

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON HOUSING AND BUILDINGS
Jointly with the
COMMITTEE ON FINANCE

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November 22, 2016
Start: 10:50 a.m.
Recess: 1:41 p.m.

HELD AT: Council Chambers-City Hall

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

COUNCIL MEMBERS:
Stephen Levin
Eric Ulrich

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

Miss Eisenberg
Resident
NYC

Nancy Sher
Tenant
125 Court Street
Brooklyn, NY

Benjamin Dulchin
Executive Director
Association for Neighborhood and Housing
Development (ANHD)

Ellen Davidson
Staff Attorney
The Legal Aid Society

Yolande Nicholson
Financial Services Attorney
Brooklyn, NY

Terri Davis-Merchant
Senior Legislative Analyst
Government Relations Group
NYC Department of Housing Preservation
and Development (HPD)

1
2 CHAIRPERSON WILLIAMS: [off mic] So we
3 have... and then David, you can come up. Sorry, you
4 can... Where's Nancy?

5 [Pause]

6 CHAIRPERSON WILLIAMS: Can one of the
7 sergeants grab Miss Sher? They said she's next door.
8 She's in the restroom or she's next door?

9 [Pause]

10 CHAIRPERSON WILLIAMS: Nancy Sher?
11 [background voice] Oh, I see.

12 [Pause]

13 CHAIRPERSON WILLIAMS: Can you please
14 raise your right hand? Do you affirm to tell the
15 truth, the whole truth and nothing but the truth in
16 your testimony before this committee and to respond
17 honestly to council member questions? You'll each
18 have three minutes for your testimony and you can
19 begin at whatever your preference.

20 [Pause]

21 MISS EISENBERG: Oh, okay.

22 CHAIRPERSON WILLIAMS: Sorry, just hold
23 for one second. I'm sorry.

24 MISS EISENBERG: Okay, I'm going to tell
25 you a very short story, which I think is at the crux

2 of the matter. Now my grandson was having dinner one
3 night and I went to him and I said, "I have a
4 question to ask you." I put my fists like this on
5 the table and I said, "This hand collects
6 information, but they don't verify the truthfulness
7 of the landlord's statements. Do you understand what
8 verify is?" And he said, "Of course, Grandmother.
9 It means to check." "And this hand uses this
10 information and gives away a lot of money; over a
11 billion dollars. What do you think's going to
12 happen?" He was nine years old and he took about
13 four seconds to come up with an answer. He said,
14 "Oh, Grandma, they're going to cheat. They're going
15 lie. They're going to lie over here."

16 Okay, and that's the situation you find
17 yourself in because the rent registrations have no
18 basis, many of them. Many of them; in fact, most of
19 them are fiction. You don't know; you have no way of
20 knowing, especially when it comes to 421-a. A simple
21 solution would be since the landlord must keep
22 according to the law, the first rent collected and
23 the first check collected, why doesn't HPD get this?
24 Okay, why are landlords allowed to change
25 registrations when they feel like? Why did HPD

2 testify at a landlord-tenant hearing against.. it
3 happened to be 125 Court Street and the head of the
4 benefits program testified and said very clearly; she
5 said, "Well, we don't look at the individual
6 registrations. We don't look at the individual rents
7 to see if they're true. We look at the aggregate,"
8 and in this case, it was I believe \$1,150,000.00 a
9 month. So how big of an incentive do you have to
10 have people cheat?

11 So the state has absolutely no idea if
12 any of the rent registrations are true or not because
13 they have no proof. They have a form that's been
14 filled out and that's it and so this legislation is
15 inadequate because it doesn't get to the heart of the
16 problem. So if you want to check and see if people
17 have gotten file certificates, they don't actually
18 check on the rent registrations and so therefore, you
19 have a lot of people in this city who are suffering
20 because they're paying way too much under the rent
21 stabilization on 421-a buildings. There's a lot of
22 thieving going on, and I live in Williamsburg and
23 believe me, we've got lots of landlords who are doing
24 it. Some who have sued; most people decide not to
25 sue and just move, and that also brings up the 20%

2 vacancy decontrol; that when you vacate an apartment,
3 you get a bump up, which encourages the landlords to
4 get people out, because 20% is a lot better in the
5 last couple years than 0%. So it's up to you to
6 change the system so that you have something that's
7 fair for everybody.

8 NANCY SHER: Hi, my name is Nancy Sher.
9 I live at 125 Court Street. I've been here once
10 before and told you my story, ProPublica has told you
11 my story and nothing has changed. As far as I'm
12 concerned, the system is rigged. I think HPD is a
13 zombie agency and I think in tandem with HDC,
14 Department of Finance and DHCR, they have wrecked so
15 much misery on so many people and the only people to
16 benefit are the real estate.

17 I'm going to abandon my original
18 testimony because I found the HPD and Department of
19 Finance testimony so fantastic that I actually felt
20 like I was living in an alternative universe.
21 Nothing they said has resonated at 125 Court Street,
22 but then again, Two Trees is a big developer with the
23 sophisticated lawyers and the resources to run
24 roughshod over all their tenants. She said you know,
25 all affordable living tenants were overcharged. They

2 tried to evict an 86-year woman using falsified
3 evidence. These people have not gained the public
4 trust and I would like to know if HPD and Department
5 of Finance are going to go and try and claw back over
6 10 years of misbegotten tax benefits that they've
7 never qualified for.

8 In addition, they set the initial rent;
9 HPD. In the case of 125 Court Street, they issued an
10 initial rent schedule, but it was fraudulent because
11 they didn't have the information they needed. I mean
12 Two Trees lied. Why wouldn't they lie? There's no
13 penalty for lying or misrepresenting or fraud.
14 There's no penalty. So, they said like their
15 commercial rents were \$1.18 per square foot. That
16 fit into the statutory formula. My apartment alone;
17 I've had C Violations, which means hazardous; repair
18 within 24 hours because of broken floors and toxic
19 mold since 2011, and I had children living with me
20 and you can't find those violations on HPD site
21 anymore; not because a floor has been repaired. No,
22 because HPD calls Two Trees and, "Oh, yes, we
23 repaired that." They don't verify, so they take it
24 off. It's just... they changed over 2,000 rent
25 registrations at DHCR unsupervised and created a

2 whole other fantasy and story about 125 Court Street.
3 My neighbor, who was in on this fight with me, was
4 just forced to move. His rent went from \$3,700.00 to
5 \$6,700.00 in one lease and the court said yes, that's
6 okay.

7 You know I just really feel the system is
8 rigged and we're dealing with corruption,
9 incompetence, collusion and racketeering, and I thank
10 you, Mr. Williams, for your efforts on behalf of
11 tenants you know, to try and get to the bottom, but
12 it's a cesspool. It's a cesspool and hopefully
13 Bharara will shine; will be successful. [background
14 voices, laughter]

15 BENJAMIN DULCHIN: So thank you, Chair
16 Williams and other council members. I hope you don't
17 mind if I address myself directly to the gentleman on
18 your left, who, because he has the gavel, is clearly
19 the one in charge of the hearing. [laughter]
20 Hopefully, he will respond.

21 So my name is Benjamin Dulchin. I'm the
22 executive director of the Association for
23 Neighborhood and Housing Development. We're the
24 umbrella organization of 101 neighborhood-based
25 affordable housing economic development organizations

2 across all five boroughs, and I'm here today to
3 testify in favor of Intros 1359 and 1366. You know,
4 we all know the problems with oversight enforcement
5 of 421-a; the ProPublica stories were unfortunately
6 confirmed and what we already knew to be the case,
7 which is that the city was you know, lax, to put it
8 nicely, in their enforcement of 421-a affordable
9 units.

10 I listened with great interest to HPD's
11 testimony this morning and to (**inaudible**) testimony.
12 It is certainly encouraging to hear that since 2014
13 they have been putting in place some measures to try
14 to understand and track and enforce where there are
15 affordability benefits within 421-a, but I think the
16 fact that in a program that started in the late
17 1970s; that for the first time in 2014 there's really
18 any kind of attempt at enforcement speaks volumes for
19 the problem and really calls out for the need for
20 some kind of structural audited enforcement, as is
21 proposed by these city council bills. We simply
22 cannot leave it up to the interest of any one
23 administration or other administration what their
24 level of interest is going to be to enforce 421-a.
25 It has to be required by law. There has to be a

2 mandated oversight. Even if the program does not
3 come back; even if it remains suspended, which is
4 probably unlikely, we're going to have 421-a
5 buildings on the books for the next 25 years, and
6 probably long after that. Even if we sort of think
7 that the current steps being taken by this
8 administration are an improvement, nothing is the
9 same, but the administration or the one after that
10 will effectively oversee the affordability benefits
11 and so the city council can and must step in with
12 these (**inaudible**) approach of requiring audits and
13 oversight.

14 Just sort of by way of a little bit of
15 context; I mean just what I think what folks already
16 know, the need to maintain some kind of public
17 affordability benefit is absolutely crucial, just
18 give the overwhelmingly ineffective nature of the
19 program. In an ANHD study in fiscal year 2014, New
20 York City deferred about \$1.2 billion in that year
21 alone on 421-a benefits, covering some 153,000 units
22 overall, of which about 12,500 were affordable in any
23 measure. What you end up with then is a cost per
24 affordable unit that is about five times what any
25 other program in New York City costs. It is [chime]

2 by a factor of five the most ineffective most
3 expensive affordable housing program, if you can call
4 it that, in this city and to not even enforce the
5 most minimal affordability benefits is really a crime
6 against the public. Thank you.

7 ELLEN DAVIDSON: [off mic] Where are we?
8 I want to say good afternoon. Just checking the
9 time. My name is Ellen Davidson and I am a staff
10 attorney at The Legal Aid Society and I want to start
11 by saying thank you to Chair Ferreras-Copeland; to
12 Chair Williams and also to Chair Williams and Council
13 Member Levin for their bills that would require
14 auditing of 421-a buildings to ensure compliance with
15 both rent registrations and affordability
16 requirements.

17 I've written my testimony. We support
18 the bills. They're vitally important. I want to
19 make a couple of points. I think it is a wonderful
20 thing that the city is threatening revocation of
21 benefits to landlords who have not complied with the
22 law. I think it's great that in the city's press
23 release that they mention that even if benefits are
24 revoked, tenants remain rent stabilized. I find it
25 troubling that once again, there seems to be no

2 notification going to the tenants that they are rent
3 stabilized and once again, it will be up to the
4 tenants to figure out that their buildings have lost
5 benefits and that they remain rent stabilized and to
6 enforce their own rights. It's fairly typical that
7 tenants are always responsible for enforcing their
8 rights and I think that is just really too bad.

9 Also again, I think that having an
10 auditing of the bills is incredibly important. One
11 thing that is also troubling to me is that HPD seems
12 not to follow the part of the 421-a law, which says
13 that a first rent in a 421-a building cannot be
14 preferential, so the first rent in a 421-a building
15 is supposed to be the rent that is charged and paid.
16 That means that the landlord cannot then go and if
17 he's charging \$1,800.00, cannot then go and register
18 the rent at \$4,000.00. That happens all the time and
19 HPD has completely ignored that part of the law and
20 said that it's up to DHCR to enforce it and DHCR says
21 it doesn't enforce the law. So that is I think
22 something that... so even if the buildings are being
23 registered, they're being registered in a way that
24 violates the law, which completely harms tenants, and
25 that is a real problem.

2 And then the third thing: I know we are
3 not here to talk about the 2015 law and whether or
4 not it should or shouldn't be suspended, but I do
5 want to put on the record and so for your own
6 edification to understand that one of the changes
7 that went into effect in 2015 is that after 2015 any
8 building that's built under those new laws, market
9 rate units can be deregulated upon vacancy. This is
10 for buildings that are built after the 2015, which
11 [chime] means all of the market rate units, [chime]
12 which again, the city just told you would be
13 \$4,000.00, will all be deregulated upon first vacancy
14 and so they won't have to register those units, and
15 will be in compliance with the law for not
16 registering, which is again, pretty troubling.

17 Anyway, you have my written testimony. I
18 appreciate the opportunity to testify today.

19 CHAIRPERSON WILLIAMS: I know we're going
20 to have one more person to testify and I want to just
21 have her come up to the table as well to give her
22 testimony.

23 But I did have a couple of questions.
24 Miss Eisenberg, you said HPD testified that they
25 didn't check...

2 [interposing]

3 MISS EISENBERG: Right.

4 CHAIRPERSON WILLIAMS: Uhm...

5 [interposing]

6 MISS EISENBERG: They said that...

7 [interposing]

8 CHAIRPERSON WILLIAMS: What year was
9 that?

10 MISS EISENBERG: Last year. It's uhm...

11 [interposing]

12 NANCY SHER: 2016.

13 MISS EISENBERG: 2016.

14 CHAIRPERSON WILLIAMS: So they testified
15 to the opposite, so what are you saying that they
16 said at the... where was this?

17 MISS EISENBERG: This was in Housing
18 Court and it was Two Trees versus Bromber...

19 [interposing]

20 NANCY SHER: Oh, Goodman and Bromberg.

21 MISS EISENBERG: Goodman and Bromberg.

22 CHAIRPERSON WILLIAMS: And what did they
23 say exactly?

24 MISS EISENBERG: Excuse me?
25

2 CHAIRPERSON WILLIAMS? What did they say
3 exactly?

4 MISS EISENBERG: They said they do not...
5 they only... when they do the final; you know, the
6 eligibility, they only look at the gross amount of
7 the rents for the month. They never check the
8 individual rents.

9 CHAIRPERSON WILLIAMS: I see.

10 MISS EISENBERG: So if the..

11 [crosstalk]

12 CHAIRPERSON WILLIAMS: Okay.

13 [crosstalk]

14 MISS EISENBERG: Rents added up to
15 \$1,150,000.00 a month..

16 [interposing]

17 CHAIRPERSON WILLIAMS: I see.

18 MISS EISENBERG: The other thing they
19 said was that... so the lawyer for Two Trees said,
20 "Well, does that mean you could charge zero and
21 everybody else \$1 million a month?" And they said
22 yes and then you can change it whenever you liked.

23 CHAIRPERSON WILLIAMS: Okay.

24 MISS EISENBERG: And that is in written
25 testimony and I believe we have a copy.

2 CHAIRPERSON WILLIAMS: Mm-hm.

3 MISS EISENBERG: I can send that.

4 CHAIRPERSON WILLIAMS: And Miss Sher, you
5 said nothing has changed at all in terms of who
6 should be...

7 [crosstalk]

8 NANCY SHER: Well, they redid the
9 terrace, which was done so poorly, that you know...

10 [interposing]

11 CHAIRPERSON WILLIAMS: Yeah.

12 NANCY SHER: They redid the terrace, but
13 it was done very poorly, but my neighbors were just
14 forced out. The rent was raised \$3,000.00 and people
15 are... no, they are still giving what I consider
16 fraudulent leases and they're exploiting people and
17 they're up to the same tricks because nobody has
18 stepped in and penalized them. It hasn't cost them
19 anything. Why should they change? Why? They have
20 no incentive.

21 CHAIRPERSON WILLIAMS: Okay and Miss
22 Davidson, so it's interesting that the tenants aren't
23 given any information and they're not told that their
24 rent's stabilized and I was particularly interested
25 about the preferential rent. Now normally I would

2 recommend putting a bill in or something to be given
3 that information during the lease, but most tenants,
4 unfortunately, don't read the lease, so is that a
5 good way to get the information to them? What would
6 be a better way to get that type of information to
7 the tenant?

8 ELLEN DAVIDSON: We've had this
9 conversation about whether tenants read their leases
10 or not. I actually think that since part of the
11 requirements of the 421-a law is that tenants get
12 notification in their leases that their rent
13 stabilized because of the 421-a law and often that
14 does not happen, I do think that this needs to be
15 part of the notification that comes...

16 [interposing]

17 CHAIRPERSON WILLIAMS: In the lease?

18 ELLEN DAVIDSON: In the lease. I do.
19 Many of clients do read their leases.

20 CHAIRPERSON WILLIAMS: They read the
21 lease and the riders and all the...

22 ELLEN DAVIDSON: How else do you get
23 information? I mean I never have a problem with
24 requiring agencies to send out letters...

25 [interposing]

2 CHAIRPERSON WILLIAMS: Okay.

3 ELLEN DAVIDSON: That are outside the
4 leases. Certainly you know, in the case of the J-51
5 tenants where the letter was sent to the landlords by
6 DHCR, saying by the way, these units should be
7 regulated and no one told the tenants.

8 CHAIRPERSON WILLIAMS: Maybe an
9 independent letter outside of the agency.

10 [crosstalk]

11 ELLEN DAVIDSON: We did urge the agency
12 at that point to send a letter to the individual
13 tenants they declined. So I also think though, and I
14 was at a hearing in February where Council Member
15 Kallos had a bill that would allow tenants to look at
16 one database to see the regulatory statuses of their
17 buildings. Strongly support that; for a tenant to be
18 able to look up their building and understand all the
19 facts about their building, which gives them at least
20 an opportunity to do a little bit more research and
21 perhaps in that site you know, and if they did that
22 site, there would be a way to like click on and get
23 some more information about what that means; what
24 some of the rules are. That's another way to do it,

2 but you know, as much information that you can get to
3 tenants as possible is I think essential in any...

4 [crosstalk]

5 CHAIRPERSON WILLIAMS: Uhm...

6 [crosstalk]

7 ELLEN DAVIDSON: Way.

8 CHAIRPERSON WILLIAMS: And just for both
9 you and Mr. Dulchin: they testified to a lot of
10 activity going on that sounds really good in terms of
11 enforcement. I'm surprised to hear someone testify
12 that nothing's happened in their buildings. What
13 they testified to, have you been feeling that on the
14 ground and have you been seeing any of that activity
15 occurring within any buildings that you're working
16 with or with any of the organizations that are
17 working with these buildings?

18 ELLEN DAVIDSON: I will say that again, I
19 don't know that this is exactly the type of work they
20 said they were doing, but we are representing a
21 pretty big building in the Bronx where the tenants
22 never received the required notices and the landlord
23 announced last year that the 421-a benefits were
24 ending this year and therefore, everybody was going
25 to be evicted or rents were going to be raised by

2 100%, which again, is not allowed by law, but once
3 again, it's the tenants who had to... we had to bring
4 the case in Bronx Supreme explaining that 421-a
5 requires that tenants get notice they are rent
6 stabilized because of the 421-a benefits and that
7 rent stabilization will end and they're supposed to
8 get that notice in each and every lease and if they
9 don't get that notice, they remain rent stabilized.
10 So it's possible that... I mean it sounds like what HPD
11 is saying that big landlords like Two Trees and like
12 the landlord that we're dealing with in the Bronx do
13 as much as possible to comply with some of the law,
14 but still figure out ways of both overcharging
15 tenants and getting away without providing required
16 notifications.

17 CHAIRPERSON WILLIAMS: What building was
18 that you...

19 ELLEN DAVIDSON: It's been in the paper.
20 I can get you that information. It was a case that
21 Legal Aid and Legal Services Bronx brought together
22 in the South Bronx.

23 BENJAMIN DULCHIN: But we... the ANHD
24 organizations have not noticed any additional change.
25 We're certainly willing to believe that there is more

2 conscientious oversight by HPD now. In none of the
3 buildings that we're working in or researching have
4 we noticed any kind of additional enforcement. It
5 may be happening, but it's certainly not happening in
6 a way where tenants who are currently covered in
7 rent, so housing conservation coordinators on the
8 West side of Manhattan did quite an important study
9 in their own neighborhood, and as far as I know... and
10 when they looked in great detail prior to 2014 at
11 rent units that should have been rent regulated that
12 were where that the tenants did not understand that
13 they had that right and did not seek to have that
14 enforced. As far as they're aware, none of the
15 tenants in their neighborhood who should have been
16 rent regulated have been notified by HPD, so I
17 suspect that whatever they are starting at HPD has
18 not yet gotten out more broadly.

19 I would also just point out one sort of
20 additional thing, which I think is of an important
21 new set of facts on the ground now around 421-a, and
22 that is that we're in this sort of odd moment of the
23 suspension of the program and the assumption has been
24 from the beginning that it was in some way that a tax
25 abatement was necessary for the active functioning of

2 the market and that new construction you know, may be
3 in high-rent neighborhoods, but certainly in low-rent
4 neighborhoods would drop off dramatically without
5 421-a. We've never really got a chance to observe
6 what would happen. There was never a control group
7 for this because 421-a has been a fact of life every
8 minute of the year for the last 40 years. For the
9 last six months, since January, we've actually had a
10 controlled experiment on this to see what happens to
11 the markets without 421-a and two things had become
12 readily apparent. One is that the construction
13 markets have not died. In fact, new things are being
14 built you know, and they are being built across the
15 city. I think even REBNY you know, knew that was
16 likely to be the case given how strong rents are, but
17 both this administration and REBNY have assured us
18 with absolute 100% sort of surety that there would be
19 no new rental construction in the weaker markets of
20 the outer boroughs without 421-a. In the last couple
21 months this has apparently clearly become not the
22 case. The Furman Center has issued a white paper
23 showing that new construction permits in the last
24 quarter of 2016 returned to their 2014 levels, which
25 is very significant. It means that...

2 [crosstalk]

3 CHAIRPERSON WILLIAMS: Well...

4 [crosstalk]

5 BENJAMIN DULCHIN: New construction is...

6 [crosstalk]

7 CHAIRPERSON WILLIAMS: Some of the

8 pushback has been that... I would love to see this, but

9 the applications for those permits were in the works

10 already. Do you know if that's the case or these are

11 just brand new...

12 [interposing]

13 BENJAMIN DULCHIN: These are brand new,

14 so we saw there was a huge spike prior to June 2015.

15 There was a huge spike in permits as everyone tried

16 to get sort of their permits done. There was then a

17 dramatic drop off right after that and the question

18 was would that drop off continue because so many

19 applications had come in prior to June 2015 or would

20 it revert to sort of more natural 2014 levels? We

21 thought it would take a while for it to revert back

22 to 2014 levels. By the last quarter 2016, it has

23 reverted to 2016 levels, significant... I'm sorry, 2014

24 levels. What's interesting about this, and this is

25 why I think this is sort of such an important moment

2 for everyone to sort of step back and look at what
3 the impact is, the clear understanding has always
4 been by policy, folks, that at some level 421-a has
5 served to juice land values, right? That the
6 existence of 421-a, right; in a city where the rental
7 market is so hot; you know, where the market is so
8 active that essentially the fact that 421-a gets
9 baked into the land prices in an unnatural way. So
10 the important thing to look at would be without 421-
11 a, right; and we see that new construction is back a
12 pace, but why? What else has changed? And so the
13 last quarter's data from real estate firms looking at
14 the price per square foot of new development sites
15 shows that in weak market neighborhoods in the outer
16 boroughs, right; where you actually would want 421-a
17 hypothetically to incentivize new development in
18 those neighborhoods, right; the price per square foot
19 of development sites, which had been shooting up for
20 the last number of years, has absolutely flat lined,
21 meaning that without 421-a it is now less expensive
22 to purchase land for development sites.

23 [interposing]

24 CHAIRPERSON WILLIAMS: Mm-hm.

2 BENJAMIN DULCHIN: Which is what makes
3 new construction possible in those neighborhoods
4 without a tax exemption.

5 CHAIRPERSON WILLIAMS: Oh, so it...

6 [crosstalk]

7 BENJAMIN DULCHIN: Which is like...

8 [crosstalk]

9 CHAIRPERSON WILLIAMS: [**inaudible**]
10 itself.

11 BENJAMIN DULCHIN: Yeah, which suggests
12 that 421-a has been sort of deeply unnatural and has
13 created an unnatural development environment and that
14 without it, in fact, affordability returns more
15 naturally to the neighborhoods where you would want
16 more development affordability and that without 421-a
17 our weaker outer borough markets are looking more
18 like what they should like with all the development
19 that we'd want to see, but without the tax exemption
20 and without the wasted tax exemption, which everyone
21 acknowledges is simply wasted in the higher market
22 neighborhoods. And again, 421-a... you know, markets
23 are complicated. The impact of 421-a is complicated.
24 You know, it's not... I suspect that the facts are a
25 little more nuanced than what I'm presenting, but

2 this is a significant moment for everyone to just
3 sort of step back and look and see what have we
4 learned in the last six months about what 421-a does
5 or doesn't do and therefore, how much should we be
6 spending on it? What is it actually accomplishing
7 for the taxpayers of New York, given that we are
8 spending \$1.2 billion a year on it and with the new
9 proposals on the table from REBNY you know, easily
10 another half a billion to a billion more per year.

11 CHAIRPERSON WILLIAMS: Well, thank you
12 for that and if you can... I'm sure the committee can
13 find it, but if you can get us the white paper, I'd
14 love for the committee to take a look at that,
15 please. I know that a council member has a question.

16 [interposing]

17 COUNCIL MEMBER LEVIN: Just one question.

18 [interposing]

19 CHAIRPERSON WILLIAMS: And then we're
20 going to hear from Miss Nicholson for her testimony.

21 COUNCIL MEMBER LEVIN: Have you been able
22 to do... to start off on that last line; that last
23 statement there or series of statements. Have you
24 been able to do an analysis... you know, obviously as
25 you've indicated before, 421-a is an extremely

2 expensive subsidy in terms of like bang for the buck,
3 but in terms of the 20% affordable units it does
4 produce affordable units at 60% AMI.

5 BENJAMIN DULCHIN: Mm-hm.

6 COUNCIL MEMBER LEVIN: And do you think
7 that with the money saved if there was no 421-a or if
8 there had been no 421-a, with the money saved and
9 increased tax revenue for buildings that don't have
10 the 421-a, if that were to be put in a lockbox or a
11 dedicated funding stream, would it work even with the
12 cost of site acquisition because land is very
13 expensive obviously in New York and you know and how
14 would that relate in terms of you know, only
15 producing affordable housing in parts of the city
16 where the land costs are lower?

17 BENJAMIN DULCHIN: Well, so I think
18 there's... so that's a complicated question and so my
19 answer is imperfect. I think there's two answers to
20 that, Council Member. One is that if you look at the
21 June 2015 revisions to 421-a, right; which is most
22 likely going to be the basis of what is renewed when
23 and if something is renewed..

24 [interposing]

25 COUNCIL MEMBER LEVIN: Mm-hm.

2 BENJAMIN DULCHIN: The expectation is
3 that in the hotter market neighborhoods, you actually
4 won't have a lot of 421-a development. You're going
5 actually have developments go condo in those
6 neighborhoods; pay their taxes as they should, right;
7 because what you're foregoing in tax revenues in hot
8 market neighborhoods is really simply not worth the
9 small amount of affordability that you're getting.
10 So where are you going to be.. according to the city
11 where you're going to be capturing the affordability
12 is in the softer market; sort of the softer outer
13 borough.

14 [interposing]

15 COUNCIL MEMBER LEVIN: Mm-hm.

16 BENJAMIN DULCHIN: You know, parts and
17 certainly the more northern parts of your district.
18 There the affordable AMI was set at 13% of area
19 median income, which is about \$2,800.00, which is..

20 [interposing]

21 COUNCIL MEMBER LEVIN: Yeah.

22 BENJAMIN DULCHIN: Far above what the
23 actual markets rents are in those neighborhoods, so
24 in fact, the supposed affordability benefit that's
25 being created as..

2 [crosstalk]

3 COUNCIL MEMBER LEVIN: So you're saying
4 in the areas closer to the waterfront.

5 BENJAMIN DULCHIN: In the areas away from
6 the waterfront, right; into the softer parts... in the
7 more outer borough parts [**inaudible**]

8 [crosstalk]

9 COUNCIL MEMBER LEVIN: The AMIs are going
10 to be 130% AMI?

11 BENJAMIN DULCHIN: Correct.

12 COUNCIL MEMBER LEVIN: Up from 60?

13 BENJAMIN DULCHIN: Up from 60, yep.

14 ELLEN DAVIDSON: It's developer choice.

15 BENJAMIN DULCHIN: Yeah, it's developer
16 choice, so Option A is range. There's three options
17 and essentially developers will be choosing either
18 Option A or Option C most likely. Option A is 25%
19 and it's a range from 40 to 50 to 60. Option C is
20 going to be the most likely one in the less strong
21 markets and...

22 [crosstalk]

23 COUNCIL MEMBER LEVIN: Mm-hm.

24 BENJAMIN DULCHIN: Those it's 30%
25 affordable at 130% of AMI and in fact, in the Option

2 A neighborhoods, at least under the proposal that was
3 you know, passed by Albany in 2015 and then
4 suspended, it is you're not likely to have a great
5 quantity of 421-a development in those neighborhoods
6 because in those neighborhoods a developer is more
7 likely to go to [**inaudible**]

8 [crosstalk]

9 COUNCIL MEMBER LEVIN: Mm-hm.

10 BENJAMIN DULCHIN: The numbers work out
11 better that way, so in fact, what was being shown as
12 being the benefit is not enormous. You know, in
13 terms of the tax dollars, alright, so in 2014, right;
14 about \$58,000.00 in deferred tax dollars per year per
15 unit was spent for every affordable unit. That makes
16 it by a factor of five the most expensive affordable
17 housing program we have on the books. There are
18 better ways to spend that money for affordable
19 housing. You know, we're certainly in a circumstance
20 now where we don't have unlimited city on land.

21 [crosstalk]

22 COUNCIL MEMBER LEVIN: Yeah, we don't
23 have...

24 [crosstalk]

25 BENJAMIN DULCHIN: To build on to say...

2 [crosstalk]

3 COUNCIL MEMBER LEVIN: Any city on land
4 at all.

5 [crosstalk]

6 BENJAMIN DULCHIN: To say the least, but
7 you certainly do need to incentivize the private
8 market in some way, right? Any robust affordable
9 housing program in the city..

10 [crosstalk]

11 COUNCIL MEMBER LEVIN: Right. I mean...

12 [crosstalk]

13 BENJAMIN DULCHIN: We've got to find a
14 way to leverage the private market, but this is... you
15 can do it..

16 [crosstalk]

17 COUNCIL MEMBER LEVIN: Right.

18 [crosstalk]

19 BENJAMIN DULCHIN: More effectively than
20 \$58,000.00 a year.

21 COUNCIL MEMBER LEVIN: Okay, I mean it's
22 a challenge because we just... the reality on the
23 ground is different from where it was even a decade
24 ago, but definitely different from where it was 20
25 years ago. If you go to a neighborhood like

2 Bushwick, there were 1,700 vacant lots probably in
3 1982 and there is you know maybe like 50 left.

4 BENJAMIN DULCHIN: Yeah. No and it's
5 certainly.. it is scarce now, right? So I mean..

6 [interposing]

7 COUNCIL MEMBER LEVIN: Let alone city-
8 owned lots, which there are..

9 [crosstalk]

10 BENJAMIN DULCHIN: Yeah.

11 COUNCIL MEMBER LEVIN: Which there are..

12 [crosstalk]

13 BENJAMIN DULCHIN: So again, I think we
14 do..

15 [crosstalk]

16 COUNCIL MEMBER LEVIN: Probably few of.

17 BENJAMIN DULCHIN: Yeah, that's
18 absolutely the case, right? I mean so there are.. I
19 think a couple years ago we did a study that showed
20 that under the current zoning you can build around
21 7,500 units of housing in the city-owned land that
22 was currently controlled by HPD. I'm not sure where
23 that is now, right?

24 [interposing]

25 COUNCIL MEMBER LEVIN: Yeah.

2 BENJAMIN DULCHIN: So it is pretty small.

3 [crosstalk]

4 COUNCIL MEMBER LEVIN: Does that include
5 like neighborhood gardens and stuff?

6 BENJAMIN DULCHIN: That does not... that
7 does not include theirs.

8 [crosstalk]

9 COUNCIL MEMBER LEVIN: Oh, no, okay.

10 BENJAMIN DULCHIN: They would get mad at
11 us for that. Actually I think we took a percentage
12 of the gardens and assumed that they would be
13 developed, but it certainly is small.

14 COUNCIL MEMBER LEVIN: Mm-hm. A
15 miniscule...

16 [crosstalk]

17 BENJAMIN DULCHIN: Yes.

18 COUNCIL MEMBER LEVIN: In the... right.

19 BENJAMIN DULCHIN: But the answer to that
20 then I think is...

21 [crosstalk]

22 COUNCIL MEMBER LEVIN: Acquisition.

23 [crosstalk]

24 BENJAMIN DULCHIN: Something like
25 mandatory inclusionary housing, right; done right

2 with the right details, right; with the right amount
3 of affordability.

4 COUNCIL MEMBER LEVIN: Right. The
5 challenge with the mandatory...

6 [crosstalk]

7 CHAIRPERSON WILLIAMS: Council Member?

8 [crosstalk]

9 COUNCIL MEMBER LEVIN: Inclusionary...
10 right, that's alright. Just lastly, the challenge
11 with the mandatory inclusionary is you need the up-
12 zoning to do it, right? I mean matching it with 421-
13 a was all well and good, but if you don't have the
14 up-zoning, you know, then you're stuck with just the
15 421-a.

16 BENJAMIN DULCHIN: I was going to say if
17 you took the same amount of money; the tax money that
18 we're deferring and put it into a city Section 8 type
19 program, you would have...

20 [interposing]

21 COUNCIL MEMBER LEVIN: Mm-hm.

22 BENJAMIN DULCHIN: Five times the
23 affordability benefit and you can put it where you
24 want that it would be immeasurably more efficient.

2 COUNCIL MEMBER LEVIN: Okay, we might
3 need it when this incoming administration attacks
4 Section 8, but...

5 BENJAMIN DULCHIN: Indeed.

6 COUNCIL MEMBER LEVIN: Okay.

7 BENJAMIN DULCHIN: Thank you.

8 CHAIRPERSON WILLIAMS: Miss Nicholson,
9 can you please raise your right hand? Do you affirm
10 to tell the truth, the whole truth and nothing but
11 the truth in your testimony before this committee and
12 to respond honestly to council member questions?

13 YOLANDE NICHOLSON: Yes, I swear to do
14 that. Thank you.

15 CHAIRPERSON WILLIAMS: Thank you. You
16 have three minutes for your testimony.

17 YOLANDE NICHOLSON: Thank you. Good
18 afternoon. It's unfortunate that Councilman Levin
19 left because I wanted to echo what you said. Oh!
20 Councilman Levin, my councilman.

21 In my three minutes I'll say I actually
22 did an analysis. I have testimony prepared for
23 Assemblywoman Latrice Walker of the proposed 2015
24 421-a plans and it does not provide affordable
25 housing for civil servants; working families between

2 60% and 125% AMI, as you have indicated, and it's
3 just yet another big giveaway to the developers, and
4 I'd like to share that with you and send it in, where
5 we're sort of saying well, we're going to give 30% or
6 something to low income families when we could do it
7 with Section 8 housing and when you do that and you
8 disregard enforcement for even the market rate units
9 and the low income housing units, because we've seen
10 that the low income housing tenants are also
11 overcharged, you end up with something that is not
12 achieving affordable housing in communities where
13 working families who are teachers and civil servants
14 and accountants want to live.

15 But thank you for the opportunity to
16 testify and again, I want to thank you both for
17 introducing this legislation, which I understand is
18 co-sponsored by New York City Public Advocate Latisha
19 James. We have come before you before and you've
20 listened and we so much appreciate it. Your
21 legislation seeks to rein in the abusive, fraudulent
22 and otherwise illegal practices of developers that
23 have been entrusted by New York City to construct and
24 operate residential multiple dwellings with 421-a
25 bond proceeds. These developers, as you know, enjoy

2 a huge economic cushion in operating these annually
3 with millions of dollars of real estate property tax
4 exemptions yet are not held to any level of
5 accountability at a tenant level. With this letter I
6 bring to your attention that I've requested that the
7 New York State Attorney General intervene with
8 enforcement to hold Two Trees and other 421-a
9 developers that have flagrantly violated the law and
10 defrauded tenants accountable under the New York
11 State penal code and separately under New York State
12 laws. I've included in the package the request.
13 Filing a false registration on the state registry is
14 a crime. Filing of false registrations to achieve
15 deregulation, de facto luxury decontrol of 421-a
16 units is actually a violation of the state rent
17 stabilization laws. The new law that was passed
18 under the Tenant Protection Act last year, which
19 permits deregulation of 421-a units upon vacancy; I
20 ask the city council to intervene and ask the state
21 to either repeal that law or amend that law. [chime]
22 There is no reason why [chime] government funding,
23 whether it's direct dollars or 421-a bond subsidies
24 or tax credits or tax exemptions should be used to
25 create 70-80% of new construction for families making

2 over \$200,000.00 and there is no reason for luxury
3 decontrol when we have a housing crisis in New York
4 City with over 60,000 of working families sleeping in
5 the homeless shelter, according to the New York City
6 Department from the Homeless, dressing and going to
7 work in the morning, taking their children to school.
8 Children are living from school to school district
9 because they cannot afford New York City rents. I
10 firmly believe that the development at the corner of
11 Court and Atlantic was partly instrumental in this
12 artificial...

13 [crosstalk]

14 CHAIRPERSON WILLIAMS: Ma'am?

15 [crosstalk]

16 YOLANDE NICHOLSON: Inflationary...

17 [crosstalk]

18 CHAIRPERSON WILLIAMS: Can I ask you to...

19 [crosstalk]

20 YOLANDE NICHOLSON: Ride.

21 CHAIRPERSON WILLIAMS: To close.

22 [crosstalk]

23 YOLANDE NICHOLSON: So I just wanted to...

24 I would submit this testimony and I thank you. I
25 just want to say one other thing. HPD is the agency

2 that had been entrusted to regulate. They have a
3 "look the other way" policy with respect to tenants.
4 I ask that you outlaw that policy. Thank you.

5 CHAIRPERSON WILLIAMS: Thank... which
6 policy?

7 YOLANDE NICHOLSON: Well, HPD has adopted
8 a policy that it does not regulate 421-a developments
9 at the tenant level; that they're...

10 [interposing]

11 CHAIRPERSON WILLIAMS: I see.

12 YOLANDE NICHOLSON: That they only... I
13 think it was described to you before.

14 CHAIRPERSON WILLIAMS: Yes.

15 YOLANDE NICHOLSON: And that... so tenants
16 are being harassed, overcharged, living in mold; you
17 know, not getting rent stabilization, all the things
18 that you've heard.

19 CHAIRPERSON WILLIAMS: Right.

20 YOLANDE NICHOLSON: HPD... and HPD sort of
21 says go to DHCR. DHCR is not the regulator. I've
22 written a letter to Councilman Levin before, so it's
23 in here that shows you directly where they have
24 authority. Our new Mayor, who claimed he was a
25 working family man, needs to be asked and encouraged

2 and maybe told to have his agency help working
3 families. They too... they most are harassed and no
4 one is stepping up. If you go to any Housing Court,
5 they're all being evicted.

6 CHAIRPERSON WILLIAMS: Well, thank you
7 for your testimony, Miss Nicholson and I know the
8 work that you do and the advocates, all of you, for
9 the work that you're doing. There are some alternate
10 issues and to the tenants yourselves for coming out
11 and putting your face and name and sharing your
12 personal stories. We appreciate that. Thank you so
13 much. Oh uhm...

14 [interposing]

15 YOLANDE NICHOLSON: For the opportunity.

16 CHAIRPERSON WILLIAMS: I think the
17 Councilman has one more question.

18 COUNCIL MEMBER LEVIN: Thank you, Mr.
19 Chair. I just wanted to read one thing into the
20 record here because Assembly Member Jo Anne Simon and
21 I wrote a letter to DHCR, the Tenant Protection Unit
22 back in April regarding this particular building, and
23 I'd like the members of the city administration to
24 hear this because this is the kind of response that
25 we got, okay? Dear Assembly Member Simon and Council

2 Member Levin, thank you for your letter addressed to
3 Commissioner Rubin in regard to 125 Court Street in
4 Brooklyn and your request for a review of the
5 building by the Tenant Protection Unit. As you are
6 aware, the rent setting process for the 421-a program
7 is conducted by the New York City Department of
8 Housing Preservation and Development. Accordingly,
9 you may want to pursue the matter with HPD first to
10 ensure that all rents have been properly set. In
11 addition, any tenant may file with our agencies,
12 office, or branch administration if they feel like
13 they are being overcharged and every claim will be
14 handled pursuant to the law. Thank you again for
15 your letter. Please don't hesitate to reach out to
16 the agency with any additional questions you may
17 have. Sincerely, Richard R. White, Deputy
18 Commissioner, TPU.

19 So that was the extent of the response
20 that we got to a two page detailed letter and it
21 highlights frankly the passing of the buck. It's a
22 classic passing of the buck to go from one agency
23 back to the other; city to state; state to city and
24 so I agree with you that there needs to be real
25 accountability and tenants need to know where they

2 can go where their claims are taken seriously and I
3 think if at the very least out of this hearing and
4 these pieces of legislation and the reporting that's
5 been done by Scozzari and his colleagues at
6 ProPublica, if anything comes out of it, that
7 includes accountability for tenants; places where
8 tenants can go and the public can go to ensure that
9 the law is being complied with. I think that that is
10 the very least that we ought to be able to do.

11 So I want to thank you very much for your
12 advocacy because I wouldn't have done this without
13 your buildings coming to my office..

14 [interposing]

15 YOLANDE NICHOLSON: Appreciate it.

16 COUNCIL MEMBER LEVIN: And advocating.

17 NANCY SHER: I just want to say one thing
18 about there should be a database tenants can go to
19 and get information, but it has to be truthful
20 information. DHCR now certifies a state document
21 that they..

22 [crosstalk]

23 COUNCIL MEMBER LEVIN: But they don't
24 honor the truth.

25 [crosstalk]

2 NANCY SHER: Say they have not verified.
3 You take that to court, you can't overcome that. How
4 do you certify a state document you've not verified?

5 YOLANDE NICHOLSON: So we need a city
6 registry and the same pass the buck happened with the
7 Attorney General. The Attorney General I understand
8 looked into it. They said HPD deflected to DHCR, so
9 as a tenant; a resident. My mother and I lived in
10 that apartment. We were evicted, as you know. I
11 have a matter in court. The courts are confused
12 because HPD continues to come to court and publicly
13 deceive. That's the word I would use. So I ask the
14 city council, who I believe has a regulatory
15 authority and oversight over HPD, to begin to rein
16 them in.

17 COUNCIL MEMBER LEVIN: And I want to also
18 for the record publicly apologize to your building
19 because you came to me several years ago and I didn't
20 understand the details of what was going on and so I
21 didn't act when I should have acted, so small
22 consolation, but I do want to for the record
23 apologize to you or to members of your...

24 [crosstalk]

2 YOLANDE NICHOLSON: Wheels of justice
3 does...

4 [crosstalk]

5 CHAIR MEMBER LEVIN: Residents of your
6 building.

7 [crosstalk]

8 YOLANDE NICHOLSON: Turn slowly for us
9 lawyers, but thank you for saying that.

10 COUNCIL MEMBER LEVIN: Yeah, thank you.

11 YOLANDE NICHOLSON: Appreciate that a
12 lot.

13 CHAIRPERSON WILLIAMS: Alright, thank you
14 very much for your testimony. This hearing is going
15 so well. I'd like to call HPD, please to answer a
16 couple questions that I had after hearing this panel.

17 YOLANDE NICHOLSON: Thank you.

18 CHAIRPERSON WILLIAMS: Thank you.

19 [Pause]

20 CHAIRPERSON WILLIAMS: We have to get our
21 witness slips. Is there anybody from DOF here also?
22 Yeah? Please come up, please. Can we... they need two
23 witness slips. They need two witness slips here. I
24 have a feeling my questions won't yield to fruitful
25 answers, but I'm going to try and ask them anyway.

2 If you can just fill out the slips, please. No, I'm
3 just going to ask some questions, yeah.

4 [Pause]

5 CHAIRPERSON WILLIAMS: Can you both
6 please raise your right hand? Do you affirm to tell
7 the truth, the whole truth and nothing but the truth
8 in your testimony before this committee and to
9 respond honestly to council member questions? Thank
10 you so much.

11 So a couple of things that I heard there
12 were a bit troubling, so I just wanted to raise them.
13 The first one was that 125 Court Street. They didn't
14 seem to feel that any of the enforcement that was
15 discussed was happening in their building and I think
16 that one of the advocates mentioned another building
17 in the Bronx. I just wanted to know if you had any
18 information about those buildings.

19 TERRI DAVIS-MERCHANT: I do not at this
20 time. My name is Terri Davis-Merchant. I'm a senior
21 legislative analyst with the Government Relations
22 Group at HPD. I do not have any specific information
23 to my knowledge about the specific instances at 125
24 Court Street, as well as the other building in the
25 Bronx that's being referred to right now. I'm

2 unfortunately not authorized to speak on these
3 matters at this time.

4 CHAIRPERSON WILLIAMS: And also there was
5 mention that in court many times that HPD testifies
6 they don't have jurisdiction I guess over individual
7 tenants to see if the individual unit is being
8 applied properly. They'll look at the gross rent
9 receipts and not the individual rent receipts. Do
10 you know if that's accurate according to the law or
11 do you know if that's accurate what's happening in
12 the courtroom?

13 TERRI DAVIS-MERCHANT: Again, I am not
14 authorized to speak on these issues and I'm
15 definitely not authorized to speak on any matters
16 about a subject of ongoing litigation.

17 CHAIRPERSON WILLIAMS: Uhm... and it seems...
18 you probably have the same answer, but it seems that
19 this is about a back and forth going with DHCR. I
20 was concerned about what Council Member Levin read
21 into the record. So it seems that there is ping
22 ponging going back and forth. Do you have any idea
23 if the enforcement that was testified today... is HPD
24 finally just saying that we accept responsibility and
25

2 stop pushing it back to DHCR in terms of enforcement
3 of some of the agreements?

4 TERRI DAVIS-MERCHANT: I think as
5 mentioned in our testimony, we are continuing to work
6 with DHCR as best as possible to create an
7 enforcement mechanism in order to make sure that any
8 taxpayers that are receiving 421-a benefits are doing
9 so in a manner that is in accordance with the law.
10 Again, I'm not authorized to speak on any of these
11 particular matters and I would be happy to get back
12 to you on any questions that you have.

13 CHAIRPERSON WILLIAMS: Well, I appreciate
14 it. I don't know if you're going to add anything
15 from DOF? Can I just ask how long you've been at
16 DOF?

17 UNIDENTIFIED SPEAKER: [off mic] Sure,
18 I've been there since May.

19 CHAIRPERSON WILLIAMS: Of this year. And
20 how long have you been with HPD?

21 TERRI DAVIS-MERCHANT: I joined HPD in
22 February 2015.

23 CHAIRPERSON WILLIAMS: Thank you very
24 much. I figured that this is how it would probably
25 go, but I appreciate you coming back up. I think

2 what I'm going to try and do in the future for
3 hearings like this is get a panel before
4 administration so that administration has the
5 opportunity to respond because I am concerned about
6 what was said and it didn't sound like it jived
7 completely with the testimony, although I'm sure
8 there's good work going on, but we want to make sure
9 that the works being done is being felt by the most
10 affected tenants. So thank you very much. I
11 appreciate it.

12 We don't have anyone signed up for
13 additional testimony. I do want to mention that
14 Council Member Ulrich was here and for the record, we
15 have testimony submitted by REBNY, Community
16 Development Project at UJC and Tenants and Neighbors.
17 With that, the hearing is now closed.

18 [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 December 15, 2016