,
23 we're--we make robo calls. We email owners if they
24 provide us with email addresses. It's--it's--again,
25 it really would depend. If you take heat or hot

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2 water as an example, if a building requires a fuel
3 delivery, the Emergency Repair Program can step in as
4 early as the next day. If it requires full-blown
5 replacement, it may take us some time to effectuate
6 the repair.

7 CHAIRPERSON WILLIAMS: Is the
8 certification a self-certification?

9 DEPUTY COMMISSIONER MUSTACIUOLO: It's a
10 self-certification.

11 CHAIRPERSON WILLIAMS: How is that going.
12 Have you found people not self-certifying properly?

13 DEPUTY COMMISSIONER MUSTACIUOLO: So the
14 self-certification we two actions. We audit
15 especially all Class C violations, the immediately
16 hazardous conditions. So we attempt to re-inspect
17 all certified Class C violations. [coughs] In
18 addition, our system will send a notice to the
19 complainant that the owner has certified the
20 violation as corrected. If they object to their
21 certification, we give them a number to call, and
22 then we will send an inspector out to perform the re-
23 inspection.

24 CHAIRPERSON WILLIAMS: Well, thank you
25 very much. I know it's a great program, and also I

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2 know that the intent to change behavior doesn't work.
3 It's not cost-effective. So I'm glad that we have
4 this bill, and hopefully we can get it passed and
5 into law soon. So thank you very much. Do we any
6 other questions from my colleagues? Thank you so
7 much.

8 DEPUTY COMMISSIONER MUSTACIUOLO: Thank
9 you.

10 CHAIRPERSON WILLIAMS: Thanks to both of
11 you.

12 [pause]

13 CHAIRPERSON WILLIAMS: Next, we're going
14 to have DOB. We're going to discuss the other three
15 bills. Commissioner Rick Chandler, Assistant
16 Commissioner Annette Hill, Patrick Whaley and
17 Assistant Commissioner Ed Pemberton, and General
18 Counsel Sengal--Sehgal. Sorry.

19 [pause]

20 CHAIRPERSON WILLIAMS: Okay, and everyone
21 raise their right hands, please. Do you affirm to
22 tell the truth, the whole truth, and nothing but the
23 truth in your testimony before this committee, and to
24 respond honestly to Council Member questions? You
25 can begin.

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2 COMMISSIONER RICK CHANDLER: Good
3 morning, Chair Williams and members of the Housing
4 and Buildings Committee and other members of the City
5 Council. I am Rick Chandler, Commissioner of the New
6 York City Department of Buildings. I'm joined by
7 Assistant Commissioner of External Affairs Patrick
8 Whaley; General Counsel Mona Sehgal; Assistant
9 Commissioner for Financial Management Edwin
10 Pemberton; and Annette Hill, Assistant Commissioner
11 and City Register from the Department of Finance.

12 We are pleased to be here to offer
13 testimony on three pieces of legislation. This
14 includes Intro No. 831, introduced at the request of
15 the Administration, and which provides for a more
16 equitable fee structure. Introductory No. 49, which
17 requires notification of new building and major
18 alteration applications, and Introduction No. 280,
19 which requires the Department to establish a registry
20 of restricted covenants.

21 On May 14, the department announced our
22 vision to fundamentally reform the Buildings
23 Department to enhance public and work site safety/
24 wait times and delays and modernize all aspects of
25 the department to meet the needs of the largest and

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2 most complex city in America. We call this plan
3 Building One City, and I--and I appreciate the
4 opportunity to meet with many of the members of this
5 committee to discuss this plan in detail. One of the
6 proposals contained in this plan and detailed in
7 Intro 831 is to provide for a more equitable fee
8 structure. Broadly speaking, this legislation serves
9 two purposes. First, it is to reduce by half the
10 fees paid by one, two and three-family homeowners for
11 new buildings and major alteration applications.
12 Second, it is to increase new building and major
13 alteration application fees for what refer to as
14 major developments. These include buildings seven
15 stories or greater or 100,000 square feet or greater.
16 Fees for new building applications are determined
17 based on the square footage of the proposed new
18 building. For one, two and three-family homes, the
19 department proposes reducing the square foot fee from
20 12 cents per square foot to six cents per square
21 foot. Major developments would see a fee increase
22 from 26 cents per square foot to 45 cents per square
23 foot. Fees for major alteration applications are
24 determined based on the estimated cost of work
25 provided by the applicant. For one. two and three-

2 family homes, the department proposes reducing the
3 estimated cost of work fee from \$5.15 per \$1,000 of
4 work in excess of \$5,000 to \$2.60 per \$1,000 of work
5 in excess of \$5,000. Major developments would see a
6 fee increase from what is essentially \$10.30 per
7 \$1,000 of work in excess of \$5,000 to \$17.75 per
8 \$1,000 in work in excess of \$5,000. For those fees
9 that are increased, the increase is based on applying
10 the Consumer Price Index since the fee was last
11 adjusted in 1991. The decision to increase fees for
12 any of our applicants is not one we make lightly.
13 However, after much thought and deliberation, we feel
14 an increase is necessary and appropriate due in large
15 part to advances in technology and expertise. In
16 recent years we have seen construction grow
17 significantly in scale and complexity. One only
18 needs to step outside this building and look up to
19 see numerous examples of this fact, and it can be
20 seen throughout this city. Ensuring this
21 construction is safe and code compliant requires
22 significant resources from the department from plan
23 review through permitting and inspections. And as
24 this development grows in scale and complexity, it
25 requires a greater proportion of department resources

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2 to ensure it complies with the law and a safer
3 occupancy. Through Building One City and due to the
4 support of the Administration and City Council, the
5 department is committing significant resources to
6 dramatically improving the services provided to the
7 filing community and fees should be commensurate with
8 the enhanced level of service provided. And as
9 mentioned above, these fees have not been adjusted in
10 24 years. Finally, this legislation grants the
11 department the authority to adjust these fees going
12 forward through rule making. This will give the
13 department the opportunity to realign fees as needed
14 to continue to support the services we provide. The
15 department would appreciate this committee's swift
16 consideration and approval of this legislation.

17 I will now discuss Intro 49. This
18 legislation requires the department to send copies of
19 completed new building and major alteration
20 applications to the City Council member and Community
21 Board where the application is located with five days
22 of receipt. If these applications are rejected or
23 what we refer to as disapproved, notices of
24 disapproval are to be shared in the same fashion.
25 The department takes a great deal of pride in the

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2 enormous effort of information we make available to

3 the public. The department opposes this legislation

4 because the information it seeks is largely available

5 on the department's website and can be accessed in a

6 couple of different ways. For example, each week the

7 department posts on its website several reports

8 including a report that provides a wealth information

9 on the jobs filed with the department the prior week.

10 This report can be filtered by community board

11 district to provide the information sought after in

12 this legislation. This report does not include

13 disapprovals, but it can be added. Additionally, the

14 department has a Building on My Block tool on our

15 website where this information can also be viewed.

16 Using this tool, the user can view new building and

17 major alteration applications along with other

18 application types within a specific community board.

19 Alternatively, the user can enter a specific address

20 to receive information on that location.

21 Finally, I'd like to discuss Intro 280,

22 which requires the department to maintain a registry

23 of deeds with restricted covenants and make them

24 available to the public during normal business hours.

25 This legislation requires restricted covenants to be

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2 filed with the department by either an owner of the

3 property that has a restricted covenant or an

4 organization that represents the geographic area

5 covered by the covenant. A restricted covenant is a

6 private or public contract that runs with the land

7 and is related to a deed that requires an owner of a

8 property to either take or abstain from a specific

9 action. At the outset, I would like to inform the

10 Council that restricted covenants are filed with the

11 Department of Finance, and are available for public

12 viewing. Furthermore, the Department of Buildings

13 has no authority to enforce covenant restrictions

14 that do not relate to the compliance with the

15 Construction Codes or zoning. The resolution of such

16 restricted covenants is essentially a civil matter.

17 Upon purchasing a property through a title search,

18 the owner receives a copy of the deed and any

19 recorded restriction on the property, and is

20 therefore made aware of any covenant restrictions.

21 The department opposes this legislation because

22 owners are aware if a covenant restriction exists on

23 their property. This information is already

24 available to the public. The Department of Buildings

25 has no authority to enforce most covenant

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2 restrictions, and we have no ability to determine
3 their legality or accuracy. Thank you for your
4 attention, and the opportunity to testify before you
5 today. I welcome any questions that you may have.

6 CHAIRPERSON WILLIAMS: Thank you,
7 Commissioner. I'm going to--we've been joined by
8 Council Member Ulrich and we'll be joined by Council
9 Member Espinal. I'm going to ask some questions
10 about the permit filing fees. Then I'll go to my
11 colleagues for their bills, and I might have some
12 follow up for them--after them, and then my
13 additional colleagues. How much revenue did the
14 department generate from permit filing fees in the
15 last fiscal year.

16 COMMISSIONER RICK CHANDLER: The last
17 fiscal year we generated \$293 million in Fiscal 15.

18 CHAIRPERSON WILLIAMS: And how much
19 revenue did the department anticipate generating if
20 the legislation was passed?

21 COMMISSIONER RICK CHANDLER: We
22 anticipate a net dollar amount of \$6 million.

23 CHAIRPERSON WILLIAMS: I'm sorry. How
24 much did you say the first one was.

25

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2 COMMISSIONER RICK CHANDLER: \$293
3 million.

4 CHAIRPERSON WILLIAMS: And then how much
5 are you anticipating with the new fee?

6 ASSISTANT COMMISSIONER WHALEY: Good
7 morning, Chair Williams. My name is Patrick Whaley
8 of the Buildings Department. So our total revenue in
9 Fiscal Year 2015 was \$293 million. The revenue that
10 we received from the fees--

11 CHAIRPERSON WILLIAMS: Yeah.

12 ASSISTANT COMMISSIONER WHALEY: --that
13 are proposed to be revised in this legislation
14 totaled \$164 million, and so the net increase in
15 revenue from this proposed legislation would be a
16 total of \$6 million.

17 CHAIRPERSON WILLIAMS: So, you're up
18 about \$200 million.

19 ASSISTANT COMMISSIONER WHALEY: The total
20 revenue would go up from \$293 to approximately \$299,
21 and then that portion of the revenue that is from
22 these types of fees would increase from \$164 million
23 to about \$177 million.

24
25

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2 CHAIRPERSON WILLIAMS: Okay. And that--
3 that--those fees will go into--back to general fund
4 or are they going to go into the DOB?

5 ASSISTANT COMMISSIONER WHALEY: Those
6 fees will go back into the general fund.

7 CHAIRPERSON WILLIAMS: On this
8 legislation, permit filing fees from any development,
9 which includes 7 stories or greater or more than
10 100,000 square feet will be increased. As a result
11 of such increase, does the department anticipate
12 providing any enhanced services?

13 COMMISSIONER RICK CHANDLER: Our Building
14 One City plan includes a number of initiatives that
15 improve service delivery for our applicants. Chief
16 among them is through investments in technology and
17 staffing. We will reduce the amount of time it takes
18 to get inspections performed and applications
19 approved. Furthermore, our plan will provide the
20 means for applicants to do more of their work online
21 including submitting applications, payments and
22 requesting inspections.

23 CHAIRPERSON WILLIAMS: So if I
24 understand, you're saying there's going to be general
25 increased expediency by what you're changing overall,

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30

2 but no increase in expediency directed for these fee
3 increases?

4 COMMISSIONER RICK CHANDLER: Well, we
5 can't--we are not assigning particular service
6 improvements related to these fee increases. What
7 we're saying is that in the last 24 years there's
8 been an increased scope and breadth and complexity to
9 the services that we provide. Examples include the
10 addition of all things related to sustainability. We
11 have an entire division of sustainability reviewers,
12 inspectors and technical people who are writing that
13 code, meeting with the industry. That's just on that
14 side. We have people in the field related to the
15 flood plain approvals. The complexity of the
16 buildings that are going up, as I mentioned in my
17 testimony that you see outside, often times require
18 multiple meetings with consultants of particular
19 fields to demonstrate compliance with the
20 construction codes as it relates to many things
21 particularly egress and fire proof or fire protection
22 construction. So those are not straightforward
23 reviews that generally one plan examiner can take on.
24 It often times requires many, many meetings involved.
25 So the--the complexity of these structures plus the

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2 safety inspections that we do after the permits are
3 issued have increased tremendously over the last
4 years. And so we think that this is just a small
5 increase on the amount of services that we deliver.

6 CHAIRPERSON WILLIAMS: Is it the last
7 time of the increase was 1991?

8 ASSISTANT COMMISSIONER WHALEY: That's
9 correct.

10 COMMISSIONER RICK CHANDLER: Yes.

11 CHAIRPERSON WILLIAMS: And honestly,
12 that's a long time. So obviously addressing it makes
13 sense. From speaking for the industry I think you're
14 going to testify or I'm assuming you're going to
15 testify to some of the things that I've heard that
16 they are happy to pay increases if they can get fast
17 services. Is that something that you've thought
18 about or willing to do? What's your thought process
19 on that?

20 COMMISSIONER RICK CHANDLER: So, you
21 know, we've talked about this since I've started my
22 job about our service levels. It's something we talk
23 about every day. Certainly, when we talk with the
24 industry that's a common theme is about services and
25 our service levels because we're very much aware that

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2 the speed with which we provide our services very
3 much affects jobs in terms of the construction
4 industry but also others. So, with that said, I'd
5 like to just say further that our enhanced fees for
6 enhanced services should not be in the way of what we
7 are trying to accomplish with this legislation. The
8 fact is the department today provides 2015 services
9 at 1991 fees, as we've discussed already. Over time,
10 our work to provide these services has become far
11 more challenging, and time consuming. The logical
12 first step is to charge fees that are commensurate
13 with the services provided. Then, to explore in more
14 detail going beyond that.

15 CHAIRPERSON WILLIAMS: And that makes
16 sense. It makes sense when you say it, and put it
17 that way. This I think bill is logical to get us to
18 where we need to be, but it seems to me that if we're
19 going to change the fees we might just do it all at
20 once. And so if we're thinking about properly
21 addressing some expediency issues with additional
22 fees, wouldn't it make sense to do it all at the same
23 time?

24 ASSISTANT COMMISSIONER WHALEY: So the--
25 the department is certain open minded. We've heard

2 from the real estate community, and they certainly
3 have an interest and a willingness to pay enhanced
4 fees for enhanced services. And the department
5 certainly has--we're open minded to the idea of doing
6 that. And as a matter of fact, to a certain respect
7 we have been doing that. We're currently offer after
8 hour inspections at no cost on a pilot basis. So the
9 department has begun to actually provide enhanced
10 services currently at no cost, and we're open minded
11 about exploring that further. We have spoken with
12 the real estate community. We welcome their
13 suggestions. We have not heard anything specific
14 from them yet, but when we do we're happy to work
15 with them on it. But again, as the Commissioner
16 mentioned, the logical first step here is to ensure
17 that the fees we charge are commensurate with the
18 services we provide. Fees haven't been adjusted in
19 nearly a quarter of a century, and we think it's
20 entirely reasonable and appropriate to adjust those
21 fees accordingly.

22 CHAIRPERSON WILLIAMS: Okay, but we may--
23 that issue may get hit with two fee increases
24 basically if we--if you go forward with the train of
25 thought that we do want to provide enhanced services

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2 and we get that done, they may get a hit now and then
3 hit later for it.

4 ASSISTANT COMMISSIONER WHALEY: And that
5 second hit might be a hit that they welcome.

6 CHAIRPERSON WILLIAMS: Okay. Thank you.
7 I'm just going to go in alphabetical order. So,
8 Council Member Cabrera, if you'd like to go and then
9 Council Member Vallone.

10 COUNCIL MEMBER CABRERA: Thank you, Mr.
11 Chair. Commissioner, thank you for coming. Thank
12 you for your testimony. Last night, I went to
13 Community Board No. 7 in the Bronx, and when I shared
14 about Intro 49 the place just erupted with elation at
15 the idea that this intro was having a hearing. Also,
16 I want to read a sentiment from--actually a
17 resolution that was passed in Queens Community Board
18 No. 11. It basically says, The board members support
19 this legislation since it will provide the board
20 office with information it needs to assist with
21 inquiries from the public and provide information
22 regarding housing and so many density changes
23 carrying the district. This is the line that--that
24 really I get a lot of feedback from community boards.
25 They say the process for changing [sic] this

2 information has always been difficult because the
3 staff has to be constantly proactive in order to
4 search for information about construction in the
5 neighborhood from the Department of Buildings'
6 website or through our liaison. So basically what
7 they're saying is why the Buildings Department cannot
8 make it easier for them, and send this information to
9 them whether it's a weekly basis, monthly basis,
10 however this is worked out. Right now, we have it
11 after Fridays.

12 ASSISTANT COMMISSIONER WHALEY: I totally
13 understand the concern. I think what I would say is
14 to a very large extent the department currently
15 provides the information that community boards, as
16 you mentioned, are looking for. Perhaps this is
17 really more of a communication issue than anything
18 else. We have staff at the department who work
19 regularly with elected officials' offices and
20 community boards. And information that's sought
21 after in this legislation, you know as explained in
22 the testimony provided by the Commissioner is
23 provided currently on our website. So on a weekly
24 basis, for example, the department provides a report
25 on a Monday for the prior week that includes all the

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2 new--all the new filings that the department has
3 received. It's in an Excel spreadsheet. That
4 information could be filtered as appropriate, as
5 designed in any number of ways. And so, the
6 community board can through that information get a
7 listing of all the new building and major alteration
8 applications that have been received by the
9 department in the prior week.

10 COUNCIL MEMBER CABRERA: So I appreciate
11 your consistency because in your testimony and in the
12 testimony by the Commissioner and you just said it
13 again largely available. Can you define what you
14 mean by largely. What's missing?

15 ASSISTANT COMMISSIONER WHALEY: So I'll
16 explain to you the distinction between what's
17 available now--

18 COUNCIL MEMBER CABRERA: Okay.

19 ASSISTANT COMMISSIONER WHALEY: --and
20 what's sought out in the legislation. Number 1 it's
21 rejections. What we refer to as disapprovals. The
22 report we provide currently does not include within
23 that report during the prior week which applications
24 were disapproved. We can easily--not easily. We can
25 provide that information within the report. The

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2 other distinction is the bill seeks to provide that
3 information based on community district as well as
4 Council district. This report allows you to filter
5 only based on community board, and not on Council
6 districts. The reason why that exists is because as
7 you well know, Council Member, there's a significant
8 overlap between community board districts and Council
9 districts.

10 COUNCIL MEMBER CABRERA: Right.

11 ASSISTANT COMMISSIONER WHALEY: Not
12 entirely, but significant, and our perspective is
13 it's better to provide this information based on
14 community board district because there are more of
15 them than council districts. So you get a greater
16 level of specificity with each individual community
17 board than you would council districts. And
18 furthermore, unlike council districts. community
19 districts aren't subject to redistricting. So those
20 boundary lines wouldn't change every 10 years.

21 COUNCIL MEMBER CABRERA: You know, I have
22 to tell you I understand your position, but I have to
23 tell you that as you well know, community boards are
24 largely understaffed running on a very small minute
25 budget and they are very strained in all of the work

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2 that they have to do. I think this is--I think it's
3 the least, and I would appreciate if you could just
4 reconsider. This is the least that we could do for
5 them. It just makes it a lot easier. It makes it a
6 lot easier, I have to confess, even to our offices
7 with all of the work that we have. But, if you could
8 reconsider, I think it will be very helpful, and I
9 think in some respects there's a disconnect, and I
10 agree with you there's a big disconnect, because
11 those community boards constantly are feeling like
12 we've been caught off guard whenever a building
13 project is coming into the district. And so, again I
14 turn it back to the Chair, and thank you so much.

15 ASSISTANT COMMISSIONER WHALEY: Thank
16 you.

17 COUNCIL MEMBER CABRERA: And hopefully,
18 we could have a meeting of the minds.

19 CHAIRPERSON WILLIAMS: Council Member
20 Vallone.

21 COUNCIL MEMBER VALLONE: Thank you,
22 Chair. Commissioner, it's not often that I get the
23 press that I'm hearing, which I've managed to achieve
24 them. [sic] You know, when we go to our community
25 boards and our civic associations and our elected

2 officials and the community agencies, it's our
3 responsibility to listen, and time and time again
4 this call for restricted covenants have been denied
5 by the Building Department. In your residential
6 communities there's not an overall fondness to the
7 agency in general. So if you were going to any
8 community board or civic, one of the first questions
9 is it a homeowner, or a contractor, a developer,
10 someone who's breaking the rules and we need the
11 Building Department's help. Can you help us with a
12 permit? Can you help us with enforcement, with a
13 violation, and there's that relationship we play in
14 making sure those things happen. This bill creates a
15 simple registry. There's no enforcement. Every one
16 of the documents I have here from civic boards,
17 community boards and civic associations are in
18 support of this first step of legislation, and
19 everyone is pleading to take it to the next step.
20 The next step being who's going to enforce it? So I
21 took the simple approach of let's take the first step
22 and create the registry. Nowhere in the bill does it
23 say that the Buildings Department will have
24 enforcement liability as a result of it. It's a
25 judicial decision, and beyond our capacity for this

2 hearing. As to who will have the ownership or
3 responsibility of a private restrictive covenant and
4 what the city's role in it. So I'm asking our city
5 to do the right thing, and create the registry.
6 Because everyone is asking for it. And now I get the
7 hearing and the testimony and a paragraph saying
8 sorry. Due to the Department of Finance, it's not
9 our problem. That's not good enough. It's simply
10 not, and I'm not asking for the Constitution to be
11 written. I'm asking for a list of restrictive
12 covenants to be provided to the good people of the
13 City of New York. Not defend which ones are proper
14 and which ones are not because I can tell you that
15 one of the reasons why I became a lawyer, and my
16 father's on *Learning to Govern*. And one of the
17 chapters was grandfather Charles Vallone, who my son
18 was named after, went to buy their second home, and
19 the lawyer at the table wanted him to include the
20 restricted covenant in the contract. And he said I
21 absolutely will not, and it was language forbidding
22 the sale to Hebroids and Negroids, and this was in
23 1937, and my grandfather was one of the leading
24 proponents for equal rights because of that. And I'm
25 not here to say all restrictive covenants are created

2 equal. They are not but there are some really good
3 ones out there, and as people hear from our civic
4 associations out in Northeast Queens who are going to
5 plead to let you know, they've been fighting the
6 fight by themselves, and they would love to have some
7 assistance. But they know there's been a boundary
8 that the Buildings Department won't cross in
9 enforcing these private agreements. So if I have
10 anyone, and the Landmarks Preservation Chair came out
11 to the Broadway-Flushing Homeowners' this week to see
12 the beauty of the neighborhood. And I bet you many
13 of the folks here took her on the tour. Anyone that
14 comes says, My God, it's such a beautiful
15 neighborhood. It wasn't because the city did
16 anything to keep it that way. It was because a
17 restrictive covenant was in place back in 1906 called
18 the Rickert-Finlay Covenant that established clear
19 parameters for anyone who moved into the neighborhood
20 to adhere to. And the civic associations and the
21 homeowners that are all in pockets would come to the
22 doors and say hey, did you know there was the
23 Rickert-Finlay Covenant. You can't do that. But
24 guess what, the house was torn down or the damage was
25 already done. Without zoning protection, without

2 enforcement restrictive covenants then homeowners did
3 it themselves, and to this day, they do it
4 themselves. So when I promised to take office, I
5 said we will start this process again, and I
6 appreciate, and that's why I said to Chair--to Chair
7 Williams and everyone here this is a huge step. And
8 as simple as it may seem, it's a step. And if all of
9 you look at every one of these pieces in support from
10 the community boards to the civic associations, they
11 acknowledge how much this will be of help to go to
12 the neighborhoods to let them know, hey, there is a
13 registry now. Here are the restrictive covenants.
14 Your home falls within one of those restrictive
15 covenants. Please, if you're planning on doing any
16 work, be aware of it. Please, if you're going to
17 resale be aware of it. Don't go searching for the
18 Department of Finance, rely on a lawyers, rely on a
19 title company or department, someone at a closing.
20 Because if you've been in any closing, and I've done
21 20 years of them, the quickest thing is how to get
22 out of the door as quick as possible and not have the
23 client screwed up in any way, shape or form with
24 problems. And so if they don't ask about the
25 restrictive covenant, that's great. Let's get the

2 hell out of here, take our fee and go home. That's
3 not helping the homeowners. So by having a registry,
4 there'll be there. And I'll just give you a couple
5 of quick sentences, and it's not like I can have
6 dialogue because you've said no. But I'll give you a
7 couple of these sentences that were submitted today
8 by role of the great different civic associations.

9 Dear Councilman, thank you so much. The
10 notification will be of great value to prospective
11 developers as well as individual homeowners reminding
12 them to inform themselves about these covenants
13 before finalizing their building plans. Intro 280 is
14 a huge important first step in bringing attention to
15 these restrictive deeds. And this is from the
16 Broadway-Flushing Homeowners' Association, Bob
17 Hanophy the President, who is here today. The
18 Westmoreland Association with Douglaston Manor has
19 the same issue, Walter Mugdan the President. DOB
20 would00is always unable to maintain these. However,
21 providing notification that these specific parcels
22 are subject to covenants and deeds would be a huge
23 assistance to our communities under attack. This
24 notification would be of great value to prospective
25 developers as well as individual homeowners reminding

2 them to inform themselves about these covenants
3 before they finalize their building plans, and it
4 goes on and on. And I have Community Board 7. With
5 this bill these covenants would be available for view
6 via the Department of Buildings, and homeowners like
7 myself wishing to place covenants recorded on their
8 deeds into the registry would finally have a process
9 requesting to do so. A civic or community
10 organization could also place in the registry deeds
11 within neighborhoods that have restrictions attached
12 to them. All of that, my big concern, however, is
13 that the legislation doesn't do enough, and my
14 response to them is let's take this step and see
15 where we go. Is there anything as a result of
16 today's hearing you will go back to say you're going
17 to re-look at this bill, and see if it's something
18 the department would consider?

19 ASSISTANT COMMISSIONER WHALEY:

20 Respectfully, Council Member, the answer is no.

21 COUNCIL MEMBER VALLONE: Well, I...that
22 was to the Commissioner. So I...I don't know.

23 COMMISSIONER RICK CHANDLER: [off mic] I
24 would say respectfully no, sir, because you're asking

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2 us to get involved again in things that we have no
3 business getting--

4 CHAIRPERSON WILLIAMS: [off mic] Can you
5 turn on your mic, please.

6 COUNCIL MEMBER VALLONE: Yeah, I don't
7 think everyone can hear you.

8 COMMISSIONER RICK CHANDLER: Respectfully
9 no, sir. You're asking us to get involved in things
10 that we have no business getting involved in.

11 I...I've been a Borough Commissioner in the Queens
12 office and every other borough office as well. I've
13 been asked to resolve civil matters. I've been asked
14 to get involved when someone had a lawyer when they
15 closed their--their sale of their building, and I'm
16 very, very disappointed that the lawyer didn't do
17 what I think that they were hired to do, or the title
18 company didn't do what they were hired to do. But
19 the department's mandate is not to resolve civil
20 disputes between a seller and a buyer or someone that
21 made a covenant about a building that has nothing to
22 do with construction codes or zoning.

23 COUNCIL MEMBER VALLONE: And this bill
24 doesn't do that.

25

2 COMMISSIONER RICK CHANDLER: So, you, but
3 you said yourself that it creates a first step and
4 the last thing that we need is the expectations when
5 homeowners come to our office, which happens everyday
6 as it is now, but we'd like to minimize that if
7 possible by creating the expectation--

8 COUNCIL MEMBER VALLONE: My job is not to
9 help them minimize a building when it's coming to
10 your office. Our job is to--

11 COMMISSIONER RICK CHANDLER: Well, I
12 think you'd be concerned about your constituents
13 coming to our office expecting a result that we can't
14 deliver, and I'm just being honest, and I think we--

15 COUNCIL MEMBER VALLONE: How can we not
16 believe if we're creating a list? That's what you
17 say in New York, too, and that's why I have the
18 animosity and the anger at the boards and the civic
19 associations toward the Building Department because
20 if you can even say not to this, then the frustration
21 goes through the roof. See, at some point, there's
22 responsibility I believe we all have to making our
23 lives a little bit easier. And this is one of those
24 steps, and we're still saying to them. Not creating
25 responsibility to it. It's something that our city

2 could do make their lives a little bit easier for our
3 folks to say here are the exiting restrictive
4 covenants for the City of New York. Do with it what
5 you want. We have no responsibility. The
6 legislation says that. It creates no responsibility,
7 creates no enforcement. Because I--like in the
8 example I used with my grandfather, the last thing
9 you want is for somebody to enforce that. Just as an
10 example, there are bad language out there.

11 COMMISSIONER RICK CHANDLER: It's a
12 perfect--it's a perfect example, sir, where people
13 would come into us and expect us and ask us to
14 enforce that. I've stood there. I've received these
15 requests. I've been there. Someone would come in if
16 that--if someone put that onto and it was there, they
17 would come down and ask us to enforce that.

18 COUNCIL MEMBER VALLONE: And the same
19 thing you would say to the boards is we acknowledge
20 that, there's no responsibility on the Building
21 Department. Take it up with your attorney. Take it
22 up with your--some other enforcement. [sic]

23 COMMISSIONER RICK CHANDLER: And we say
24 that every day. Every day we say that you're asking
25 our staff to be in the position of deciding well

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2 should I say no to the covenant, which you used,
3 which was really an egregious example.

4 COUNCIL MEMBER VALLONE: No, I'm asking
5 your staff to turn around and say here--here is our
6 list. So take that back to our attorney. Take that
7 back to hour homeowners' association, and see if
8 there is anything he can do with this. Sorry it's--

9 COMMISSIONER RICK CHANDLER: But what our
10 testimony says is that all of these things are
11 already at city agency. They're on file with
12 Department of Finance. I would allow-I would ask my
13 colleague to comment about it.

14 COUNCIL MEMBER VALLONE: Well, that's
15 even--

16 COMMISSIONER RICK CHANDLER: But they're
17 there and that's the rule--

18 COUNCIL MEMBER VALLONE: That's even more
19 alarming because if they're already there why create-
20 -

21 COMMISSIONER RICK CHANDLER: --of either
22 party and the attorney that you hire to get that
23 information available to you.

24 COUNCIL MEMBER VALLONE: You just said
25 it's the rule in the Department of Finance.

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2 COMMISSIONER RICK CHANDLER: It's not the
3 rule in the Department of Buildings.

4 COUNCIL MEMBER VALLONE: So why not
5 create it a list.

6 ASSISTANT COMMISSIONER WHALEY:
7 Councilman, what I would add if I may is that the
8 department just doesn't see the additional value in
9 having this registration, and as the Commissioner
10 mentioned, it creates the false impression that the
11 Buildings Department has the authority to enforce
12 these covenant restrictions. They're already--the
13 owners of these properties upon purchasing are made
14 aware of that these covenant restrictions exist.
15 These restrictions are available for public viewing
16 through the City Register and the Department of
17 Finance. That's all it needs.

18 COUNCIL MEMBER VALLONE: But that's
19 begets--that begets the original argument of saying
20 that shouldn't be information.

21 ASSISTANT COMMISSIONER WHALEY: The
22 department has no authority to enforce these covenant
23 restrictions, and we would have no idea, no ability
24 to ascertain the legality or the accuracy of these
25 covenant restrictions assuming they're shared with

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2 the Buildings Department. It's just not something
3 that's--

4 COUNCIL MEMBER VALLONE: Well, you're
5 going--you're already--you're going--the basis of
6 your argument of creating liability on the Building
7 Department is not what we're debating. It's not. As
8 much as one of the groups would like to have that,
9 we're not. Now, on a--on a side note, Commissioner,
10 I have a thought as these things come up. Was there
11 ever a time that maybe the agency could create a
12 litmus test or some standards that would create
13 validity to a restrictive covenant. And that at the
14 civic group or association were to meet those
15 standards then that restrictive covenant would be
16 enforced. Something that would adhere to the existing
17 building code and zoning of that area. I think there
18 may be a way, like you say we rely on zoning, we rely
19 on restrictive code, but if we had done that, there
20 wouldn't be a Broadway-Flushing Homeowners' area and
21 there wouldn't have been a Douglaston Manor. It would
22 have been all changed because the zoning as we know
23 it takes decades to kick in before it actually
24 protects. So some of these have achieved the goal of
25 what the Building Department wanted LBC [sic], which

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2 was preserving these neighborhoods, but they did it
3 on their own.

4 COMMISSIONER RICK CHANDLER: It's not the
5 Department of Buildings. Just a reminder again it's
6 not our mandate. It's not our mandate to preserve
7 and make the neighborhoods that you cite as beautiful
8 as they are. I love those neighborhoods. They're
9 beautiful, but it's not because of the Department of
10 Buildings or any mandate that we have. Our mandate
11 is construction safety.

12 COUNCIL MEMBER VALLONE: Well, it's
13 beyond construction.

14 COMMISSIONER RICK CHANDLER: It's not the
15 beautify of a--of a neighborhood.

16 COUNCIL MEMBER VALLONE: I've never heard
17 the Building Department summarized as a construction
18 safety.

19 COMMISSIONER RICK CHANDLER: Safety of
20 New Yorkers. It's our primary goal. I mean the
21 Universal Pre-K just was completed last week in large
22 part because of the many thousands of inspections
23 that we took upon ourselves to do at every place.

24 COUNCIL MEMBER VALLONE: That's one
25 aspect.

2 COMMISSIONER RICK CHANDLER: It's one
3 very large aspect of it.

4 COUNCIL MEMBER VALLONE: All right, we're
5 back to the original question that we're debating,
6 which is if there's a litmus test that we could to--
7 if a restrictive covenant were presented to a city
8 agency to say this is one that is not ridiculous and
9 one that has good basis in preserving what it's done.
10 Therefore, we're going to take this stuff to enforce
11 it, and acknowledge it.

12 MONA SEHGAL: Good--

13 COUNCIL MEMBER VALLONE: Good morning.

14 MONA SEHGAL: Good morning. My name is
15 Mona Sehgal, General Counsel, Department of
16 Buildings. Thank you for a moment here to speak just
17 very briefly. We enforce per the provisions of our
18 Charter and Construction Codes and Zoning. Thank
19 you, and we do have certain restrictive covenants,
20 specifically restricted declarations and easements
21 that we accept from private parties who are seeking
22 to construct, develop their property, but need,
23 for example, to satisfy a code requirement like a
24 secondary means of egress if they can't satisfy
25 through their buildings. So they need an easement

2 agreement at the adjacent site, adjacent property,
3 and we accept those kinds of easements. There are
4 also very specifically enumerated declarations in the
5 zoning resolution, parking and off-street parking and
6 the like that we, of course, are mandated to accept,
7 and we accept. And we have a template on our system
8 on our website that informs applicants to submit
9 their restrictive decs and easements in that
10 particular format. So it's very specific. When you
11 open up the door to now creating any kind of database
12 or registry within the Department of Buildings of
13 these outside, you know, mandated covenants, as the
14 Commissioner said, it does create an expectation. We
15 get questions like that fairly regularly as to asking
16 DOB to enforce even where you don't have something
17 like a registry in our code. But once you put that
18 in there, there is going to be an increased
19 expectations. And now, we're in the world where it's
20 simply outside of our charter mandate. We don't know
21 what's legal and what's not legal. If someone in an
22 association says you can only plant certain kinds of
23 plants or paint your windowsill a certain color, it's
24 simply not something that DOB would ever, you know,
25 look again. But then again, the expectation would be

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2 created, and there could be a slippery slope I'm
3 afraid that some of the restrictions or covenants
4 many have many items.

5 COUNCIL MEMBER VALLONE: Well, I didn't
6 know that.

7 MONA SEHGAL: Yeah.

8 COUNCIL MEMBER VALLONE: I thank you for
9 bringing up the prior part of the --

10 MONA SEHGAL: Okay.

11 COUNCIL MEMBER VALLONE: --testimony.
12 There are some existing language that we can work
13 with, and maybe we can go back to that. And I thank
14 you, Chair, for that. I just--obviously we're going
15 to plead and fight on behalf of those who want those.
16 So, I--I appreciate your--the time for hearing our
17 questions. I look forward to working with the agency
18 so we can get this done. Thank you, Chair.

19 COMMISSIONER RICK CHANDLER: Thank you.

20 CHAIRPERSON WILLIAMS: Thank you, Council
21 Member. We've been joined by Council Member
22 Rosenthal and Council Member Reynoso briefly. I have
23 some questions before my colleagues. But, first, I
24 did--it seemed to me--I understand you're opposed,
25 but particularly, I didn't--I don't--I didn't fully

2 think I accepted the notion that we can't put
3 something, the City can't put information out without
4 accepting liability for that information. It seems
5 to me that we can put information with a notice that
6 we don't take liability for this, but we're just
7 providing information. Why is that--why is that
8 mutually exclusive with you?

9 MONA SEHGAL: If I may--if I may answer
10 that. It's not so much a question of liability. The
11 City doesn't normally take liability on anything
12 filed with the City, certainly not in a registry
13 context. It's an expectation. It's to manage
14 expectations, and the confusion that it creates among
15 the general public that when you have an agency
16 establishing this type of registry beyond what we
17 already required to be submitted as part of filing
18 applications, that there's this expectation now that
19 the Department of Buildings is now the lead on these
20 kinds of covenants, now there's some that the
21 Department of Buildings should do to enforce it if
22 there's a violation.

23 CHAIRPERSON WILLIAMS: It seems to me
24 there's already confusion about the restricted
25 covenants.

2 COMMISSIONER RICK CHANDLER: Exactly, and
3 this would just make it even more confusing, and it
4 also uses up a significant amount of our resources in
5 trying to clarify that confusion, and people are
6 already requesting us to enforce restricted covenants
7 that we have no mandate to do.

8 CHAIRPERSON WILLIAMS: I mean I hear you,
9 but if they're already coming, I'm not sure--if
10 they're already--if you're just saying they're asking
11 you the question, it seems to me you're already
12 giving the--the response, and now you're just saying
13 it's just a registry. I--I--I mean I understand your
14 point kind of. I just don't know that it makes the
15 most sense that we can't have a registry because it
16 will confuse people when we can just say that it's
17 just a registry. Particularly, if people are already
18 coming to the DOB for that information, and you're
19 already having contact.

20 COMMISSIONER RICK CHANDLER: And again,
21 as we had mentioned previously, upon the transaction
22 of personal property, an owner is made aware of the
23 covenant restriction, and this information is
24 currently available through the City Registrar's
25 Office and the Department of Finance.

2 CHAIRPERSON WILLIAMS: I want to come
3 back to some of that anyway. This information is
4 always available on the Internet. It doesn't mean
5 it's easily accessible by--by most folks, but I have
6 some questions. This is a question for both bills,
7 but I want to go to my colleagues Council Members
8 Koslowitz, Cornegy and then Cabrera had a follow-up
9 questions. I don't want to put a time limit. So
10 I'll just ask colleagues to please be respectful.

11 COUNCIL MEMBER KOSLOWITZ: I just want to
12 say that I agree with Council Member Vallone. It's
13 important. I had experience in my community. I have
14 three restrictive covenants, and I had an experience
15 that they were building an apartment building in that
16 community. And it so happened that the person who
17 had the papers had passed away, and nobody could find
18 it, and they had to go to court and it cost them lots
19 of money. When, in fact, if there is a registry, you
20 would be able to go to that registry and see for
21 herself. I'm not say Buildings has to be responsible
22 for it, but someone does--should take the
23 responsibility of listing all--all the places that
24 have the restrictive covenants.

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2 COMMISSIONER RICK CHANDLER: It's called
3 ACRIS on the Department of Finance website. It's a -
4 --it's a database of deeds and restrictive covenants
5 around the city, ACRIS, the Department of Finance.

6 COUNCIL MEMBER KOSLOWITZ: Okay.

7 COMMISSIONER RICK CHANDLER: It's there.

8 COUNCIL MEMBER KOSLOWITZ: I will look,
9 but I think, you know, that people have to be made
10 aware of it. You know, it being there, people, you
11 know, the average person doesn't know how to find
12 this, and I think some place, somewhere, they should
13 be made aware of where they can find it. Also,
14 allowing the--notifying the community boards and the
15 Council members when something is being--an
16 application is being filed with Buildings to let the
17 Council person or the community boards and the
18 community board not or--and the community board to be
19 notified that something is happening. Because right
20 now in my community in Forest Hills and in Kew
21 Gardens, buildings going up where unbelievable in
22 Rego Park that I ride down the boulevard every day.
23 Today, I was riding down the boulevard and I saw
24 another structure going up. It's fine except that
25 nobody looks at the infrastructure of the community.

2 I mean we just went through a process of schooling
3 for kids, the Pre-Ks and the kindergarteners, and now
4 buildings are going up that have children in it. We
5 have to--we should know that something is happening
6 so we can deal with the other aspects of people
7 moving into the community. And I really firmly
8 believe that we should be notified of any
9 applications that are being filed before it's too
10 late to do something.

11 [background comments, pause]

12 ASSISTANT COMMISSIONER WHALEY: So I--I
13 understand what you're saying, Council Member. I
14 think the distinction we're talking about here is the
15 Department of Buildings shooting out information to
16 the council members, community board districts, which
17 the department theoretically can do in an infinite
18 number of ways. Our approach, which we think works
19 best is to take the wealth of information, all the
20 data the department gets and submit that available to
21 the public including community boards and council
22 members of which they have the means easily to filter
23 that to whoever they like. So the information,
24 again, to a very large extent, not entirely, and as
25 it relates to disapprovals within this legislation

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2 we're amenable to including that in the information
3 we provide. The information is available on our
4 website, and it's very simple I would say to access
5 the information. And again, you know, we have staff
6 at the Buildings Department who work with elected
7 officials and community boards everyday, and we're
8 always more than happy to work with them to
9 understand exactly how that--how they can go about
10 getting the information that they're looking for.

11 COUNCIL MEMBER KOSLOWITZ: I know but we
12 have--you know, we have staff and se don't have tons
13 of staff, and it's very, very difficult for us
14 sometimes. You know, we want to take care of our
15 constituents not be on the computer looking for all
16 different kinds of information. Whereas, if
17 something is being done that we get the information.
18 I mean we get other information. When they're
19 shooting a movie in the community, they--they send us
20 notice that they're shooting a movie. So why can't
21 we get the notice so we could take action. I can't
22 have somebody going on the computer every day to see
23 if there's a new structure going up. And the
24 information if I want to get in touch with a

25

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2 developer, it's very difficult to do that unless I
3 have the information before it's too late.

4 ASSISTANT COMMISSIONER WHALEY: Uh-huh.

5 So what's not very difficult is to use the means that
6 we currently provide to get that information, and
7 literally in a few clicks, a few seconds to a very
8 large extent, and we're willing to provide a little
9 more than the bill seeks, to get that information off
10 of our website.

11 COMMISSIONER RICK CHANDLER: And maybe
12 sent in a batch report to your staff once a week or
13 maybe it's a daily thing. It should show up in a--it
14 could probably show up in an email on one of your
15 staff emails.

16 COUNCIL MEMBER KOSLOWITZ: An email would
17 be fine. We check our emails every single day. So
18 an email would be okay.

19 COMMISSIONER RICK CHANDLER: So that
20 report that is generated could be probably sent over
21 on an automatic email. I think we could check, we
22 could look into that.

23 COUNCIL MEMBER KOSLOWITZ: That would be-
24 -that would be okay. So, you know, the information
25 of who's the developer and what's being built because

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2 right now there's a building being built on Queens
3 Boulevard that I have no idea what's going to be in
4 there.

5 COMMISSIONER RICK CHANDLER: So as
6 Patrick said, though, we're going--with a few clicks
7 you're going to see--you could see all of that
8 because that's what our database is doing now, and
9 thanks to the generosity of this Council and the
10 Administration, we're going to expand that to being
11 even more easily retrieved. So that will in the
12 coming year plus that will be easier to get. But
13 currently there now. You just have to click on a few
14 links.

15 COUNCIL MEMBER KOSLOWITZ: All right, but
16 I would appreciate email now.

17 COMMISSIONER RICK CHANDLER: We will
18 absolutely look into that.

19 COUNCIL MEMBER KOSLOWITZ: Okay. Thank
20 you.

21 CHAIRPERSON WILLIAMS: Council Member
22 Cornegy followed by Council Member Cabrera for a
23 follow-up question.

24 COUNCIL MEMBER CORNEGY: First of all,
25 I'd like to thank Council Member Vallone for that

2 very rich history lesson on all the unions. I think
3 that's--I think that's incredibly important to know
4 to help put this in context. So I really want to
5 thank you for that. Commissioner, at the risk of
6 beating a proverbial dead horse, I do have to mention
7 that, you know, in Brooklyn, the borough boards have
8 continually asked for this permit notice because
9 we're--we're doing this thing backwards, right, as
10 opposed-- We're having our constituents come to us,
11 and report new structures going up when we should be
12 reporting to the community that new structures are
13 going up. Right, there's that fundamental
14 difference. And then there's thing that, you know,
15 we a long time ago called professional courtesy,
16 right. And if we could just get that back, which was
17 kind of us working in tandem. You know, I'm very
18 excited about this progressive administration, and
19 there are little subtle nuances that we can do that
20 would make things go smoother, right. So if I could
21 just implore you. The email suggestion was a good
22 suggestion, but just a way of generating this
23 information on a consistent basis. Council Member
24 Koslowitz mentioned the fact that we get these
25 notifications everything from movie shootings. I get

2 way more than I'd like, but a lot of it's not
3 pertinent. This I'm telling you is pertinent. It
4 makes our offices more efficient. It makes the
5 community run as it should run, which is us giving
6 the information. So if you could consider getting
7 this done in any way, I would greatly appreciate it.
8 And I'm sure the City of New York and its
9 constituents as a whole would appreciate this
10 information in that way. And it's generated from our
11 offices. So if you could just remember that little
12 professional courtesy, it would be great.

13 COMMISSIONER RICK CHANDLER: We will
14 absolutely come to that. We'd certainly like to
15 provide the service level at least to what the
16 filming industry is providing.

17 MALE SPEAKER: [off mic] Could you speak
18 into the mic, please?

19 COMMISSIONER RICK CHANDLER: We'd at
20 least like to provide the service that the filming
21 and media industry is providing.

22 CHAIRPERSON WILLIAMS: Thank you, Council
23 Member Cornegy. Council Member Cabrera has a follow-
24 up question and then Council Member Rosenthal. We

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2 have been joined by Council Member Mendez I believe
3 and Council Member Levine.

4 COUNCIL MEMBER CABRERA: Thank you, Mr.
5 Chair. On the website that you refer to it says that
6 it lists major projects. So is that like--that's
7 kind of subjective. It is--is it all the projects?
8 Is it 90% of the projects, 50% of the projects? How
9 many projects are you talking about?

10 COMMISSIONER RICK CHANDLER: Every one.
11 Every project is listed there.

12 COUNCIL MEMBER CABRERA: So, it's not
13 major projects?

14 COMMISSIONER RICK CHANDLER: So, you're
15 right. It is subjective. We--we made it subjective
16 when we tested or wrote our testimony here, or when
17 we developed the legislation seven stories or more
18 100,000 square feet. Our website doesn't discern
19 that to the general public. Certainly our analysts
20 and programmers can do that as they go through our
21 data.

22 COUNCIL MEMBER CABRERA: I--I--let me
23 just reiterate a point that was made. I'll make it
24 real brief, and I just want to make a comment
25 regarding Vallone's bill. It's that does it take a

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2 lot of work from your end if you were to put this in
3 automatic? Like for example, I introduce a client
4 [sic] in that bill. And that's just, you know,
5 there's--there's no unions involved so to speak.
6 That information is already theirs aggregated
7 automatically. How much work would it take you for
8 this bill to come into fruition?

9 COMMISSIONER RICK CHANDLER: Which bill
10 of the three are we talking about?

11 COUNCIL MEMBER CABRERA: The Intro 349.
12 My bill. I'm sorry. Not my bill. Yeah, I'm sorry,
13 that's--

14 [background comments]

15 ASSISTANT COMMISSIONER WHALEY: So to
16 answer your question, we can't say with great
17 specificity how much resources we require. Clearly,
18 we take some level of resources. As all agencies,
19 the department has, you know, a finite budget, and we
20 have a lot of priorities within the agency. That's
21 probably the best answer I can give you. It would
22 certainly require resources that we would divert from
23 other--other things of the needs that the department
24 has.

25

2 COUNCIL MEMBER CABRERA: No, the reason I
3 mentioned it is because it was just mentioned that it
4 wouldn't take much to--and I don't know if you have
5 the capacity to put it automatically as emails to go
6 out, you know, in a timely fashion. I don't know if
7 you have that in your system, but--and if it--if it
8 is, I thought the commissioner mentioned that to my
9 colleagues earlier. Is that true that you could put
10 that in--?

11 COMMISSIONER RICK CHANDLER: As Patrick
12 already testified, we generate that report now. It's
13 there. It's automatic.

14 COUNCIL MEMBER CABRERA: So it's--

15 COMMISSIONER RICK CHANDLER: It's there
16 now. All you need to do is click on a few things.
17 It will be there.

18 COUNCIL MEMBER CABRERA: So that's the
19 part-

20 COMMISSIONER RICK CHANDLER: So we will
21 ask our folks if it's possible they could take that
22 report that's already generated and automatically
23 transfer it to an email center to send it to
24 someone's email address. We'll check that. I'm
25 pretty sure we can do that.

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2 COUNCIL MEMBER CABRERA: So essentially,
3 wouldn't that fulfill the need for this bill if you
4 were to do that?

5 ASSISTANT COMMISSIONER WHALEY: Perhaps
6 yes.

7 COUNCIL MEMBER CABRERA: I mean--

8 ASSISTANT COMMISSIONER WHALEY: We
9 welcome the opportunity to discuss it in more detail
10 with you, but yes.

11 COUNCIL MEMBER CABRERA: I mean we--if we
12 Would you be amicable that we could make sure that
13 this bill reflects what you're talking about. We
14 don't want to create a lot of work for you guys that
15 is an excessive amount of work, obviously, but
16 something that is functional. I'm looking for the
17 functionality so we could have it, you know, on an
18 ongoing basis and it makes it easier for you guys and
19 for us as well. Something to think about.

20 ASSISTANT COMMISSIONER WHALEY: I would
21 be happy to discuss it with you. I'm just thinking we
22 could be--we could be much more productive having a
23 discussion about something--enhancing something
24 that's already done rather than legislating it.

25

2 COUNCIL MEMBER CABRERA: Okay, the second
3 thing about Vallone's bill, it would seem to me that,
4 and please correct me if I'm wrong, you're already
5 having a problem with people coming up and addressing
6 an issue that really you have no power over. But if
7 you had it in the registry there, and you have a
8 disclaimer, it would actually help you because then
9 people will read that disclaimer every time they were
10 going to the covenant and it would say we have no
11 jurisdiction over this. And essentially, you are
12 able to send the message on a consistent basis in a
13 way that you don't have to bother with the phone
14 calls and, you know, and everyone knocking at your
15 door. Wouldn't that be more like helpful to do it
16 that way?

17 ASSISTANT COMMISSIONER WHALEY: It's--I
18 hear what you're saying. It's more than just our
19 concerns about the impression it creates and our lack
20 of authority to enforce restrictive covenants.
21 Again, this information is already publicly available
22 to all New Yorkers and folks who buy property. When
23 that transaction occurs is--is made--is made aware of
24 the restrictive covenant. So the department does not
25 see the value in providing this registry on our

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2 website, particularly given that the department plays
3 no role whatsoever in the enforcement of these
4 covenant restrictions.

5 COUNCIL MEMBER CABRERA: As a matter of
6 fact, that's the very line I would put there in red
7 bold letter--

8 ASSISTANT COMMISSIONER WHALEY: I
9 understand.

10 COUNCIL MEMBER CABRERA: --and blinking
11 lights.

12 ASSISTANT COMMISSIONER WHALEY: I
13 understand.

14 COUNCIL MEMBER CABRERA: I think it would
15 help. I mean just so big.

16 COMMISSIONER RICK CHANDLER: We
17 appreciate your faith in humanity, and just
18 understanding that. [sic]

19 COUNCIL MEMBER CABRERA: [laughs] I do
20 have faith. Thank you so much.

21 CHAIRPERSON WILLIAMS: Thank you, Council
22 Member. So, and I want to be fair and not set a time
23 for our other colleagues, but this conversation got a
24 little bit more excited than I thought it would be.
25 So I do want to set the clock for four minutes just

2 so people will know when they've reached that four-
3 minute mark and hopefully self-police themselves when
4 it comes to their--the time that we're spending on it
5 just so we can be respectful of the Commissioner's
6 time as well. So let's set the clock for four, and
7 you don't have to obviously stop at that moment, but
8 just so you know. Council Member Rosenthal and
9 Council Member Levine.

10 COUNCIL MEMBER ROSENTHAL: Thank you so
11 much, Chair Williams. Commissioner, thank you so
12 much for your comments, and Patrick for your staff
13 for being here and helping us understand your
14 concerns about these bills. I feel like there's
15 already movement forward. So I just want to add my
16 two cents on Council Member Cabrera's Bill Intro 49.
17 It strikes me that it's a tech issues, right? That
18 it's a matter of making the system-- As you say, you
19 already have a report that could hypothetically be
20 sent out. So it's a matter of making the system
21 capable of hitting send to certain addresses, right?

22 ASSISTANT COMMISSIONER WHALEY: Uh-huh.

23 COUNCIL MEMBER ROSENTHAL: Because I was
24 actually hoping to take it a step further, Council
25 Member. You know, I would very much appreciate

2 getting that information in my office, and we're
3 trying to set that up ourselves on our website. But
4 we have constituents who would also be interested in
5 getting that information. So I just want to put it
6 out there that if you are able to move it forward to
7 have that capacity on your computer system to
8 contemplate. It doesn't have to be a legislatively,
9 but just as you think about it, the ability of
10 residents to sign up to get that information. So
11 that they would know, you know, within a geographic
12 sphere whether or not something was happening.

13 I think there is so much development
14 going on now. People are--people are just wary.
15 Thank you, Commissioner.

16 COMMISSIONER RICK CHANDLER: My pleasure.
17 We'll look into that.

18 COUNCIL MEMBER LEVINE: The Chair stepped
19 out of the room and he's asked me to moderate myself
20 in speaking next. So I'm happy to quickly say a
21 word. Good morning.

22 COMMISSIONER RICK CHANDLER: Good
23 morning.

24 COUNCIL MEMBER LEVINE: I'm going to
25 reset the clock--reset the clock to 25 minutes

2 please. [laughter] Just kidding. I'll be brief.

3 Okay, I'm going to get a little better angle here.

4 Thank you. I really want to compliment Council
5 Members Vallone and Cabrera for these two disclosure
6 bills, and I want to ask about a related issue, which
7 may not be covered, but it would be great to get your
8 input on. We're seeing in Midtown and actually all
9 over the city various savvy developers who are
10 acquiring adjacent plots, and rolling up air rights
11 to be able to produce as-of-right very, very tall
12 buildings. Buildings, which I think are too tall,
13 and we talked about ways in which we wish to limit
14 that height in Midtown and elsewhere, but in my
15 district there's word that Extell is acquiring a
16 bunch of adjacent plots, and I'm told there's a way
17 to actually figure that out through publicly
18 accessible databases, but it takes an intrepid data
19 savvy person. And our community boards are not
20 receiving notice of these types of projects really
21 until they are fairly complete. Where essentially a
22 developer says surprise, we're building an 80-story
23 tower. Not only do you not have the ability to stop
24 it, but you have no input even on shaping the
25 project. And I'm wondering whether anything in these

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2 bills or anything that's in the works in your
3 department would address this problem, and would
4 inform community board, elected officials, the public
5 when people are acquiring through adjacent lots these
6 massive air rights?

7 COMMISSIONER RICK CHANDLER: No, we have
8 nothing in our system that we do that.

9 COUNCIL MEMBER LEVINE: Would you agree
10 that this leaves a gap in public disclosure?

11 COMMISSIONER RICK CHANDLER: I'm not sure
12 that's for me to comment on Council Member. You
13 know, from our--the culture in our agency is if it's
14 as-of-right then our job is to facility what's as-of-
15 right. If it's not as-of-right then you need to seek
16 the other forms that are available to you to present
17 your case. So, you know, our--again, our culture and
18 our mandate is you--we're here to see what it is that
19 the law says that you can do, nothing less and
20 nothing more. And so we really try to be absolutely
21 neutral on those issues.

22 COUNCIL MEMBER LEVINE: All right. Well,
23 I think there might be other legislation in the works
24 that more directly tackles this, something that I

25

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2 think I and my colleagues care a lot about, and I
3 think you'll be hearing more from us.

4 COMMISSIONER RICK CHANDLER: Sure.

5 COUNCIL MEMBER LEVINE: Thank you very
6 much, Commissioner.

7 COMMISSIONER RICK CHANDLER: Sure. My
8 pleasure.

9 COUNCIL MEMBER LEVINE: And now I will
10 turn the mic back. He's back.

11 CHAIRPERSON WILLIAMS: Thank you very
12 much. Commissioner, back to Intro No. 49, the email
13 you will be able to filter it out?

14 COMMISSIONER RICK CHANDLER: We said we'd
15 look at it, if we're able to do it.

16 CHAIRPERSON WILLIAMS: Well, if you were
17 able to do it, it would be per council member, it
18 would be each council member's district?

19 ASSISTANT COMMISSIONER WHALEY: I think
20 sitting here it would be a little premature to say
21 exactly what that would look like, but again, we
22 welcome the opportunity to discuss with the Council
23 Member and the committee what that would look like.

24

25

2 COMMISSIONER RICK CHANDLER: And we
3 hesitate to get into a council district. That really
4 complicates things in terms of the programming.

5 CHAIRPERSON WILLIAMS: You said you have
6 community board.

7 COMMISSIONER RICK CHANDLER: Community
8 board we prefer to do because it's already
9 established.

10 CHAIRPERSON WILLIAMS: Okay. Because I
11 mean at least a minimum, you know, of community
12 boards would--would be helpful I guess. Every agency
13 that we try to get information from will tell us the
14 information is on a website. So that would mean that
15 each council member would have to go through hundreds
16 of agencies every month to see what information is
17 needed for that particular district as opposed to the
18 agency filtering it and sending it to us. It would
19 seem to be the best way for this information to flow.
20 And so, what you're saying makes sense. I understand
21 it but we hear it from every agency. I mean we just
22 have to have this information. As was mentioned, our
23 constituents will come and tell us and then they must
24 from our know that the structure or whatever has come
25 in and we have to say well it's as-of-right, blah,

2 blah, blah. But the fact of the matter is the
3 information is out there as you're saying. And we
4 think it's probably more incumbent for the agencies
5 to send it to us in a form that you can as opposed to
6 us having to dig through every single agency. So
7 hopefully that the email thing works and we'll
8 address this. Otherwise, we have to find a way to
9 get the information. I think it's better, as you
10 mentioned, if we can work together on something that
11 already exists instead of trying to force something
12 else. With 280--hold on a second. With 280, it's
13 kind of similar kind of framing. Somebody has to do
14 it. So I don't know if we can speak to the
15 Department of Finance. My guess is like most
16 agencies they'll push back on some of the things
17 that--some of the same reasons that you're saying.
18 But I think it's--as mentioned, I don't think it's
19 given at each sale. So that information is not
20 always forthcoming. And again, somebody has to dig
21 through. You trying to find it? You trying to find
22 it?

23 ASSISTANT COMMISSIONER HILL: Yes.

24 CHAIRPERSON WILLIAMS: Oh, yes. Good,
25 great. Um, can you do it?

2 ASSISTANT COMMISSIONER HILL: Yeah, hi,
3 my name is Annette Hill. I'm the Assistant
4 Commissioner and the City Register for New York City
5 and I work wit the Department of Finance. Currently,
6 when a deed comes in, if there is a covenant in the
7 deed, it's listed in the body of the deed. So
8 there's no way of saying that what that deed contains
9 unless somebody actually goes in and reads the deeds.
10 The deeds are available on ACRIS, as mentioned
11 before, by the property block and lot number, by the
12 person's name, but we don't--do not list deeds by
13 types of deeds meaning if it's restricted covenant
14 deed. It's not how it's listed. It's just listed as
15 a deed.

16 CHAIRPERSON WILLIAMS: I think based on--
17 we're here because whatever is being done is the
18 information not getting to folks. Folks from my
19 understanding very necessary to find information. It
20 seems like it might be even hidden under the term
21 'deed' but you have to go find it. You might not
22 know where it is. I think a registry is needed of
23 these restricted covenants. I don't know who will
24 take the responsibility for doing it, and it would be
25 great if we can figure something out assuming that my

2 colleagues on this committee and Council as a whole
3 agree with me and Council Member Vallone. We would
4 have to find some place to try to make it go. So it
5 would be good if we could work out something that's
6 amicable for everybody. Because I think saying that
7 we're basically going to keep it the status quo is--
8 is not going to work because it hasn't been working.
9 So my hope is that there can be some discussion of
10 where we go. If it's not DOB then it's Department of
11 Finance and who will be able to put it together. I
12 think that is some place that we definitely have to
13 get to. I know it's difficult, but I think there--
14 we've heard a lot of reasons why we need to get it
15 done. So that's just kind of my comment. No
16 additional questions.

17 [pause]

18 CHAIRPERSON WILLIAMS: Thank you so much
19 for the testimony. We appreciate it and thank you,
20 colleagues.

21 COMMISSIONER RICK CHANDLER: Thank you
22 very much.

23 CHAIRPERSON WILLIAMS: [background
24 comments] We have one panel. We also have some
25 [laughter] testimony for the record. Queens

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2 Community Board 11 and REBNY. We Maria Becce or
3 Becce. I'm sorry Becce, Broadway-Flushing
4 Homeowners' Association; Edith Terri Pouymari? Did I
5 get that right? All right. Thank you. We can--we
6 can wait another second and have the Commissioner
7 leave, and Rhea O'Gorman.

8 [background comments, pause]

9 CHAIRPERSON WILLIAMS: So, I understand
10 Rhea O'Gorman will not be testifying if I understand
11 correctly.

12 FEMALE SPEAKER: Yes.

13 CHAIRPERSON WILLIAMS: Yes, we'll very
14 probably set it for three minutes. Thank you very
15 much for coming out to testify. If you could each
16 raise your right hand, please. Do you affirm to tell
17 the truth, the whole truth, and nothing but the truth
18 in your testimony before this committee, and to
19 respond honestly to Council Member questions?

20 FEMALE SPEAKER: I do.

21 CHAIRPERSON WILLIAMS: Thank you so much.
22 You have three minutes each for your testimony. It
23 doesn't include any questions that council members ma
24 have. You can begin in the order of your preference.

25

2 MARIA BECCE: [off mic] Good morning. My
3 name is Maria. Becce. Good morning, my name is Maria
4 Becce.

5 COUNCIL MEMBER VALLONE: Just click the
6 red button there, Mary. There you go. If we can't
7 hear you then--are you on the mic there? Give it a
8 test there. Now, you're good.

9 MARIA BECCE: Is that better? Yeah.
10 Good morning. I think it's still morning. (laughs)
11 My name is Maria Becce. I'm the Second Vice
12 President of Broadway-Flushing Homeowners'
13 Association here to present a statement on behalf of
14 Robert Hanophy, Jr., President of the Association.
15 I'm try and speak as quickly as I can, and I have
16 already submitted the report. So I'll speak quickly.
17 On behalf of the members of the Broadway-Flushing
18 Homeowners' Association, we are pleased to submit the
19 statement regarding District No. 19, Council Member
20 Paul Vallone's proposed legislation Intro 280, a bill
21 requiring the Department of Buildings to maintain a
22 publicly available registry of restricted covenants
23 contained in certain property deeds. The
24 neighborhood of Broadway-Flushing located on the
25 northeast corner of Queens County New York comprises

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2 more than 1,300 homes and approximately one-half of

3 them have a restricted deed that runs in perpetuity

4 with the property known as the Rickert-Finlay

5 Covenant of 1906. The association's boundaries can

6 be found at our website. They extend from Northern

7 Boulevard on the south to 29th Avenue on the north,

8 from 155th Street on the west to 170th Street on the

9 east. Intro 1--Intro 280 is a simple and inexpensive

10 measure that will be--will be of great value to

11 residents of Broadway-Flushing, and similar

12 communities and also to developers and others who

13 propose residential or commercial construction within

14 these communities. The City of New York and its

15 Department of Buildings are not legally authorized to

16 administer or enforce our Rickert-Finlay Covenant.

17 Only private legal action initiated by an individual

18 organization representing the neighborhood can

19 enforce a covenant. Under the terms of Intro 280,

20 however, DOB would maintain a publicly available

21 registry providing notification that these specific

22 parcels are subject to covenants in the deeds. That

23 notification will be of great value to prospective

24 developers as well as individual homeowners reminding

25 them to inform themselves about these covenants

2 before finalizing their building plans. Intro 280 is
3 an important first step in brining attention to
4 restricted deeds. This simple step will raise
5 awareness of restricted covenants, and begin to
6 improve communication between prospective builders
7 and homeowners, save months or years of delay and the
8 huge cost associated with such delays. It is a first
9 step to help the Broadway-Flushing Homeowners'
10 Association funded by membership dues and voluntary
11 contributions from the enormous effort, cost and time
12 consuming litigation to enforce the terms of our
13 covenant against those who elect to ignore or who
14 assert that they are unaware of the existence of the
15 covenants.

16 The community of Broadway-Flushing like
17 our sister neighborhoods of Westmoreland and Douglas
18 Manor was developed in whole or in part by the
19 Rickert-Finlay Realty Company in the first two
20 decades of the 20th Century. At that time, there
21 were not municipal [bell] zoning rules in effect. I
22 will job to the last couple of paragraphs. While we
23 prefer that Intro 280 be amended to allow the
24 Department of Buildings to search the proposed
25 registry prior to issuing a permit, and if any

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2 covenant be violated, the permit request be denied,
3 we understand the intent of Intro 280. However, it
4 is most important the City Council seriously consider
5 a revision to Intro 280. It should definitely be
6 enhanced by requiring the Department of Buildings to
7 place a flag in its online database identifying
8 parcels subject to restricted covenants. Therefore,
9 we submit our appreciation to Council Member Paul
10 Vallone for proposing this legislation as a first
11 step in raising awareness of enforceable restricted
12 covenants that exist to protect our neighborhoods. We
13 respectfully request that the Committee on Housing
14 and Buildings and the entire City Council support
15 Intro 280 and the above suggested enhancement to
16 place a flag in the database. Thank you very much.

17 CHAIRPERSON WILLIAMS: You're welcome.

18 TERRI POUYMARI: The red light go on or
19 off? Can you hear me?

20 CHAIRPERSON WILLIAMS: Yeah, we got you.

21 TERRI POUYMARI: Okay, thank you. My
22 name is Terri Pouymari. I represent the Auburndale
23 Improvement Association established in 1905 and
24 celebrating our 100th year of incorporation this
25 month. We pre-dated Rickert-Finlay by one year I

2 believe. Mr. Vallone said 1906. Our territory
3 includes a large portion of the Rickert-Finlay
4 Covenant area. Many houses in the area are in the
5 historic district, and that would be the Broadway-
6 Flushing area. But a large section beyond their
7 immediate area goes down to Northern Boulevard, and I
8 happen to live in a house that is in the Rickert-
9 Finlay area. I bought it about 40 years ago, and I
10 never knew anything about a covenant. So I wasn't
11 told anything at that closing or whatever, and I'm
12 sure that's happened to many others. And I'm sure
13 there are people today who don't want to hear about a
14 covenant, and if it's lost that's fine because they
15 want to develop it without the restrictions.

16 In our territory, new owners have come in
17 and if they knew, tried to ignore or refused to
18 recognize that their property had restrictive
19 covenants. The community is being undermined by the
20 threat of teardowns with replacement that threaten to
21 diminish the character of our area. The validation
22 and education and the enforcement of the use of
23 covenants will protect the nature of the entire
24 community under the Rickert-Finlay Covenant and even-
25 -may even carry over to the neighboring houses.

2 Over the years, the sale of properties
3 even outside the historic district sometimes meant
4 that no one knew or understood the covenant.
5 Creating a registry in the Department of Buildings
6 with covenant restrictions is and can be problematic
7 without the ability to enforce the covenants and
8 enforce compliance. The need to understand the value
9 of the restrictions can be brought to the community
10 by the associations. But regular permits from the
11 DOB often are not inspected or enforced even after we
12 send complaints, and that would be for zoning or
13 compliance. And so, the DOB has to come up with a
14 cooperative way to search the deed registry before
15 issuing a permit for properties that must comply to
16 the restrictions. And make sure that the plans do
17 not ignore the terms when they're giving out a
18 permit, and that may mean inspecting the results of
19 the property as the permits are in operation. And as
20 you would shut down the permit, pull the permit
21 temporarily until there's compliance in zoning or the
22 plans or whatever under the DOB, I think that that
23 would have to happen with the compliance or the
24 Rickert-Finlay or other restrictions or perhaps there
25

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2 should be giant maps [bell] with those restrictions
3 in the Department of Buildings offices. Thank you.

4 CHAIRPERSON WILLIAMS: Thank you. Now,
5 we've been rejoined by Ms. Rhea O'Gorman?

6 RHEA O'GORMAN: Yes, Sir.

7 CHAIRPERSON WILLIAMS: Is that correct.

8 RHEA O'GORMAN: I apologize, but I had to
9 check in with my office.

10 CHAIRPERSON WILLIAMS: That's okay.

11 COUNCIL MEMBER VALLONE: We want to keep
12 you employed Rhea.

13 CHAIRPERSON WILLIAMS: Station Road Civic
14 Association.

15 RHEA O'GORMAN: Yes.

16 CHAIRPERSON WILLIAMS: If you could
17 please raise your right hand?

18 RHEA O'GORMAN: Sure.

19 CHAIRPERSON WILLIAMS: Do you affirm to
20 tell the truth, the whole truth, and nothing but the
21 truth in your testimony before this committee, and to
22 respond honestly to Council Member questions?

23 RHEA O'GORMAN: I do.

24 CHAIRPERSON WILLIAMS: Thank you. You'll
25 have three minutes for your testimony, and you can

2 being. Hopefully you--there are two in your last
3 name.

4 RHEA O'GORMAN: Yes.

5 CHAIRPERSON WILLIAMS: Yeah. Okay.

6 RHEA O'GORMAN: Okay. Yes, my name is
7 Rhea O'Gorman. I and the President of the Station
8 Road Civic Association. We're the newcomers to the
9 civics in Queens. We're approximately 10 years old.
10 The area that we picked to bound our civic is
11 entirely within in Rickert-Finlay area. It was
12 thought that that was one good way to demarcate our
13 territory. There are a lot of misperceptions and
14 mischaracterizations. I think about Rickert-Finlay.
15 We're not elitists. We're diverse. We're middle-
16 class. We're inhabited by families of all types who
17 make up the fabric of this city. We're civil
18 servants, construction workers, lawyers, doctors,
19 nurses, small business owners, office workers and
20 clergy. We have chosen to live in a one-family home
21 area, and we really work very hard to keep it a very
22 nice place to live. I bought my house approximately
23 21 years ago, and it is in a Rickert-Finlay area. I
24 was never told either through a title search or at
25 the closing that there was a restrictive covenant on

2 my property. I think it's important that that
3 information is out there. It would tend to ratchet
4 down some of the hard feelings that happen once
5 people buy into it, and there is an enforcement
6 action taken or people just try and approach a new
7 owner to tell them about the covenant. I think the
8 bill is a first step. It's a very tiny, tiny baby
9 step. The Department of Buildings is a logical place
10 for the information to be stored because at least in-
11 -at least--the covenant is tied inextricably to the
12 zoning at this point because when the last rezoning
13 was done, they had it mirror the covenant. So our
14 zoning did stay one-family on. In fact, we--the
15 Station Road area is the only area on Northern
16 Boulevard that retains its residential zoning
17 designation, and we--we deal with the variances, but
18 it is important that they be linked and Buildings is
19 the place to do that. The fact that there isn't
20 going to be any sort of computer link, that this
21 seems to be--it's going to be a little musty book in
22 a corner and only available 9:00 to 5:00 when
23 Buildings is open is almost an impossibility n this
24 computer age that they can't find a way to red flag
25 at least to say that this property has a deed

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2 restriction. See Finance, however they want to word
3 it. It's the computer age and this how people
4 research buying a house is they go to these sites to
5 see what's there, and for this not be accessible to
6 the public that way will greatly diminish the effect
7 of this bill.

8 I hope that it's passed. I would be able
9 to give it more support if it had things like a
10 computer designation. [bell] And I do hope that
11 someday we see a second step with Department of
12 Buildings or any other city agency that these
13 covenants should not--especially where they're upheld
14 repeatedly in New York State courts that they should
15 not be allowed to flounder. And it really is unfair
16 that it's the homeowners or civics financial burden
17 to enforce it.

18 CHAIRPERSON WILLIAMS: Thank you so much.
19 Thank you all for taking the time out.
20 Unfortunately, not a lot of people do this. So it's
21 great that you came out to let us hear your voices.
22 Ms. O'Gorman, I think one of your comments really
23 highlights the difficulties of our job in convincing
24 our constituents that we are working. I think you
25 said this is a really tiny baby step. And if you

2 were here you saw how difficult it was to even get
3 that tiny baby step agreed to. So thank you for
4 highlighting that, and you can pass the word on that
5 we're working hard particularly Council Member
6 Vallone. That it is much more difficult than
7 sometimes people anticipate. But I'll pass it over
8 to Council Member Vallone.

9 COUNCIL MEMBER VALLONE: Thank, Chair
10 Williams. Yeah, it's--it's how far we're going to
11 take it, and I can't thank you enough the three of
12 you taking time out of your busy days to come. The
13 personal testimony is always the most telling for all
14 of us on the committee, and your testimony as to
15 buying the homes and not being told. Sometimes it's
16 just us saying that. When the folks come in and tell
17 their stories--and the question I have is because
18 there isn't enforcement by any city agency, has there
19 been times that you have had to hire lawyers and take
20 your own funding to go out and try to enforce these
21 covenants?

22 TERRI POUYMARI: You guys do it. We
23 can't afford to. We're a small association. We have
24 the smallest, you know, number of homes within our
25 boundaries. We're actually--we actually exist within

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2 the Auburndale territory as well. But it--it is for
3 us an impossibility to do that so--

4 MARIA BECCE: May I please respond to
5 that?

6 COUNCIL MEMBER VALLONE: Yes, it's for
7 all. (sic)

8 MARIA BECCE: I had some extremely direct
9 association with that. I was very privileged when I
10 first bought my home 35 years ago that there was
11 still some founding members who were still active in
12 the Broadway-Flushing Homeowners' Association. And
13 when I say active, I mean very active. So I learned
14 from the best, and during that course of that time
15 when I--we first bought our home I was--I had
16 volunteered to serve on the Executive Committee. I
17 was the Recording Secretary, and we came across our
18 first court case, and the problem was they--the
19 zoning would have allowed a single-family home to be
20 demolished and multi-family home to be put up in its
21 place. It ended up being both a zoning problem and a
22 covenant problem. There was an error to the zoning
23 map, and there was a woman named Marjorie Forigno
24 (sp?) who spent about five years or her life
25 correcting the zoning map. And Claire Schulman (sp?)

2 at the time told her that would be an absolutely
3 impossible fete. It will--it will never happen and
4 Marjorie loves a challenge, and--and she--and we got
5 the zoning map changed. That house also was on the
6 covenant. So we had those two things in our favor,
7 but all of these actions require private legal action
8 that's paid for by the association. And the reason
9 why we had the funds at that time was the association
10 has been in existence for more than 50 years. And
11 those \$7.50 and \$10.00 dues add up over time when you
12 don't need them, and here we are. We came upon a
13 time that we did.

14 But I want to give you a more current
15 situation. We had a house on 35th Avenue and 158th
16 Street who decided to erect a mall, which is
17 prevented. Which is prohibited by the covenant.
18 Because he built a pool in his back yard, a sun
19 control. In order to have a pool, you have to have a
20 fence. You can't have a fence because you're on the
21 covenant. So we said to the gentleman who bought the
22 house, please do not erect this wall. Please go and
23 check your covenant. You are covered. You are not
24 permitted to build a wall. He said I don't care very
25 much about your covenant. I choose to ignore it.

2 I'm going to put up my wall. I'm going to put up my-
3 -we're going to build our pool. So we said, okay,
4 unfortunately, we're going to have to see you in
5 court then to enforce our covenant. That court case
6 went on for about six years. It cost our association
7 \$50,000. It basically depleted almost all of our
8 treasury. We don't like to let everybody know about
9 that. We don't want them to know that we're--that
10 we're vulnerable. We have now I'm very happy to say,
11 we've been--we've replenished that with voluntary
12 contributions to our legal and reserve fund.

13 That case went--that's where I was about
14 to finish reading when the bell went off, but I want
15 to tell you that Broadway-Flushing Homeowners'
16 Association, and we work very closely with all of our
17 local civics and all of our elected officials. WE
18 are very proud to say that after all--more than 100
19 years, we have an enforceable covenant that remains
20 in the area of Northeast Queens. And I have to tell
21 you that we recently upheld the covenant by a
22 decision of the Appellate Division. The Second
23 Department of New York State Court of Appeals, which
24 declined to disturb the Appellate Division's
25 findings. So when we have the next situation on 35th

2 Avenue where a homeowner bought a house, and bought
3 the house corner property, tore it down. Then he
4 applied to subdivided the property. The Department
5 of Buildings carrying out their--their laws, and they
6 were 100% correct, allowed them to subdivide. They
7 would have allowed them to subdivide that property.
8 The covenant superseded it. Again, we said, Please
9 sir, don't knock down your house. Don't do this,
10 don't do that. You are covered by the covenant. You
11 have corner property. You have even more
12 restrictions than a house normally covered. You're
13 in the middle--in the middle of the block. He said
14 take me to court. I'll do what I want. He went to--
15 he took the house down, immediately applied to
16 subdivide. The Department of Buildings said you're
17 fine. You can do it. We said no you can't. We saw
18 him in court again. The court decided in our favor
19 because we had an enforceable covenant upheld
20 recently by the Appellate Court. That property
21 unfortunately is still undeveloped. It's a big--it's
22 an eyesore in the neighborhood. It's--it's empty
23 lot.

24 COUNCIL MEMBER VALLONE: Now these--these
25 are the stories I--I think that are--are what led to

2 this, and I think that's what--when we started the
3 hearing, I tried to give a little bit of the history
4 that if it wasn't for 1906 Rickert-Finlay Covenant
5 there wouldn't have been a Broadway-Flushing area to
6 defend today because their zoning wasn't up to speed,
7 nor will it ever really be. So for all the work that
8 was done, and that's why I think these little steps.
9 And by the way, there could be some amendments. So
10 we're working on some ideas, a 9:00 to 5:00 thing and
11 that's going to be trashed. Things like that. You
12 know, there's--it's amazing when you submit something
13 and where it winds up at the end and how it go there.
14 So we'll get back to that, and there's another that
15 we're working just so you know, that we've talked
16 about it all the different civics is putting the onus
17 on the architect-contractor to self-certify that he
18 or she has checked the property, the work that's
19 going to be done whether there's a restrictive
20 covenant or not. Again, it's not putting the onus on
21 the Building Department. Now, we're going on the
22 private side, that the contractor and the architects
23 prior to pulling it will have certified. And they're
24 going to have to take a second thought before they
25 put their signature on that, that application.

2 Because now they're saying if the application is
3 beyond what the covenant allows, we have case. So
4 thee are things that we're trying to do. Whether it
5 happens on this bill or our next steps, we'll keep
6 you appraised and I thank all of you for coming down,
7 and I know there is so much testimony here. It will
8 be written right into the record, the community
9 boards and the outlying civics also. So thank you
10 all three. Rhea, do you have one last comment?

11 RHEA O'GORMAN: One--one question and
12 point. It doesn't say in the bill will there be a
13 fee for filing the covenant?

14 COUNCIL MEMBER VALLONE: No, we didn't
15 put any fee for that?

16 RHEA GORMAN: Okay. They can't. If the
17 bill gets passed, Buildings can't make a fee for it?

18 COUNCIL MEMBER VALLONE: No, we--we don't
19 have any provision on that to make any money on this.
20 [laughs] That's the last thing I want to do is--is
21 create--have someone who's paying more money. We
22 don't want that.

23 MARIA BECCE: And we--we really thank you
24 very, very much for bringing awareness to this
25 problem, and we hope that it will be worked out.

2 COUNCIL MEMBER VALLONE: Thank you.

3 CHAIRPERSON WILLIAMS: Thank you very
4 much for the hearing, and we do have someone,
5 Patrick, waiting from the Department of Buildings
6 here listening to those great stories. So thank you,
7 everybody and the hearing is now adjourned.

8 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date SEPTEMBER 17, 2015