

1 COMMITTEE ON GOVERNMENTAL OPERATIONS JOINTLY WITH
THE COMMITTEE ON LAND USE 1

2 CITY COUNCIL
3 CITY OF NEW YORK

4 ----- X

5 TRANSCRIPT OF THE MINUTES

6 Of the

7 COMMITTEE ON GOVERNMENTAL OPERATIONS
8 JOINTLY WITH THE COMMITTEE ON LAND
USE

9 ----- X

10 September 26, 2019
Start: 10:23 a.m.
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11 HELD AT: Council Chambers - City Hall

12 B E F O R E: Fernando Cabrera,
13 Chairperson for Committee on
14 Governmental Operations

15 Co-Chair Rafael Salamanca, Jr.
16 Chair for the Committee on Land
Use

17 COUNCIL MEMBERS:

18 Ben Kallos
19 Alan N. Maisel
20 Bill Perkins
Keith Powers
21 Ydanis A. Rodriguez
22 Kalman Yeger
23
24
25

A P P E A R A N C E S

Susan Amron

General Counsel at the Department of City
Planning

Frank Ruchala

Director of the Department of City Planning's
Zoning Division

Margery Perlmutter

Chair of the New York City Board of Standards and
Appeals

Carlo Costanza

Executive Director of New York City Board of
Standards and Appeals

Mona Sehgal

General Counsel at the Department of Buildings

Annette Hill

City Register

Gale Brewer

Manhattan Borough President

George Janes

Urban Planner

Sean Khorsandi

Landmark West

Andrea Goldwyn

New York Landmarks Conservancy

Olive Freud

President of the Committee for Environmentally
Sound Development

Thomas Devaney

1 COMMITTEE ON GOVERNMENTAL OPERATIONS JOINTLY WITH THE
COMMITTEE ON LAND USE 3

2 Senior Director of Land Use and Planning at the
3 Municipal Art Society

4 Harry Bubbins
5 Village Preservation, also known as Greenwich
Village Society for Historic Preservation

6 Richard Lewis
7 Board Chair of Community Board 12 in Washington
8 Heights and Inwood to the top of Manhattan

9 Stacey Shub
Seaport Preservation

10 Ray Rogers
11 Corporate Campaign

12 Alida Camp
13 Community Board 8

14 Sheila Kendrick
15 Save Central Park

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CHAIRPERSON CABRERA: [GAVEL] I am Governmental
Operations Council Member Fernando Cabrera. Today,
we are meeting jointly with the Committee on Land
Use, chaired by my colleague Council Member Rafael
Salamanca for an oversight hearing on the general
operations of the Board of Standards and Appeals and
the specific topic of Zoning Lot Mergers.

The land use process in the city is complex. It
can be incredibly opaque even for season developers
and city planning experts, let alone for the average
New Yorker.

Several city agencies have role in zoning and
city planning including the Department of Buildings
and Department City Planning and the Board of
Standards and Appeals.

Over the years, the Council has passed
legislation to make the process more transparent to
the public more efficiently coordinated. Such
legislations include: Requiring notices of
expiration of zoning variances and special permits to
be shared with community boards requiring the BSA to
respond to community and borough boards when a
determination is made contrary to the
recommendations; requiring biannual reporting on the

1 application for variances and special permits and
2 online mapping of variances and permits.
3

4 Today, the Committees expect to hear updates from
5 the Board of Standards and Appeals on the
6 transparency legislation that has been enacted today,
7 as well as general information about the boards
8 operation including the protocols around board
9 members recusal and the administration of oath.

10 Of particular interest is the role the board
11 plays in the decisions that impact zoning lot mergers
12 and the ways in which the board engages with DCP and
13 DOB on this matter.

14 Zoning lots are often made up of one or more tax
15 lots under the zoning resolution, property owners can
16 agree to merge their zoning lots. This allows owners
17 to shift unused development rights within the
18 resulting merge zoning lot from one tax law to
19 another. The zoning resolution provides that
20 property owners must record in the city register
21 declarations or restrictions against each effected
22 tax law participating in a zoning lot merger.

23 These declarations must describe the entire track
24 of land covered by the zoning lot. However, there is
25 currently no publicly assessable map of zoning lots

1 and no centralized system to identify and track
2 zoning lot mergers. As a result, it is nearly
3 impossible for key stakeholders and members of the
4 public to understand the development rights a
5 developer has accumulated when a new building is
6 directed that maybe out of scale from the surrounding
7 neighborhood.
8

9 We will hear testimony later today about
10 particular towers including the one at 200 Amsterdam
11 Avenue in my colleagues Council Member Rosenthal
12 district that have perplexed and anger community
13 members. Their construction was enabled by an
14 unusual piecing together of tax laws and partial tax
15 laws that lead them to be seemingly out of character
16 with the surrounding neighborhood. Because zoning
17 lots mergers are deals struck between developers and
18 development rights are transferring zoning lot
19 mergers; as of right, there's currently no
20 discretionary review from the city.

21 Council Member Rosenthal regrets being unable to
22 attend this hearing. She led an effort to oppose the
23 200 Amsterdam Avenue development including having 26
24 of our Council Members signed onto a letter urging
25 the BSA to prohibit a so-called [INAUDIBLE 6:122]

1 zoning, writing that the BSA decision will have
2 implications felt citywide.

3
4 I hope that would improve transparency, the land
5 use process at it related to zoning lot mergers can
6 also be better understood by key stake holders,
7 including members of the general public.

8 The Committee will be conducting a first hearing
9 on a package of bills. I will let Chair Salamanca
10 speak to the bill before his Committee, the Committee
11 on Governmental Operations will be considering the
12 following three bills for the first time:

13 Introduction 1691, sponsored by myself, will require
14 the Department of City planning to assign a unique
15 identifying number to each zoning lot in the city.
16 The bill will also require that any subdivision or
17 zoning lot merger will be reflected in the newly
18 created zoning lot number. This bill will take
19 effect immediately.

20 Introduction 1692 sponsored by myself will
21 require the Department of City Planning to make the
22 uniquely identifying zoning lots available to the
23 public on an online map. The bill will require the
24 zoning lot changes be updated on the online map on a
25 quarterly basis. The bill authorizes DCP to receive

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2 all necessary information from the Department of
3 Building, the Board of Standards and Appeals and the
4 City Register as needed for the implementation of
5 this bill. This bill will take effect one year after
6 it becomes law.

7 Introduction 1723 sponsored by Council Member
8 Kallos will expand Local Law 103 of 2017 to require
9 the property owners testifying under oath at all BSA
10 hearings. The law currently only covers testimony by
11 property owners at a hearing for variances and/or
12 special permit.

13 I will let the sponsor speak at greater length
14 about this bill later on. I will also thank our
15 staff whose work made this hearing possible; Daniel
16 Collins, Elizabeth Kronk, Emily Forgione, as well as
17 my own legislature and Communications Director Claire
18 McLeveighn. And with that, I will pass it to my Co-
19 Chair Rafael Salamanca.

20 CO-CHAIR SALAMANCA: Thank you Chair Cabrera.
21 Good morning and welcome to the joint hearing of the
22 Committees on Land Use and Governmental Operations.
23 I am Council Member Rafael Salamanca; I am the Chair
24 of the Land Use Committee and I would like to welcome
25 our esteemed colleagues who are here today. We have

1
2 Council Members Maisel, Powers, Perkins, Rivera,
3 Grodenchik, Chair Adams, Koo and Council Member
4 Kallos.

5 I would like to thank Chair Cabrera for his
6 leadership of the Governmental Operations Committee
7 and for working with the Land Use divisions to bring
8 greater transparency to the issue of zoning, lot
9 mergers and transferrable development rights.

10 Since New York City adopted the first zoning
11 resolution in 1916, we have been an as-of-right
12 jurisdiction. That means that so long as a proposed
13 development complies with the existing zoning
14 regulations, the approval of its building permits is
15 not conditioned on discretionary approvals or public
16 review.

17 In the 103 years since the adoption of that
18 zoning resolution, the city has become subject to an
19 even more complicated array of federal, state and
20 local land use regulations. This fact, along with
21 the complexity of the city's own zoning resolution
22 makes it challenging for anyone, even professionals
23 to look at a vacant parcel of land and predict what
24 can be built on it.

1
2 One of the biggest challenges for forecasting
3 future development is that zoning regulations apply
4 to zoning lots. Zoning lots cannot be seen with the
5 naked eye. They may or may not be continuous with
6 tax lots, which are assigned by the Department of
7 Finance for taxation purposes.

8 While every building permit must be accompanied
9 by a zoning lot description in a map indicating the
10 boundaries of the zoning lot, there is no single map
11 that shows where one zoning lot is relative to
12 another. A vacant tax lot maybe a zoning lot onto
13 itself with a maximum developable height and bulk
14 that can be calculated based on the square footage.
15 The same parcel may also be part of a zoning lot that
16 includes multiple tax lots. In which case, it might
17 be undevelopable because its development rights have
18 been transferred to another tax lot within the zoning
19 lot.

20 The lack of transparency is complicated by the
21 fact that transfers of development rights within and
22 between zoning lots are accomplished by contract
23 between private parties.

24 While record of such transactions must be
25 recorded wiht the City Register, there's no way to

1 track development rights transfers without keeping a
2 vigilant watch over the city's tax record.

3
4 I would like to thank Chair Cabrera and Council
5 Member Kallos for bringing these issues to the
6 forefront with this package of legislation that will
7 finally require zoning lots to be mapped and
8 numbered; just like tax lots. And also require the
9 Department of Finance to notify community boards and
10 elected officials whenever development rights
11 transfers or a zoning lots mergers are recorded.

12 Hopefully, we'll be able to make the land use
13 process more transparent and increase the public
14 trust in our effort to build a city of the future
15 that works for all New Yorkers.

16 And with that, I'm going to allow our Council
17 Member Kallos to give an opening statement.

18 COUNCIL MEMBER KALLOS: Thank you Chairs Cabrera
19 and Salamanca. I am Council Member Ben Kallos, you
20 can tweet me at Ben Kallos if you are watching at
21 home and want to comment on today's proceedings.

22 Today, we're hearing two bills that I am proud to
23 sponsor. First, community seeking to fight back
24 against living in the shadow of a super tall building
25 for billionaires seeking better views, will get a new

1
2 weapon in the form of public notice provided when
3 real estate developers transfer develop rights under
4 proposed Introduction 1701 of 2019.

5 This bill would require that any time a transfer
6 of development rights is recorded with the city, that
7 a copy be provided within five days to the relevant
8 community board, Council Member and Borough President
9 along with the Speaker of the City Council.

10 While New York City is no longer a stranger to
11 tall buildings since the birth of billionaires row on
12 432 Park Avenue, developers have been using the
13 transfer development rights to stack all the
14 development rights onto a very small lot, seeking to
15 build narrow, super tall buildings in excess of I
16 believe the definition is 800 or so feet.

17 Now, development of out of context skyscrapers
18 and super tall are being proposed for residential
19 neighborhoods at 58 Sutton, 180 East 88th Street, 249
20 East 62nd Street, 50 West 66th Street and 200
21 Amsterdam Avenue and all of which have faced fierce
22 community challenge. Residents involved in the
23 transfer often do not know they are helping bring a
24 super tall to their community.

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2 As reported by the Daily News, at Sutton place,
3 the developer got the residents to sell their air
4 rights by misleading them into believing the building
5 would be no more than 30 stories. Then before the
6 ink was even dry, the developer turned around and
7 announced plans for a \$1 billion, 90 story mega
8 tower, one of the largest condos in the country.
9 Community challenges are often a race to the clock
10 making public notice essential.

11 I want to thank my Co-Prime Sponsor Helen
12 Rosenthal and Manhattan Borough President Gayle
13 Brewer. I'd also like to thank the Land Use Division
14 Staff Jeff Campagna and Julie Lubin for their work on
15 this bill.

16 I also want to just take a moment to speak in favor
17 of Council Member Cabrera's legislation, Introduction
18 1691 and 1692. You have no idea how many hours I
19 have spent of my life going through ACRIS filings in
20 order to determine which pieces of property
21 developers owned. What LLC owned which piece of
22 what, the relationship between multiple similarly
23 named LLC's. Only to find that in the definition of
24 the zoning lot that was in their red herring and
25 offering plan, often didn't even match what was filed

1 with the city at the DOB. Let alone match what was
2 filed with the Finance Department.
3

4 And so, I've been the one trying to actually
5 piece together the actual maps, the DOB maps and
6 others and I was helped in doing all of that by a
7 resident of my district named George James. But the
8 fact is, that that is crazy. No one should need to
9 hire a lawyer and an urban planner to figure out
10 what's going on. So, I am incredibly supportive of
11 1691 and 1692. I wish to associate myself with both
12 bills.

13 In 2017, I sponsored, and the City Council passed
14 Local Law 103 of 2017, amending the Charter to
15 provide that certain testimony delivered at a public
16 hearing must be sworn or affirmed under oath.

17 Specifically, only testimony by an applicant on
18 proposed application either varied the zoning
19 resolution or for a special permit shall be sworn or
20 affirmed under oath. Local Law 103 also establishes
21 civil penalty for any person knowingly makes or
22 allows to be made false statements to the BSA.
23 Notwithstanding Local 103, the BSA rules do not
24 require any person who offers testimony to do so
25 under oath. Rather, the rules require only that the

1 person offering testimony must state his or her name,
2 address within effected area and/or represented of
3 capacity.
4

5 Today, we will hear Introduction 1723 which
6 expands upon Local Law 103 of 2017, amending section
7 663 of the Charter to require that property owners
8 providing testimony at all BSA hearings do so under
9 oath. The purpose of this introduction is to prevent
10 unscrupulous property owners from providing false
11 information to the BSA, providing board commissioners
12 with accurate information when evaluating an
13 application.

14 I'd like to thank the Committee Council Daniel
15 Collins for his work on this bill, as well as Jess
16 Baker and Laura **[INAUDIBLE 21:41]** for their work on
17 this bill and this package of bills, the Council
18 passed to reform the BSA in 2017. Thank you.

19 CO-CHAIR SALAMANCA: Alright thank you Council
20 Member Kallos. I just also want to recognize that
21 Council Member Rosenthal asked us to read this letter
22 that she actually sent to the BSA on June 5, 2019
23 which was signed by; I would say close to 20 of my
24 colleague including myself on 200 Amsterdam Avenue.
25

1
2 And I just want to point out here in the letter,
3 we urge the Board of Standards and Appeals to
4 prohibit the use of gerrymandered zoning lots in the
5 City of New York. The use of gerrymandered lots has
6 significant policy implications for the city. Most
7 fundamentally, we are concerned that divorcing zoning
8 lots from the tax lots on a block will make ensuring
9 compliance with the zoning resolution dramatically
10 more difficult.

11 Rather than working from a set pool of building
12 blocks, lots mergers could now include a nearly
13 unlimited number of variations and without tax lot
14 boundaries for reference.

15 The Department of Buildings itself has come to
16 recognize that the public trust is best served by
17 prohibiting such gerrymandering. It is noted in the
18 March 9th letter to the Board that having zoning lot
19 lines coincide with tax lines promote clarity and
20 transparency.

21 This particular proposal is in one council
22 district but the implications of the boards decision
23 on the land use process will be felt citywide. The
24 board should not reverse the Department of Buildings
25 interpretation, rather we urge you to uphold it and

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2 ensure clear and more transparent language process
3 going forward.

4 So, with that, I will hand it over to the
5 Council.

6 COUNCIL CLERK: And we'll swear in the agencies
7 present. If you could raise your hand. Do you
8 affirm to tell the truth, the whole truth and nothing
9 but the truth in your testimony before this Committee
10 and to respond honestly to Council Member questions?

11 CHAIRPERSON CABRERA: You may begin.

12 UNIDENTIFIED: Okay, so do you want City Planning
13 or BSA to begin?

14 CHAIRPERSON CABRERA: How ever you'd like.

15 SUSAN AMRON: Good morning, Chair Cabrera, Chair
16 Salamanca, and members of the Governmental Operations
17 and Land Use Committees. My name is Susan Amron and
18 I am General Counsel at the Department of City
19 Planning. I am joined by Frank Ruchala, Director of
20 the Department of City Planning's Zoning Division.

21 Thank you for the opportunity to testify on
22 Introduction Numbers 1691, 1692, and 1701. We
23 appreciate the City Council's interest in zoning lots
24 and zoning lot mergers.

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2 The Department of City Planning, New York City's
3 primary land use agency, is responsible for planning
4 for the orderly growth and development of the City of
5 New York. It administers the City's land use review
6 process; referred to as ULURP, conducts planning
7 studies, and collects statistical and other data that
8 serve as the basis for land use planning
9 recommendations. Department of City Planning staff
10 also aid the City Planning Commission in all matters
11 under its jurisdiction. The City Planning Commission
12 hold regular public hearings and votes on
13 applications concerning use, development, and
14 improvement of real property subject to city
15 regulations.

16 I want to start my testimony by discussing how
17 zoning lots are formed, to frame our comments on the
18 proposed legislation. As you know, the Zoning
19 Resolution governs land development through specific
20 use and bulk regulations applicable largely to zoning
21 lots. For example, as a general matter, development
22 rights are calculated based on the size of a zoning
23 lot and the applicable zoning district's floor area
24 ratio. At its simplest, a zoning lot is a tract of
25

land, usually on one block, that is to be developed as a unit.

Today, the Zoning Resolution defines zoning lot in four ways. The first definition is historical and effectively grandfathers any lot of record existing prior to 1961. The other three describe zoning lots formed through common ownership of contiguous lots at specific points in time or through private agreements among owners of contiguous lots.

Regardless of how they are formed, zoning lots generally allow the floor area to be arranged anywhere on the zoning lot, in any manner consistent with bulk regulations.

New zoning lots are created without involvement of the City Planning Commission or the Department of City Planning. Indeed, the transaction among private parties that create new zoning lots are typically accomplished as-of-right. That is, without discretionary approval of any city agency. City agencies may not know of a private agreement to create a new zoning lot until the landowners want to do something that depends on the establishment of the zoning lot. For example, pulling a permit for a development or engaging in certain types of property

1 transactions. In that situation, when the owner
2 wants a tract of land to be recognized as a new
3 zoning lot, the owner records a Zoning Lot
4 Declaration of Restrictions.
5

6 And, when a developer wants to develop or enlarge
7 on such a zoning lot, the developer submits required
8 documentation to the Department of Buildings. All is
9 required by the Zoning Resolution. But precisely,
10 when a new zoning lot is recorded is largely up to
11 the developer. No development however, that depends
12 on the new zoning lot is possible until the developer
13 records the zoning lot.

14 These public recordation requirements were added
15 to the Zoning Resolution in 1977. Zoning lots formed
16 before 1977, may or may not be supported by readily
17 available documentation.

18 These is no comprehensive list of zoning lots for
19 all zoned land in New York City. Sometimes
20 identifying a zoning lot is straightforward. Other
21 times it can require weeks or months of fact
22 intensive historical research by title, insurance
23 companies, lawyers and other experts. Occasionally,
24 the available evidence for pre 1970 zoning lots is
25 not definitive.

1
2 By conservative estimate, there are tens of
3 thousands of lots in New York City for which an
4 official zoning lot has never been established in the
5 public record. These may be lots with buildings that
6 predate zoning in 1916 or the introduction in 1938 of
7 Certificates of Occupancy that list the metes and
8 bounds of a relevant lot.

9 Because determination of zoning lot status has
10 legal force and can dramatically affect what an owner
11 can do on a site, inquiries into zoning lot status
12 much be thorough and accurate, and zoning lots must
13 be determined on an individualized basis.

14 Given the history of zoning lot creation, the
15 lack of historical documentation and the complicated
16 and individualized nature of zoning lot
17 determinations, the Department of City Planning
18 believes it would not be possible to assign an
19 identifying number to, create a comprehensive list
20 of, or develop a map displaying zoning lots for all
21 zoned land in New York City.

22 With respect to Introduction 1701, we generally
23 support the Council's desire to bring transparency to
24 the creation of new zoning lots and look forward to
25 working with the Council on this effort.

1
2 One final point; Introduction 1691 seeks to amend
3 section 191 of the Charter, which sets forth the
4 powers of the Director of City Planning. Changes to
5 the authority of the Director of City Planning are
6 subject to referendum.

7 Thank you again for the opportunity to testify
8 today and City Planning looks forward to continued
9 dialogue with the Council on these proposed
10 legislations.

11 MARGERY PERLMUTTER: Good morning, Chair Cabrera,
12 Chair Salamanca, and members of the Governmental
13 Operations and Land Use Committees. I am Margery
14 Perlmutter, Chair of the New York City Board of
15 Standards and Appeals. I have here present several
16 members of my staff for support, including Kurt
17 Steinhouse who's our General Counsel and Carlo
18 Costanza who's our Executive Director.

19 I thank you for the opportunity to testify today.
20 The Board of Standards and Appeals supports
21 Introduction Number 1723, which would require sworn
22 testimony for all applications before the Board,
23 because the Board already requires most applicants to
24 provide sworn testimony at public hearings. So, as a
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1
2 result, I would like to provide a brief background on
3 the Board and then take questions.

4 Since 1916, the Board has worked with administer
5 zoning, building, and housing regulations in a fair
6 and just manner to protect the City's interest in
7 safeguarding the general welfare, while balancing
8 private property interests. In this role, the Board
9 has frequently been called a relief valve, a
10 protector of the City's regulations from
11 constitutional challenge and a guardian of the urban
12 fabric.

13 The Board is an independent agency that consists
14 of five full-time commissioners with select skill
15 sets, including experience in architecture, urban
16 planning, and engineering and supported by a staff of
17 16 employees. Using their technical expertise and
18 independent judgement, each commissioner scrutinizes
19 every land use application with the utmost of care.
20 Commissioners' review frequently involves analyzing
21 intricate construction documents, financial
22 statements, testimony from other governmental
23 agencies, and site conditions gleaned through visits
24 to the properties and neighborhoods at issue.

1
2 The Board's staff of 16 employees currently
3 manages 103 years of archives and 651 pending
4 applications. Since 1998, the Board has had
5 approximately 14,000 applications filed, an average
6 of about 700 applications per year over the past two
7 decades. Under the direction of the Board's
8 executive director and deputy directory, these 700
9 applications are reviewed by three full-time project
10 managers, one part-time project manager and one
11 environmental officer.

12 Second, I would like to note the Board's
13 implementation of recent legislation, which we
14 discussed at the Governmental Operations Committee
15 hearing on February 25, 2019 where we went into
16 detail about each of those bills and how the Board
17 was implementing each.

18 As you know, in 2017, the City Council passed
19 nine bills relating to the Board of Standards and
20 Appeals and it's operation, which were signed into
21 law on May 30, 2017. These bills address concerns
22 relating to the Board's transparency, consideration
23 of community comments, and the veracity of applicants
24 submissions and testimony.

1
2 The Board has since undertaken a number of
3 initiatives to ensure implementation of the specifics
4 of those bills as well as taken measures of its own
5 to further promote transparency and community
6 engagement.

7 Last, as I mentioned, we support Introduction
8 Number 1723. The Board already requires applicants
9 and their representatives to affirm their testimony
10 under oath live at hearings for all cases, except
11 interpretive appeals, General City Law and Multiple
12 Dwelling Law waivers, and vested rights cases. Since
13 the Board already requires applicants to be sworn in
14 for these applications, we support Introduction
15 Number 1723, which expands the scope of this
16 requirement.

17 I am happy to take any questions and look forward
18 to hearing ideas about improving the Board's
19 processes. Thank you again for the opportunity to
20 testify.

21 CHAIRPERSON CABRERA: Thank you so much and I
22 want to ask if Mona Sehgal is present from DOB?
23 We're going to have a few questions and let me ask
24 Council to swear you in as well.

1
2 COUNCIL CLERK: If you could raise your hand. Do
3 you affirm to tell the truth, the whole truth and
4 nothing but the truth in your testimony before this
5 committee and to respond honestly to Council Member
6 questions?

7 MONA SEHGAL: I do.

8 CHAIRPERSON CABRERA: Thank you so much. For my
9 colleagues, I'm going to refrain myself and I believe
10 Council Member Salamanca as well at the beginning
11 just to a couple of questions, so we could get you
12 right in. So, if you have any questions, please let
13 Council know.

14 Let me start and welcome, every single one of
15 you. I appreciate all the work that you do. It's
16 very detailed work, sometimes people on the outside
17 may not understand this. So, I'm going to try to
18 give it some context whenever I ask a question.

19 So, let me start in general, regarding **GO coded**
20 data provided the BSA on special permits and
21 variances, prior to the enactment of Local Law 105 in
22 2017, it was the Governmental Operations Committee
23 understanding that GO coded BSA data will be added as
24 a layer to ZoLa. Why was the decision made to place
25

1 this data on a different online map on open data
2 instead of ZoLa?

3
4 MONA SEHGAL: So, I don't think actually the
5 assumption was that it was going to be added to ZoLa,
6 it was going to be made available to the public and
7 mapped.

8 So, what we did was GO coded it, it's mapped,
9 available on open data and available through links on
10 our own website and what I am understanding is that
11 ZoLa is created actually to guide potential apt
12 developers, property owners in how to shape their
13 buildings. How to understand what the zoning
14 regulations are with respect to their buildings, so
15 that they can know how to move forward in a design.
16 And City Planning itself doesn't even put its own
17 special permits on ZoLa, because that's not guiding a
18 potential developer or property owner on how to
19 design the building.

20 So, ZoLa's probably not the right place for the
21 BSA determinations. Whereas open data is a great
22 location for all of that information because it can
23 sweep and have access to all of the data that's
24 available in New York City.

25

1
2 CHAIRPERSON CABRERA: Do you happen to have data;
3 how many people log on to the open data to get
4 information?

5 MONA SEHGAL: I don't; we could get that for you.
6 I also have with me, who's really our IT expert or
7 one of our two IT experts, Carlo Costanza, he might
8 know this answer, but I don't know because that's
9 pretty deep in the weeds.

10 CHAIRPERSON CABRERA: Okay, we're going to have
11 to swear you in.

12 COUNCIL CLERK: If you could raise your hand. Do
13 you affirm to tell the truth, the whole truth and
14 nothing but the truth in your testimony before this
15 committee and to respond honestly to Council Member
16 questions?

17 CARLO COSTANZA: I do. Good morning Council.
18 I'm sorry, can you just repeat the question?

19 CHAIRPERSON CABRERA: The question was, do you
20 happen to have data on how many people go to open
21 data to get this information that we were just
22 talking about?

23 CARLO COSTANZA: Yeah, so, at the time that the
24 legislation was implemented, we provided on both the
25 open data and the open map portal. All of our data

1
2 with regards to applications filed since 1998 and to
3 the present, as was required. We went beyond the
4 legislation, which only required variances in special
5 permits. We opted to provide everything, both
6 decided and currently active. We have approximately
7 9,700 applications available on both portals.

8 MONA SEHGAL: So, now we have an answer which is
9 provided by my general Counsel. According to the
10 data set, which is I guess the open data, data set
11 information; there were 3,003 views of the state -

12 CHAIRPERSON CABRERA: Okay, that's very good. My
13 biggest concern alright, maybe the word concern is
14 not the appropriate word. My suggestion to you is
15 that all the information you find in ZoLa; wouldn't
16 be easier to have everything in one place. I mean
17 ZoLa is where the developers go, correct?

18 MONA SEHGAL: So, I'll, because and this really
19 City Planning domain, but I just learned that ZoLa
20 and I use ZoLa all the time myself, but I'm using it
21 to find out what's the zoning? Is the site located
22 in a historic district? I can get to the tax map
23 very easily; it has all of these very handy links, so
24 that I can study that site and see what can be
25 developed on that site. It doesn't have links to

1
2 what's already developed on the site which is really
3 what we're talking about when we say special permits
4 and variances.

5 So, it's arguably not the right place to go for
6 that.

7 CHAIRPERSON CABRERA: Would it be helpful just to
8 even have a link there that will take them to open
9 data just in case?

10 MONA SEHGAL: I think ZoLa already has an open
11 data link, but this is really a domain of City
12 Planning.

13 CHAIRPERSON CABRERA: Okay.

14 MONA SEHGAL: We use it, but we don't run it.

15 CHAIRPERSON CABRERA: City Planning.

16 SUSAN AMRON: So, I am informed that ZoLa has a
17 link to open data, but you know, City Planning
18 maintains different data bases for different
19 purposes. ZoLa has a specific purpose. We have
20 other - there are other maps and data bases out there
21 that have other purposes and so, our understanding is
22 that if someone is looking to develop or looking for
23 information, they will visit, you know, they can look
24 in a number of different places but there are links
25 between them.

CHAIRPERSON CABRERA: I'm going to come back; I have quite a few questions, but I'm going to give it to my Co-Chair and come back after we hear from our colleagues because I really want to get into the possibility of having the map. I know it's difficult but usually I have learned the right — the difficult thing is the right thing.

And so, with that assumption, let me pass it onto my Co-Chair.

CO-CHAIR SALAMANCA: Thank you Chair Cabrera, I want to recognize that we've also been joined by Chair Moya. Thank you for your statement.

The representative from the Buildings Department, if on the record, if you can just state your name.

MONA SEHGAL: My name is Mona Sehgal, General Counsel at the Department of Buildings.

CO-CHAIR SALAMANCA: Thank you, thank you. So, my question here, can you briefly walk us through the BSA's conclusion that a zoning lot can be compromised of a partial tax lot and supporting evidence and arguments that the BSA considered in reaching that conclusion?

MONA SEHGAL: Who is this directed to?

CO-CHAIR SALAMANCA: I guess the BSA.

1
2 MARGERY PERLMUTTER: So, this is the actual
3 subject of this is in active litigation, so I can't s
4 speak to this.

5 CO-CHAIR SALAMANCA: You can't just speak to it
6 in general?

7 MARGERY PERLMUTTER: I can't because it's for the
8 court to decide the answer.

9 CO-CHAIR SALAMANCA: Okay, alright. Can you walk
10 us through why the BSA's majority disagreed with the
11 Supreme court's finding that the Department of
12 Buildings currently interprets of the zoning lot
13 definition should not apply retroactively.

14 MARGERY PERLMUTTER: Sorry, is this also related
15 to the same case?

16 CO-CHAIR SALAMANCA: No, this is just a general
17 question.

18 MARGERY PERLMUTTER: So, I don't know what the
19 question is referring to.

20 CO-CHAIR SALAMANCA: Okay, so, can you walk us
21 through why the BSA's majority disagreed with the
22 Supreme Court's findings that the Department of
23 Buildings current interpretation of the zoning lots
24 definition should not apply retroactively.

25 MARGERY PERLMUTTER: I believe this has to do

1
2 with the case that's in litigation and I can't speak
3 to that.

4 CO-CHAIR SALAMANCA: So, in the future, which
5 interpretation will you use.

6 MARGERY PERLMUTTER: Which interpretation as to?

7 CO-CHAIR SALAMANCA: As to in terms of the
8 whether a zoning lot can be converted into a partial
9 tax lot.

10 MARGERY PERLMUTTER: It's in active litigation,
11 it's the court that will decide what the right answer
12 with that.

13 CO-CHAIR SALAMANCA: Alright. I'm sorry, I'm just
14 trying to get my questions in order because I don't
15 to interfere with your -

16 MARGERY PERLMUTTER: I understand, understood.

17 CO-CHAIR SALAMANCA: So, in terms of zoning lot
18 mergers, as a matter of policy, does DCP have review
19 on whether or not zoning lots should consist of a
20 whole tax lot, not partial tax lots? I guess I will
21 ask DCP questions.

22 MARGERY PERLMUTTER: Okay.

23 SUSAN AMRON: We defer to the Department of
24 Building when they get an application for development
25 and whether that application complies with the zoning

1 resolution. With respect to a specific case, again,
2 that issue is in litigation at the moment.
3

4 CO-CHAIR SALAMANCA: So, does requiring that a
5 zoning lots be comprised of whole lots promote
6 clarity and transparency for the public in your
7 opinion?

8 SUSAN AMRON: Again, I don't want to repeat the
9 same - I mean to sound like a broken record but the
10 question of whether zoning lots can include partial
11 tax lots or have to include the whole entire tax lot,
12 is in active litigation and we just can't discuss
13 that topic.

14 CO-CHAIR SALAMANCA: Alright, you know what, I'm
15 going to hand this over to Council Member Kallos. I
16 am going to allow you to ask some of your specific
17 questions on your bills and we'll come right back
18 with our questions.

19 COUNCIL MEMBER KALLOS: Just to follow up on the
20 mapping. Thank you for posting the data onto open
21 data. It appears that you used the visualization
22 tool built into open data in order to provide
23 mapping.

24 There's currently only a filter as to the status
25 of different applications. If it is possible to add

1
2 more filters, so folks can filter down to their
3 community board and other specific items, could you
4 add those filters and then -

5 MONA SEHGAL: You may be able to, just a second.
6 This is the wiz on how to use it.

7 COUNCIL MEMBER KALLOS: The answer is yes,
8 because I'm building my own visualization, but I want
9 to just make sure that the default has more filters
10 available.

11 CARLOS COSTANZA: We will look into it; we will
12 discuss and whatever is possible to implement we
13 will.

14 COUNCIL MEMBER KALLOS: The other issue is, the
15 reason we wanted the visualization is just to see how
16 staggering all the variances are and my read of this
17 is that at least on my screen, they appear to be very
18 dense in terms of the numbers of that. Would it be
19 possible to update it where there is a variance that
20 is larger than one specific piece of property? If
21 it's a variance for an entire block, if it is
22 possible to - or let me change it based on the
23 nonverbals I am getting. Are there ever variances
24 that are granted for more than just one building?
25 Are there ever blockwide variances?

1
2 MONA SEHGAL: So, a variance pertains to a zoning
3 lot, so it's true that there could be a zoning lot.
4 You actually are probably familiar with a case that
5 you were involved with where a school on a much
6 larger zoning lot, right.

7 So, the variance pertains to the school, but it
8 pertains to the entire zoning lot. So, I think what
9 you're saying is, you would want to see the
10 visualization of the zoning lot as opposed to the
11 building that received the waiver.

12 COUNCIL MEMBER KALLOS: Actually either, I guess
13 one question is, just in support of my colleagues
14 bill and then I will get back to my questions. You
15 were able to do this for several thousand BSA
16 variances. In your experience, do you think that
17 another agency would be able to accomplish a similar
18 task looking at the zoning lots that have merged?

19 MONA SEHGAL: Well, the meets and bounds of our
20 approvals are very clearly laid out in our
21 resolutions. So, it's easy for us to know what they
22 are. I don't know if it's so easy to actually map it
23 other than to put a dot, right.

24 COUNCIL MEMBER KALLOS: Okay, did BSA ever hire
25 an appraiser as are required by law?

1
2 MONA SEHGAL: Yeah, so, we have been working very
3 closely with DCAS and still have learned a lot about
4 the cost of an appraiser and we're still working on
5 trying to get funding for it. However, we don't have
6 -

7 COUNCIL MEMBER KALLOS: But please let DCAS and
8 OMB know that they are violating the law and that if
9 they do not give you your appraiser that that is
10 illegal and that you need it in order to do the
11 financial analysis.

12 With regard to, let me just skip over to DOB.

13 MONA SEHGAL: I just want to add though, we do
14 have a financial specialist who sits on our Board, so
15 it's not that we're all uninformed about the
16 financial analysis; it's just not a licensed
17 appraiser.

18 COUNCIL MEMBER KALLOS: For DOB, are the zoning
19 lot mergers currently public information through
20 ACRIS?

21 MONA SEHGAL: Yes.

22 COUNCIL MEMBER KALLOS: Great, and do you see any
23 issues with providing notice to communities, to the
24 Community Board, to the elected official and what

25

1
2 have you when somebody makes their zoning lot mergers
3 public?

4 MONA SEHGAL: I can't really speak to the effort
5 there, but I just want to say that we do have
6 information that does get sent to City Council
7 members and to the Community Boards today, through
8 Building on my Block.

9 So, anytime there is an approval that's filed or
10 approval that's issue or a permit that's issued,
11 reports go out on a weekly basis to Council Members
12 and to the Community Boards.

13 COUNCIL MEMBER KALLOS: I have never gotten an
14 email from Building on my Block; I will sign up for
15 it. I literally have people on my staff who log into
16 the business building information system everyday to
17 check what's going on with specific buildings in my
18 district.

19 So, can you sign me up for this?

20 MONA SEHGAL: We will take that information and
21 someone at DOB will follow up with you.

22 COUNCIL MEMBER KALLOS: So, it sounds like the
23 technology is already there to do this.

24 MONA SEHGAL: And it's being done in this way.

25

1
2 COUNCIL MEMBER KALLOS: Perfect, is there an
3 opportunity to require that anyone who creates an
4 option for a zoning lot, relating to development
5 rights also have to file and provide that notice?
6 Similar to the statute of frauds in common law?

7 MONA SEHGAL: I'm sorry, Council Member, can you
8 just repeat the beginning.

9 COUNCIL MEMBER KALLOS: This is for DOB or DCP,
10 is there an opportunity to say that not only when you
11 file but following the lead the statute of frauds,
12 which requires that certain properties transfers be
13 required in writing, can require that any time a
14 transfer in development rights or an option relating
15 there to is recorded in writing that they must be
16 filed with the city in order to be valid.

17 MONA SEHGAL: Well, I can speak to what the
18 Department of Buildings is looking at today under the
19 law and whether or not you can require it legally may
20 need to be looked at more closely. So, I don't know
21 that I can speak to that, but certainly with respect
22 to what we do today, documents that are submitted to
23 DOB come at the time when there is a need for
24 construction document approval for a proposed
25 development or enlargement. And it's at that time

1 that my agency requires documentation about zoning
2 lot.
3

4 Any proposed zoning lot merger or a zoning lot
5 merger that may have been previously filed on ACRIS,
6 be submitted to DOB to support the zoning
7 calculations for that development or enlargement.

8 COUNCIL MEMBER KALLOS: If I may have one follow
9 up question?

10 At 180 East 88th Street, it so happened that the
11 zoning lots and tax lots hadn't been subdivided as
12 they had said so in their DOB filings and they were
13 nonetheless approved. How does somebody get an
14 approval for a building when they haven't actually
15 done the zoning lot merger or subdivision yet?

16 MONA SEHGAL: So, I think you're talking about 3rd
17 Avenue?

18 COUNCIL MEMBER KALLOS: Correct.

19 MONA SEHGAL: Okay, if there was, and I don't
20 recall the specifics of that case; however, to the
21 extent that there was any issue that did come up, it
22 was corrected.

23 COUNCIL MEMBER KALLOS: I guess the only concern
24 is just and again, why I like my colleagues bill so
25 much. It took me and an Urban Planner several hours

1
2 to find it, so that we could raise it to DOB who had
3 already approved it without the changes. And then,
4 it took several months, but there was a corrective
5 action, but DOB is extensively the gate keeper in
6 making sure people follow the laws. Thank you very
7 much.

8 CHAIRPERSON CABRERA: Thank you so much, with
9 that, Council Member Powers.

10 COUNCIL MEMBER POWERS: Thank you. Thanks, just
11 a few quick questions. I missed a little bit of the
12 conversation with Council Member Kallos.

13 Is there an opinion or support or opposition to
14 his legislation that relate to the air rights
15 transfers? I don't think I saw it in the testimony.
16 I am a sponsor of the bill, it is our bill, that's
17 correct.

18 SUSAN AMRON: We're just trying to make sure that
19 we are discussing the correct Intro. Number.

20 COUNCIL MEMBER POWERS: Okay, it is the
21 legislation that requires notification and I will
22 give you the bill number; it is 1701.

23 SUSAN AMRON: Okay, we support the idea of
24 transparency in creation of zoning lots going
25 forward. There's some details that we would work

1
2 with the Council on the bill, but generally we are
3 supportive of the bill.

4 COUNCIL MEMBER POWERS: Okay, and did I hear a
5 comment earlier that there is some notification given
6 today related to this information, because I,
7 similarly, don't recall my office or when I was a
8 Community Board Member, the Community Board getting
9 information related to air rights transfers.

10 MONA SEHGAL: So, with respect to the Department
11 of Buildings involvement, we are not involved in
12 private agreements involving air right transfers.

13 When Department of Buildings gets involved, it's
14 at the time when an applicant comes to the agency to
15 file construction documents.

16 COUNCIL MEMBER POWERS: It's after they have
17 gotten the air rights, it's when they're filing their
18 plans.

19 MONA SEHGAL: Those air rights are private
20 agreements.

21 COUNCIL MEMBER POWERS: Yeah, okay, I got it, I
22 got it. Are there any technical hurtles or any like
23 logistical hurtles related to providing that
24 information to Community Board, Borough President,
25 elected official from City Planning or BSA?

1
2 SUSAN AMRON: City Planning doesn't get
3 information about private agreements among landowners
4 and we don't get you know, the declarations or other
5 documents filed with us.

6 So, from our perspective, we wouldn't have the
7 information to provide to anyone.

8 MARGERY PERLMUTTER: And to add to that, the BSA
9 really has nothing to do with zoning lot mergers that
10 go on as-of-right.

11 COUNCIL MEMBER POWERS: Okay, I appreciate it.
12 Council Member Kallos noted to me that if you go on
13 the Building of my Block website, there's not a sign
14 up for email. So, I think may be perhaps we're
15 provided with that information but can the public
16 sign up for that to get information about what's
17 happening on their block? In an email format rather
18 than having to go on manually?

19 MONA SEHGAL: So, just getting updated. A couple
20 of things; Buildings on my Block, you have to go to
21 the website to get that information. However, I do
22 want to say today to you Council Member, that we have
23 a new effort that is in the works and DOB staff can
24 follow up as needed with your staff.

1
2 But the new effort is soon to launch to allow
3 members of the public to sign up to receive email
4 updates on construction projects of interest. And
5 so, that will be an effort that we do hope to launch
6 shortly.

7 COUNCIL MEMBER POWERS: Do you know which
8 shortly, the timeline with that is? What the
9 timeline is?

10 MONA SEHGAL: I'm being told that it would be
11 next month.

12 COUNCIL MEMBER POWERS: Next month, okay, that's
13 good, thank you.

14 Just switching topics since the topic here is
15 general operations of the Board of Standards and
16 Appeals. Can you just tell us, I think there's five
17 Commissioners right now, full time Commissioners of
18 the BSA, all appointed by the Mayor. Just
19 clarification; subject to if I say consent by the
20 City Council.

21 MARGERY PERLMUTTER: Yes.

22 COUNCIL MEMBER POWERS: Okay, has there been any
23 discussion - I mean, City Planning has appointees
24 from the City Council, the Borough Presidents, you
25 know, it strikes me the Mayor has all the power here

1
2 in terms of appointments to the BSA which is an
3 appeals process, yet you know, for Council we have
4 many projects that come through. You know, in our
5 districts and our communities that come through the
6 BSA. Has there ever been a discussion about
7 expanding the composition or changing who has
8 appointments to the BSA?

9 MARGERY PERLMUTTER: So, if you had participated
10 in the thrilling Charter Revision Commission
11 hearings, you would have seen quite a lot of
12 testimony on this subject or discussion on this
13 subject.

14 COUNCIL MEMBER POWERS: I know Council Member
15 submitted some testimony on that.

16 MARGERY PERLMUTTER: So, of course, there were
17 proposals during the Charter Revision Commission
18 proceedings to expand the BSA from five to as many as
19 thirteen Commissioners appointed by very many
20 different kinds of people but I do want to clarify
21 here that though the five Commissioners are appointed
22 by the Mayor with advice and consent of the Council,
23 once they're appointed, they are not permitted by
24 rule to be contacted by anyone once an application
25 has been filed and is pending before the Board.

1
2 So, whether or not it's appointed by the Mayor or
3 anybody else, it's not as if anyone can call a
4 Commissioner and say vote the way I would like you to
5 vote.

6 COUNCIL MEMBER POWERS: Yeah, I'm not questioning
7 independence here, it's just about composition
8 because in other agencies we have the full - an
9 ideological belief that you know, different forms of
10 appointment representation are important.

11 Is there an opinion whether the composition
12 should be, even if - whether the appoint - division
13 of appointments or sort of overall composition should
14 be looked at?

15 MARGERY PERLMUTTER: I think it was extremely
16 heavily looked at in the last few months.

17 COUNCIL MEMBER POWERS: I'm asking if you have an
18 opinion on it.

19 MARGERY PERLUTTER: I think it was heavily looked
20 at. I think actually the composition is the right
21 idea. The issue really of who's on the BSA has to do
22 with expertise and it may sound easy to find the
23 people with the kind of expertise that needs to be on
24 the board, but it is not easy. And one of the
25 requirements is that we have a representative from

1 say no more than two representatives from each
2 borough and the ideal is one representative from each
3 borough.
4

5 And for example, finding a structural engineer
6 with the kinds of expertise that's necessary to
7 review our applications, who wants to come work for
8 the City of New York and not work for one of the big
9 engineering companies, is no small feat and that's
10 true about all of the other experts.

11 COUNCIL MEMBER POWERS: I appreciate it. My
12 final question, is there an appointee from every
13 borough right now?

14 MARGERY PERLMUTTER: We have actually two from
15 Queens at the moment.

16 COUNCIL MEMBER POWERS: Two from Queens, okay. I
17 won't ask which boroughs are represented and I will
18 figure out. Thank you.

19 MARGERY PERLMUTTER: It's actually Brooklyn,
20 surprisingly.

21 CHAIRPERSON CABRERA: Okay, thank you so much.
22 Any questions from my colleagues before the Chairs
23 start asking questions?

24 Alright, so with that, let me come back. At the
25 February 25th hearing on the Governmental Operations

1
2 Committee, the BSA testified that a clerical system
3 will be necessary to implement 1095-218 with regards
4 to expiration notification. The BSA also stated that
5 the resources were presenting a challenge in
6 implementing Local Law 102 of 2017 regarding access
7 to a state certified real estate appraiser.

8 As DCAS and I know that question was asked, but
9 if you could get into a little bit more detail, has
10 DCAS granted a BSA access to such an appraiser? If
11 not, could you give a little more detail whats
12 hindering? How you identify other areas of need and
13 will the BSA require additional resources in order to
14 implement the legislation before the Committee today?

15 MARGERY PERLMUTTER: So, I just want to before we
16 go to the appraiser, I think one part of your
17 question was about an IT person for notification.

18 CHAIRPERSON CABRERA: Right.

19 MARGERY PERLMUTTER: So, yes, we actually were
20 able to happily thankfully – I want to actually thank
21 Council Member Kallos for his help on that. We're
22 able to hire an IT person and a Compliance Officer;
23 both of whom work on a data base now, which will do
24 much more than what the bill is suggesting. The bill
25 suggest that we just notify recipients of variances

1 that were granted since 2013. That there variances
2 are about to expire.
3

4 We don't typically grant variances with terms of
5 years. We've had only three in that time, but we
6 have many other kinds of applications that have terms
7 of years and we're working on a data base that will
8 eventually notify those people that their special
9 permits and other kinds of waivers are about to
10 expire. So, we're very thankful for that staff.

11 In terms of the appraiser, I'm not sure if your
12 aware of the sort of the budget situation in the city
13 but we also have a very tiny staff and we've recently
14 lost.

15 CHAIRPERSON CABRERA: Really tiny.

16 MARGERY PERLMUTTER: Yeah, very, very tiny staff
17 that handles about 700 applications a year and we've
18 recently lost some critical staff members. And so,
19 in order to keep the place running, we actually have
20 to focus on replacing them first. So that affects
21 our budget and then the appraiser as it turns out is
22 much more complicated than we realized. We had
23 thought it would be through a contract but apparently
24 what we had thought of as a contract relationship is
25 not feasible under the current structure.

1
2 COUNCIL CABRERA: So, what structure will you
3 have in place?

4 MARGERY PERLMUTTER: Yeah, so Carlo Costanza -
5 CHAIRPERSON CABRERA: Thank you Carlo.

6 CARLO COSTANZA: Thank you Chair. Yeah, so, we
7 thought that there were existing contracts already in
8 place that we could perhaps piggyback on. We've been
9 told or my understanding is that that's not possible.
10 We would have to put out our own RFP to have our own
11 separate contract.

12 When we started gauging what that would cost or
13 what we would get for the monies that had been
14 allocated for this, it appears that if we were to get
15 a contract and successfully put out the RFP, have
16 bidders and meet the contractual requirements, that
17 we probably would get maybe two to three appraisals
18 out of it; they're very expensive. So, then we
19 started to consider perhaps what the feasibility of
20 hiring a licensed appraiser, but you know, obviously
21 we don't have that approval, that part in place and
22 again, for that level of criteria it can be almost at
23 an executive level to have a New York State Licensed
24 appraiser that would be willing to come.

25

1
2 So, we haven't engaged that yet, we're scoping it
3 to see what the feasibility is of the possibility,
4 but that's the two options so far that we've had.

5 CHAIRPERSON CABRERA: So, what's the next step.
6 I mean, you're considering, you looked at the two
7 options, what's the next steps that makes sense and
8 second of all, by when do you foresee – I mean, are
9 you kind of in a bind where you have to wait until
10 next June of the new budget. Because what I'm
11 hearing between the line is a funding issue, right.

12 CARLO COSTANZA: It's the funding and the you
13 know, the prospect of finding a candidate that meets
14 whatever civil service requirement, whatever is
15 available and what that salary would like.

16 So, to meet the criteria of a New York State
17 licensed appraiser that has a certain amount of years
18 of experience that has experience familiar with what
19 our needs are and again, obviously, if we were to
20 hire someone on staff, we utilize that employee.

21 CHAIRPERSON CABRERA: What would be the
22 implication of waiting all the way into the next
23 fiscal cycle?

24 MARGERY PERLMUTTER: So, I just want to – a lot
25 of this comes from not actually I think the bill

1
2 itself came from not really understanding how the BSA
3 currently operates.

4 One of our Commissioners is a very experienced
5 financial analyst. She's not a licensed appraiser,
6 but we rely very heavily on her analysis of the
7 performers that come. That's actually what's going
8 on for the few variances that are for profit
9 variances. In the course of a year, we get maybe ten
10 or so, is that about, right?

11 CARLO COSTANZA: And the rest are typically none
12 for profits, schools, single family homes that don't
13 require a financial -

14 MARGERY PERLMUTTER: Right, so, of those ten,
15 we're looking deeply at those financials. And so,
16 it's not that we're in dire straits, we looked at it
17 instead as a great advantage to have somebody on
18 staff who we could ask for sort of data that an
19 appraiser has access to that we don't have access to.

20 CHAIRPERSON CABRERA: Let me move on to the next
21 question, because we have our esteemed - I have the
22 Borough President who's going to be testifying.
23 Thank you, you're always amazing.

24 As the Board Chair, you recuse yourself from
25 voting to prior connections to a matter before the

1
2 five-member boards. Can you please explain what the
3 boards protocol for recusal is on the circumstances?
4 Have other members of the board chosen to recuse
5 themselves and have there been situations where more
6 than one person has recused him or herself self and
7 what happens in these instances?

8 MARGERY PERLMUTTER: Okay, so in terms of how
9 recusal works, when a board member – the standard
10 rule that's really the Conflict of Interest Board
11 Rule, is that if there is some sort of financial
12 connection to that project you must recuse and by a
13 financial connection, it can even be that you have
14 some either familial or business connection to an
15 applicant and therefore, if the applicant does or
16 doesn't succeed in the project then some how or other
17 that would affect you personally, right.

18 So, that's the standard Conflict of Interest
19 Board rule, so whenever a board member is confronted
20 with that possibility, they consult with our general
21 counsel and then in turn, they go to the Conflict of
22 Interest Board to see if it rises to the level of
23 require and recusal. Typically, no one else knows
24 the reason for the recusal, that's intentional
25 because we're concerned that knowing the reason for

1
2 the reason for the recusal might affect other board
3 members and staff members opinion about the case.

4 In my case, and then we have another lawyer on
5 the Board; in both of our cases, I recuse also when I
6 view that there might be a lawyers ethical interest
7 that would be compromised. For example, if that was
8 my client and I have special information about that
9 case, then I would recuse which is different then a
10 Conflict of Interest Board recusal.

11 In terms of two Board members recusing, I haven't
12 seen that happen but three is enough to vote on a
13 case.

14 CHAIRPERSON CABRERA: But if you have four left
15 and you have a split vote, have you ever had that
16 situation?

17 MARGERY PERLMUTTER: Well, we've had situations
18 for example, well, when we didn't have enough
19 commissioners right. So, we had four commissioners
20 and one had to recuse, right, then we had three.

21 If we're ever in a situation where we only have
22 two, this is such an interesting question, I don't
23 know the answer to that. We haven't been confronted.

24 CHAIRPERSON CABRERA: So, you haven't cross that?

25 MARGERY PERLMUTTER: Yeah, happily.

1
2 CHAIRPERSON CABRERA: Alright, let me move on to
3 DCP, concerning Intro. 1691 and Intro. 1692, bulk of
4 work for numerating each zoning lot will be in first
5 identifying each zoning lot and its constituent tax
6 law.

7 First, help me understand, can you walk us
8 through the steps needed to identify single zoning
9 lot or archives and records need to be assessed to
10 accomplish these steps and which ones are digitized
11 versus manual. What is the work, if I'm asking too
12 many questions at the same time, please let me know.
13 What is the work involved in numerating zoning lots
14 beyond identifying the constituent tax law? What
15 additional staff resources would DCP need to
16 accomplish this process?

17 SUSAN AMRON: Let me sort of -

18 CHAIRPERSON CABRERA: Yeah, I know I give you - I
19 have more, but you know.

20 SUSAN AMRON: The issue on zoning lots really is
21 an historical issue. Going back pre, the first
22 zoning resolution, there are a lot of buildings and
23 structures in the city that predate the first zoning
24 resolution that predates certificates of occupants
25 that had the meets and bounds in them and that even

1 predate or clearly that predate the 1961 zoning
2 resolution that actually first defined zoning lots.

3 So, there are, and I think I, in my testimony,
4 said there is tens of thousands of lots
5 conservatively that just don't even have zoning lot
6 designations. And then, pre-1977, there was no
7 general requirement that zoning lots actually file
8 the zoning lot - the establishment of zoning lots
9 with any particular agency.
10

11 So, the current requirements about filing date to
12 1977 about recording pre-1977, it's not really a
13 question of what resources we would need, we just
14 think it would be impossible basically and we think
15 you'd have to go and look at the city and we're
16 talking on a citywide basis, you'd have to go look at
17 all lots in the city and do research. And try and
18 figure out, is there a zoning lot or just as pre-date
19 and then, what's the zoning lot.

20 The developers need to do it on a lot by lot
21 basis, and it can be done that way and as Council
22 Member Kallos said, sometimes it can take a lot of
23 time to do. And that's our understanding that it can
24 be very difficult when you're just focusing on one
25

1 lot, to do it on a citywide basis. It's not really a
2 question of resource, it's a question of possibility.
3

4 Going forward though -

5 CHAIRPERSON CABRERA: So, let me stop you there,
6 can you repeat that. It's not an issue of resources?
7 I mean, if you had the right resources, anything is
8 possible right, especially in New York City.

9 So, if you have enough resources, it could get
10 done and part of my frustration is what Council
11 Member Kallos experienced himself. Especially in
12 districts like his in Manhattan and so forth. That
13 it just take a tremendous - first of all, you need a
14 tremendous amount of will to go through that whole
15 process. You got to get people who know what they
16 are doing, it's costly. It actually discourages the
17 average normal person to be able - who don't have the
18 resources to go ahead and find it on their own.

19 How do we, I mean, are we going to have this
20 problem for ever. That's my issue. You know, I hear
21 kind of the same arguments that almost when I drafted
22 the bill, and we got it done. It's online and I know
23 this is a little bit more liberoes, but it can be
24 done.
25

1
2 **So, let me just ask, how much do you foresee that**
3 **it will cost to get it done?**

4 SUSAN AMRON: I have no way of estimating what it
5 would cost or how many people because really, what it
6 would require would be looking at you know, New York
7 City as a whole on a lot by lot basis and then doing
8 research on a lot by lot basis that could go back you
9 know, it could go back 100 years, it could go back 20
10 years and we don't know but New York has tens of
11 thousands of lots.

12 So, we do support the goal of creating
13 transparency going forward and it's really just going
14 back historically given the way that the city has
15 developed and the requirements that have been
16 applicable at various times over the city's history.

17 CHAIRPERSON CABRERA: Can you start now moving
18 forward or are you identifying moving forward?

19 SUSAN AMRON: The City Planning Commission or the
20 Department of City Planning does not get those
21 filings. You know, we I think as others have
22 testified, there are certain declarations that get
23 filed with the City Register and then, when a
24 developer is going to Department of Buildings to get
25

1 approval to move ahead, they have to have certain
2 filings with the Department of Building.
3

4 Filings of bad zoning lots, creation of new
5 zoning lots, don't come to City Planning. They
6 haven't and we don't have that ability.

7 CHAIRPERSON CABRERA: Help me here and do you
8 think that we should require developers that once the
9 transfers happens, not when they get to DOB, because
10 that could be years, right?

11 And I think that was part of the problem with 200
12 Amsterdam, and I know you can't talk about, but in
13 theory, forget 200. If we had a scenario similar to
14 that, I think part of the problem is, we are you
15 know, letting the developers determine when to file
16 which is basically when they get them ready to file
17 with DOB.

18 Wouldn't it make sense that as soon as they make
19 their agreement, that by law we would require them to
20 do so?

21 SUSAN AMRON: Well, generally, the agreements
22 among the developers are private agreements. I can't
23 really speak to the legality of when one can actually
24 require that something be disclosed or not.
25

1
2 CHAIRPERSON CABRERA: Would it be helpful if
3 there was a mandate to require them to do it asap
4 once the agreement.

5 SUSAN AMRON: I just can't speak to whether that
6 is something that's doable, that's legal or not.

7 CHAIRPERSON CABRERA: Okay, so, getting back to
8 the question that I didn't let you answer completely.
9 Moving forward, is this something that you're looking
10 to do? To get it done and piggybacking with that
11 question is, can we start with the easiest cases that
12 don't go like way back. Like you mentioned, hundreds
13 of years where it's going to require more effort by
14 somebody doing the research?

15 So, every time DOB gives a permit as we move
16 forward -

17 SUSAN AMRON: Well, we do support the goal of
18 moving forward when there are filings of being more
19 transparent about that. And we look forward to
20 working with the Council to figure out the best way
21 of doing that.

22 CHAIRPERSON CABRERA: So, will you be supportive
23 in theory, and I know we're not working out the
24 details here right now, that if the bill were to be
25

1
2 amended, to cover it moving from here forward, that
3 would be something that you would be open to?

4 SUSAN AMRON: I think we would have to talk about
5 the precise details of it with the Council, but you
6 know, it's again, the filings don't come to the
7 Department of City Planning. But as the city - I
8 think the city agencies and the council can work
9 together to figure out what the best way of making
10 this happen is.

11 CHAIRPERSON CABRERA: Okay, would Intro. 1692 as
12 drafted interfere in any way with ZoLa's existing
13 mapping of tax law in zoning districts?

14 SUSAN AMRON: Well, I think to the extent we
15 don't think that it's possible to achieve -

16 CHAIRPERSON CABRERA: But in theory, if it was
17 possible.

18 SUSAN AMRON: Well, it's hard to talk about it in
19 theory when we don't think it's possible to map.

20 CHAIRPERSON CABRERA: If we were to have the
21 scenario that I just shared with you, the possibility
22 from moving here forward, would there be any
23 interference?

24 SUSAN AMRON: It is a very theoretical matter.

25 CHAIRPERSON CABRERA: Yes.

1
2 SUSAN AMRON: I would have to go back and talk to
3 our ZoLa, the people who are responsible for the data
4 and adding data and ZoLa to understand what can and
5 can't be done and whether something should be on ZoLa
6 or some other platform.

7 CHAIRPERSON CABRERA: Do you foresee any cost
8 associating with updating ZoLa to add the shape
9 files?

10 SUSAN AMRON: Well, I think again, the side of
11 the question of whether it's possible to create shape
12 files. I think that's really the largest issue here
13 is the actual data and creation of shape files to
14 begin with.

15 CHAIRPERSON CABRERA: What about adding another
16 layer? Is that costly?

17 SUSAN AMRON: Another layer - the actual, if you
18 have files, adding shape files, my understanding is
19 that's not a huge cost. It's the actual creation of
20 the shape files that is the cost. And in here, is I
21 think we've made clear we don't think it would be
22 possible.

23 CHAIRPERSON CABRERA: Gotcha, I have another
24 question, but I'm going to turn it over to my Co-
25 Chair Rafael Salamanca.

1
2 CO-CHAIR SALAMANCA: Thank you Chair Cabrera.
3 We've been joined by Council Member Barron and
4 Reynoso. I am going to allow Council Member Reynoso
5 to ask a few questions.

6 COUNCIL MEMBER REYNOSO: Thank you, I just have
7 a couple of questions. I want to thank the Chairs
8 for having this hearing and thank you for being here.

9 Two main questions; we don't know at this moment
10 the amount of lot, I guess, mergers that exist in the
11 City of New York. I mean, like an easy, accessible
12 form or a system. Can we agree with that?

13 SUSAN AMRON: Yes, we do not know, and I don't
14 think anyone knows precisely all the zoning lots that
15 exist.

16 COUNCIL MEMBER REYNOSO: The primary function of
17 the Department of City Planning is to plan. It's
18 just very difficult for me to understand how an
19 agency responsible for ensuring some type of
20 comprehensive continuity to the way we look at our
21 city and what we expect in the future to not be able
22 to take into account merging of lots.

23 It just feels very fundamental to the work that I
24 think that you should be doing. So, for me, it's
25 concerning that we just don't do that in a meaningful

1 way. And I am concerned on whether or not DCP at
2 some time and its existence, maybe that's something
3 we should be doing more comprehensive data to make
4 sure that we're taking into account what I think in
5 some cases are very significant changes to all our
6 unintended consequences of planning, I guess, right.
7 Those are things that you don't account for, whether
8 you plan for a building to be let's say 20 stories
9 and because of a transfer of lots or purchasing of
10 air rights. Then it ends up being 40 stories.

12 I don't think you planned for that necessarily,
13 but if it does happen, I think you should account for
14 it, but we're not accounting for that. So, I guess
15 that's all a statement, not a question but my point
16 being is, is it in your interest I guess to want to
17 have this information available to you?

18 SUSAN AMRON: Well, you know, we have an as of
19 right zoning structure in the city and so, if a
20 property owner can comply with the bulk and the use
21 regulations that exist, then our view is that, and
22 they have an as of right. They can build as of right
23 under the use and bulk regulations.

24 We don't regulate transfers, property
25 transactions. We don't have the authority to

1 regulate property transactions and so, we just look
2 at the use and bulk allowed by the zoning regulations
3 and if property owners have agreements among
4 themselves or buy and sell property, or a mass
5 property and comply with the zoning regulation, we
6 think that's appropriate.
7

8 COUNCIL MEMBER REYNOSO: So, because we can't
9 control it or it's as of right, it doesn't matter.

10 SUSAN AMRON: No, the as of right, there's
11 already been - a zoning resolution allows it. And
12 so, if the zoning resolution allows something as of
13 right, then a property owner is entitled to build
14 what the zoning rights would be.

15 COUNCIL MEMBER REYNOSO: Yeah, I don't think
16 anyone here objects to that. I think what we're
17 objecting to is not knowing. It seems like just a
18 lack of information or not knowing is [inaudible
19 1:55:45]. Unless, those were your intended
20 consequences, that in some cases, this area that
21 we've rezoned in 1960, to allow for six story
22 buildings can now have a building that's 30 stories
23 because of a transfer of air rights and we accounted
24 for that, then that's perfectly fine. But when it
25

1 comes to planning, having that information I think
2 has value.
3

4 And I just really feel like there is a dismissive
5 nature in the Department of City Planning on things
6 that they just feel that they have no influence in or
7 can't control.

8 But the least that we can do is have information.
9 And for me, the biggest concern is that you've never
10 asked for this information or it isn't something that
11 you've thought was important to have. And I don't
12 know if you can plan without having that information.

13 Now, the legislation as we've written it, or as I
14 understand it, especially the one I'm on, doesn't ask
15 for us to stop the as of right development to happen.
16 It doesn't ask for us to get information prior to a
17 transaction happening. These are all happening
18 afterwards, like just the way that it happens now.
19 We wouldn't interfere with that in anyway shape or
20 form. The process by which you merge lots will
21 consistently - well, it will stay consistent. The
22 only thing we would be doing is, we would be getting
23 information about it now. Now we would know that
24 these things happen after the fact.
25

1
2 But I just don't understand I guess, in planning
3 how this wouldn't be something that you would want
4 prior to the City Council moving forward with it.

5 SUSAN AMRON: Right, and we do support the goal
6 of identifying zoning lots and changes in zoning
7 lots, development of new zoning lots or going
8 forward. Our concern is that looking backwards, it's
9 just not possible to, given the history of New York
10 City and the requirements that have been in existence
11 really pre-1977 to create a citywide map.

12 COUNCIL MEMBER REYNOSO: So, and I understand the
13 history situation and I guess what I'm getting to is
14 that you should have been doing this on your own if
15 you're a planning department. It should have been
16 something that you've wanted to do. It is just
17 beyond me how that's not the case, but I guess, I
18 want to end it by saying, I'm not **nembious1:59:16** by
19 nature. I respect as of right development; I don't
20 challenge them. I can't challenge them, I don't have
21 the authority to it, but I like to know that they are
22 happening.

23 And, I am still having still having conversations
24 regarding one of the pieces of legislation and don't
25 want it to take on the effect of allowing for

2 communities that might not want a development that is
3 happening as of right to be able to challenge it.
4 And we're like in this ground, or I'm having this
5 grey area that I'm fighting with. Where I want to
6 have the information, but I don't necessarily want it
7 to be used to stop what I consider as of right
8 developments.

9 So, I'm trying to figure that out. I don't want
10 to encourage the nimbus in being able to do that
11 work, but I do think this is information we need, and
12 I don't know how to reconcile that just yet, but I'm
13 trying to figure that out on my own. And that's why
14 even on the legislation that I'm a part of I have
15 issues with. But I do think this is information you
16 should at least want.

17 So, I guess that's where I will close my
18 statements and I want to just thank the Chairs for
19 giving me this time.

20 CHAIRPERSON CABRERA: Yeah, by the way, I wasn't
21 rushing you, I was looking at you because I was about
22 to interject on something.

23 COUNCIL MEMBER REYNOSO: Don't interject Chair.

24 CHAIRPERSON CABRERA: Okay, but I just want to
25 zone in a little bit more here. So, when we're

1
2 talking about somebody comes, had an agreement, two
3 landlords transferring their air rights to another.
4 They go to DOB, at that point, can't we assign a
5 number moving here forward, identifying tax? Would
6 it be that difficult to do that? It would seem to me
7 it's not that difficult.

8 SUSAN AMRON: Going forward, I can't speak for
9 DOB. It might be possible; it wouldn't come to us at
10 all. You know, an as of right development, we
11 wouldn't see.

12 CHAIRPERSON CABRERA: Can you repeat that again,
13 I'm sorry.

14 SUSAN AMRON: I said, I'm not speaking for DOB
15 but for City Planning, if it's an as of right
16 development, it would not come to us at all.

17 CHAIRPERSON CABRERA: So, let me ask DOB then.

18 SUSAN AMRON: So, we wouldn't be able to do that.

19 CHAIRPERSON CABRERA: DOB.

20 MONA SEHGAL: So, to put this into context; when
21 they come to DOB, they have filed the meets and
22 bounds of the proposed zoning lot, or zoning lot that
23 they're looking to develop on at the City Register.
24 And at that point, it's been filed publicly

1
2 somewhere. They come to DOB and they submit it
3 again.

4 Now, in terms of assigning a number, I guess, I'm
5 just not sure how that would work in my agency. It
6 feels like, I don't know. I just can't guess to how
7 that would work.

8 CHAIRPERSON CABRERA: Maybe both of your agencies
9 could work, the department could work together and
10 try and figure that out. Look, I'm trying to find
11 the easiest way moving forward, because if we keep
12 doing what we're doing we're going to end up with the
13 same results. I'm a firm believer in systems and
14 what I see is that we have a system in place right
15 now that is just repeating history over and over
16 again.

17 And, ten years from now, there's going to be
18 another Chair here asking the same question about
19 something that we could have an impact already that
20 is going to be helpful to our constituents and to
21 everyone who is trying to get this type of
22 information that is going to save time. It saves you
23 time as well, from people knocking on your doors,
24 looking for answers, asking questions. There I would
25 see that it will be profitable to you as well.

1
2 And so, it would seem to me that it is logical
3 and reasonable, and it doesn't take a lot of effort.
4 As a matter of fact, let me go a little deeper.
5 Every time that we have, and you will have to
6 identify what that is, anything that they come to you
7 for, not just in that case, you know, the situation
8 that it would make sense whenever it is feasible to
9 assign the number.

10 So, that way we can start moving forward and be -
11 hold on one second...

12 What about using the City Register? Would that
13 be whenever something is filed, Department of
14 Finance, anybody here from the Department of Finance,
15 I think Annette Hill.

16 Annette, how are you? Can you please come I will
17 move this real quickly.

18 COUNCIL CLERK: Please raise your hand. Do you
19 affirm to tell the truth, the whole truth and nothing
20 but the truth in your testimony and to respond
21 honestly to Council Member questions and if you could
22 please identify yourself.

23 ANNETTE HILL: Annette Hill, City Register.

24 CHAIRPERSON CABRERA: Okay, my wise council
25 behind me had really identified maybe a process and

1 see if somebody could have here, when they come in
2 file with you, did they have to file with you before
3 going to DOB, why can't we put this system in place
4 and have the identifying tax lot number?
5

6 ANNETTE HILL: When the filing is done, it has to
7 be done in a tax lot that exists already and they
8 usually come - the development rights usually come in
9 a deed form, you can't separate it out.

10 So, it would be difficult to separate it out for
11 deed.

12 CHAIRPERSON CABRERA: But can you put a process
13 that is parallel with that to make it happen?

14 ANNETTE HILL: Would have to have them recorded
15 separately. A development rights and air rights does
16 not have a tax law associated with it. So, it has to
17 be on a tax lot and exist already. So, you can't
18 have it separated out from the deed form.

19 CHAIRPERSON CABRERA: Why?

20 ANNETTE HILL: Because it does not have a lot
21 number assigned to the air rights separately, it has
22 to be on the tax lot that exists already.

23 CHAIRPERSON CABRERA: Look, maybe, let me
24 rephrase it this way. We have a lot of experience
25 right here in this panel. Years that actually

1 proceeds me is my estimation. And I know we can
2 figure this out. My concern is the way we are doing
3 it right now, we're going to keep getting the same
4 result with the same frustration coming year after
5 year and we're going to get the same answers.
6

7 Please help me figure out in a collective way
8 right here, to all the panelists here representing
9 the administration, how can we make this happen
10 moving forward? It would just seem to me that you
11 know, I'm a big believer in systems. I'm more of a
12 believer in systems than golf. Because you can never
13 get to where you are going unless you have a system
14 in place.

15 So, is there a way and you don't have to come out
16 with a magic answer right now, but can you help?
17 Let's work together identifying a process to make it
18 happen. I know I'm putting you in a spot, asking
19 right now to come up with something that's never done
20 before and I know there's always this hesitation of
21 committing to something, right.

22 But I'm coming in good faith here to try to
23 figure out, not to get this I got you kind of
24 attitude. How can we come up with something that
25

1
2 really works for everyone, including all of your
3 agencies?

4 ANNETTE HILL: Okay, well it's something we would
5 have to explore some more conversation with Council
6 as well what's in the finance of how we could make
7 that happen. I would need further conversation on
8 it.

9 CHAIRPERSON CABRERA: Thank you, thank you for
10 all of you being open minded. Let me give it back to
11 my Co-Chair.

12 CO-CHAIR SALAMANCA: Thank you Chair Cabrera, I
13 want to recognize that we've been joined by Council
14 Member Yeger and Council Member Yeger, we will give
15 you five minutes.

16 COUNCIL MEMBER YEGER: Thank you Mr. Chair and
17 Mr. Chair, good morning. First, I just wanted to ask
18 DCP, I actually agree with some of your objections to
19 the retroactive recordation, understanding that it's
20 complicated because so many of these zoning lot
21 changes are either by private agreement or have been
22 recorded in the City Register and there's no kind of
23 master book that you can go to without actually doing
24 years and years of research to go through every
25 single lot and see what it currently is linked to.

1
2 So, I understand that and moving forward, I think
3 it would be a good idea to have a master list. But I
4 do have a question about your second to last
5 paragraph of your testimony and I apologize that I've
6 been in and out, but I have another hearing next
7 door.

8 You indicate that, you represent to us, that
9 Intro. 1691 would change the City Charter in such a
10 fashion that it would be required to have a
11 referendum.

12 My understanding of the Charter and the
13 limitations on the Council to amend the Charter, we
14 do it all the time here, is that we can't curtail on
15 authority that the Charter has given to the other
16 branch of government. But we surely, I believe, can
17 assign a task to an agency whether that agency likes
18 it or not. Notwithstanding particularly in light of
19 that section then currently numbered eleven in the
20 section that you are referring to says, perform such
21 other functions as or assigned to him or her by the
22 Mayor are the provisions of law.

23 We have the ability to assign you a task. If you
24 don't want to do it, I guess that's okay, you don't
25 have to. Most agencies don't do what we tell them

1
2 anyway, so that cool. But I would just respectfully
3 differ with your legal interpretation of the
4 restrictions on this Council to assign a task to a
5 City agency.

6 That's not a question, that's just a statement
7 and I'll move on from there. But I do agree that
8 retroactive recordation and creating this master list
9 is problematic and I understand the conundrum that
10 you find and how it would be difficult to comply if
11 it's meant to go retroactive.

12 I have a question for the Chair of the BSA. It's
13 good to see you again Ma'am. During your conversation
14 with Councilman Powers, you indicated something which
15 I've heard before. Is that by rule of your agency,
16 nobody can talk to any commissioner during anytime.

17 MARGERY PERLMUTTER: Not anytime, once an
18 application has been -

19 COUNCIL MEMBER YEGER: Once an application, what
20 does that mean exactly? Does that mean that I can't
21 pick up the phone and call a member of the Board of
22 Standards and Appeals?

23 MARGERY PERLMUTTER: Correct.

24 COUNCIL MEMBER YEGER: By whose authority do you
25 promulgate a rule that says that a government

1
2 official paid by the City of New York can't be call
3 by a legislator here in the City of New York? Or by
4 the Commissioner of the Police Department in the City
5 of New York, or by anybody else?

6 MARGERY PERLMUTTER: By whose authority do we
7 promulgate a rule?

8 COUNCIL MEMBER YEGER: And is it enforceable? I
9 assume that you believe that the rules is promulgated
10 by the Board are enforceable, but do you know of any
11 other agency that has a rule that says that other
12 government officials - I'm not saying that the guy on
13 the number four train can knock on the door of your
14 house and start asking you questions about an
15 application. I don't know if he can or can't, I'm
16 not talking about that. I'm talking about your
17 colleagues in government.

18 MARGERY PERLMUTTER: So, do I know of any other
19 agency? I used to be a landmarks commissioner; we
20 were forbidden from speaking to anyone about pending
21 applications. If someone came to us, we were
22 instructed to advise the Counsels Office or the Press
23 Office, that someone reached out to us and that
24 person in those offices would respond to the
25 questioner.

1
2 So, the reason that we created that rule was
3 really to formalize our existing practice, which was
4 to not allow any commissioners to speak to anyone
5 outside of our own agency about a pending
6 application. So, as to keep their review and
7 opinions purely focused on the record before them, as
8 opposed to influenced by anyone who might have had
9 ex-parte communications, because all of our review is
10 based on the testimony that's either submitted in
11 writing or given to us at a public hearing.

12 So, it's to keep the review process very clean
13 and that's something that the Board has practiced for
14 I actually don't know how long, and this was just
15 really to formalize it by rule making and that's why.

16 COUNCIL MEMBER YEGER: Are the commissioners
17 banned from reading newspapers?

18 MARGERY PERLMUTTER: No, of course they are not
19 banned from reading newspapers.

20 COUNCIL MEMBER YEGER: Why not, we do that with
21 jurors during the pending deliberation -

22 MARGERY PERLMUTTER: They're not banned -

23 COUNCIL MEMBER YEGER: Well, that would be a
24 great idea.

1
2 MARGERY PERLMUTTER: But that's different, so
3 that's more similar to public testimony, so when we
4 know a community is opposed to a project, they come
5 and they give testimony usually quite detailed and
6 more than that, they also submit testimony.

7 So, that's quite a different thing than a
8 personal phone call where we don't know what the
9 contacts of the phone call is. Where it might be a
10 threat, it might be something else and so, we just
11 want to avoid that entirely. It makes it just a lot
12 cleaner.

13 COUNCIL MEMBER YEGER: Do you have a list of
14 streets that commissioners are not allowed to drive
15 down on a regular -

16 MARGERY PERLMUTTER: Why?

17 COUNCIL MEMBER YEGER: Just in case.

18 MARGERY PERLMUTTER: No, so, site inspections and
19 so on are something that's done regularly by
20 commissioner.

21 COUNCIL MEMBER YEGER: But that's not part of the
22 public record unless you decide to enter it into the
23 public record.

24 MARGERY PERLMUTTER: No, it is actually part of
25 the public record.

1
2 COUNCIL MEMBER YEGER: I said, the second part of
3 my sentence was it's not part of the public record
4 unless you decide to enter it into the public record,
5 but if one of the commissioners decides to drive down
6 East whatever street and take a look at a building,
7 it's only if that commissioner decides to enter his
8 or her observations into the public record that it
9 becomes public record. Otherwise it's just what he
10 or she saw, and she goes to the movies.

11 So, my point is that you're attempting to limit
12 one and wisely, it's a broad limitation but you're
13 attempting to limit one method by which people may
14 affirmatively reach out but you're not locking off
15 the board from receiving extraneous information.
16 Perhaps it's not affirmatively being reached out with
17 this extraneous information, but you can read
18 newspapers, you can read websites, you can read
19 articles, you can drive down streets. None of which
20 is part of the public record, why is it such a big
21 deal if a colleague in government - I'm not saying
22 that - by the way, I don't want anybody whose
23 watching this to think that that's because we've had
24 an issue where I tried to call, and you hung up on
25 me. That's not what occurred, it never happened.

1
2 I'm not taking personal offense by any way. I really
3 am just trying to understand the legal basis by which
4 an agency says, nobody can talk to us.

5 And I do believe you are the only agency that
6 does this.

7 MARGERY PERLMUTTER: Well, we're also arguably the
8 only agency that often gets - we may be the only
9 agency that is often accused of being affected by
10 call - we're often accused of being affected by calls
11 from for example, the Mayor's office and so on. And
12 so, this was our way of demonstrating that in fact,
13 no, we're not affected by that. But I do want to say
14 that site visits are not extraneous. Site visits are
15 very much a part of our understanding of an
16 application.

17 So, it's actually part of the standard review
18 process for us to go and visit the sites to
19 understand better how the building situates in the
20 community and so on.

21 COUNCIL MEMBER YEGER: I don't want to beat this
22 down, but you know, the notion that and I'll make
23 this my final point on this topic, but the notion
24 that an agency and a number of commissioners can set
25 themselves back and put up a brick wall and you know,

1
2 it would be to me, similar to the Police Commissioner
3 saying, no Council Member can ever call me.

4 And I think there are - well, some Council
5 Members hate the Police Department but except for the
6 ones that don't, I don't think that that would be an
7 issue and I think that well, I kind of made clear
8 what I think.

9 MARGERY PERLMUTTER: And I just want to finish
10 that. We're more similar in our thinking to the way
11 a court operated where it would not be proper for
12 judges to be approached by appellants or plaintiff
13 and so on during the course of proceedings.

14 COUNCIL MEMBER YEGER: I want to ask a question
15 about Intro., I know you support it and I'm actually;
16 I don't really care either way. I assume most people
17 tell the truth and I don't know why we bother
18 swearing people in here in the Council, I think
19 that's ridiculous.

20 But do you find, with regard to Intro. 1723, do
21 you find a lot of lying going on in your agency?
22 People come to you and they just lie right and left?

23 MARGERY PERLMUTTER: I would just have to say it
24 depends. And my counsel just showed me that

25

1 administrative law judges are also prohibited from
2 ex-parte communication.
3

4 COUNCIL MEMBER YEGER: They have that funny word
5 in their title, right, judge.

6 MARGERY PERLMUTTER: Well, we're a quasi-judicial
7 agency.

8 COUNCIL MEMBER YEGER: Quasi, also funny word.

9 MARGERY PERLMUTTER: There's the quasi part,
10 that's the judicial part and that's what we go on.

11 COUNCIL MEMBER YEGER: Right, with your
12 commissioners.

13 MARGERY PERLMUTTER: But in terms of the - so, we
14 do now swear most of the people in who come appear
15 before us and in that process which I've found quite
16 helpful frankly because they actually right at the
17 beginning of their testimony raise their hands and
18 swear. And then I can say to them, you're under
19 oath, are you sure you want to hold to that
20 statement, and we have caught actually applicants in
21 misstatements. Whether they were lies is another
22 subject, but let's just say misstatements.

23 When we've caught them, we've tried to get them
24 to change their position and when they don't change
25 their position and we believe they are

1
2 misrepresenting, we report them to the Department of
3 Investigation. And we say at the hearing that we
4 believe we have some issues with the veracity and may
5 take this up further.

6 So, does it happen a lot? It actually depends on
7 the type of application.

8 COUNCIL MEMBER YEGER: Alright, thank you very
9 much.

10 CO-CHAIR SALAMANCA: Thank you Council Member. I
11 just have one last question and then we're going to
12 go on to the next panel.

13 Department of Buildings, alright, and I'm trying
14 to get a straight up answer and I feel like I'm not
15 getting it from this hearing. If a developer comes
16 into the Department of Buildings today to pull a
17 permit on a zoning lot that is comprised of a partial
18 tax lots, okay, that's comprised of partial tax lots
19 alright, with an S. Will the Department of Buildings
20 approve or disapprove that permit assuming that no
21 individual tax lot has enough FAR to build that
22 building?

23 MONA SEHGAL: So, this is again, I appreciate the
24 question, and this is again -

1
2 CO-CHAIR SALAMANCA: What would the Department of
3 Buildings do, would you give them that permit, or you
4 won't give them that permit? That's the answer that
5 I'm trying to get from you.

6 MONA SEHGAL: Let me just answer it in this way
7 Chair. In light of the ongoing litigation, we have
8 not revised our existing memos on this and so, we
9 would have to take a look at an issue if it were to
10 come to us but at this point, because of the
11 litigation, I really can't speak any further on that
12 point unless I have a specific matter.

13 CO-CHAIR SALAMANCA: So, all future applicants
14 that are trans legal to this process, you are putting
15 them on hold because of this pending litigation?

16 MONA SEHGAL: I would need to know if there is a
17 future applicant in place today. I just can't speak
18 to it hypothetically.

19 CO-CHAIR SALAMANCA: So, you don't know if there
20 is any future applicants. Do you have applications
21 on hold because this pending litigation matter?

22 MONA SEHGAL: Not that I'm aware of.

23 CHAIRPERSON CABRERA: I just want to ask you, is
24 it typical for people to have these applications? Do

25

1
2 you get like one a year, ten, twenty, thirty? It's a
3 general question.

4 MONA SEHGAL: I don't know the answer to that
5 personally.

6 CHAIRPERSON CABRERA: Can you get us that answer?

7 MONA SEHGAL: Yes, we will.

8 CHAIRPERSON CABRERA: I know you have very good
9 data people.

10 MONA SEHGAL: Get you a general answer on that.

11 CHAIRPERSON CABRERA: Appreciate it, thank you.

12 CO-CHAIR SALAMANCA: And can you get us the
13 number of permits that are pending for these mergers?
14 Do you have that information?

15 MONA SEHGAL: I don't have it with me, but I can
16 certainly ask if we can get that information.

17 CO-CHAIR SALAMANCA: Okay, alright, and then -

18 MONA SEHGAL: I'm being asked to ask you if I may
19 for a clarification. Are you asking specifically for
20 permits that maybe pending, applications that are
21 pending that involve parts of tax lots and zoning
22 lots, is that your question?

23 CO-CHAIR SALAMANCA: Yes.

24 MONA SEHGAL: Thank you.

25

1
2 CO-CHAIR SALAMANCA: Yes, yes. Okay, and then, I
3 promise this is the final one. When a zoning lot is
4 merged, when does it take effect? When it is
5 recorded in ACRIS or when the buildings apart or when
6 the owner pulls a building permit to build on that
7 lot?

8 MONA SEHGAL: So, the zoning resolution allows
9 for declarations to be filed or it requires these
10 documents be filed in the City Register and at the
11 time they are filed, they can in fact constitute a
12 zoning lot. However, development cannot proceed on
13 that zoning lot until they file with DOB. And to the
14 extent that you know, if there's an issue, certainly
15 we would raise it but if there is no issue that
16 technically speaking it could happen at the time of
17 filing on ACRIS.

18 CO-CHAIR SALAMANCA: Okay, well, I want to thank
19 the panel for testifying today. I really appreciate
20 it and we're going to bring up our next panel.

21 We're going to start with the Manhattan Borough
22 President, Gale Brewer.

23 COUNCIL CLERK: Do you affirm to tell the truth,
24 the whole truth and nothing but the truth in your
25

1 testimony before this Committee and to respond
2 honestly to Council Member questions?

3
4 GALE BREWER: Yes, I do.

5 COUNCIL CLERK: If you could please identify
6 yourself.

7 GALE BREWER: Thank you very much. I am Gale
8 Brewer; Manhattan Borough President. I want to thank
9 Chair Cabrera and Chair Salamanca and all the Members
10 of the Land Use and Government Operations Committee.
11 These are very special Committee's to me, so I
12 appreciate being here.

13 And I am simply here to express support for
14 Intro. 1701, and I want to thank Council Member
15 Kallos and all the other sponsors.

16 In my office, we have seen developments crop up
17 in residential neighborhoods as you can imagine.
18 Many which are out of scale heights that destroy the
19 community fabric. And often, the question is how did
20 this building get so large, so big? Leaving aside
21 those developments that use zoning loopholes, which
22 you have discussed and could in fact be an issue for
23 another hearing, the answer is almost always that the
24 developer purchased developments rights, also known
25 as air rights from an adjacent property.

1
2 The legislation before you has a simple focus:
3 it mandates that the local Community Board, Council
4 Member, along with the Borough President and the
5 Office of the Speaker are informed every time a
6 transaction for the sale of development rights takes
7 place. I think this empowers communities, this law.
8 Too often developers purchase their development
9 rights and their building plans are well underway by
10 the time the community even becomes aware of the
11 development.

12 But when communities get an early sense of what
13 developments are coming to their neighborhood, they
14 have the opportunity to better engage the developers,
15 ask them the right questions, and get them and
16 everyone to understand what the concerns are. In
17 essence, it gives communities an opportunity to shape
18 what the development looks like and I think it gives
19 a positive predictability to the owner.

20 In the worst-case scenarios, when a community
21 feels it has to mount a challenge against a
22 development, whether it is at the Department of
23 Buildings or the Board of Standards and Appeals,
24 which you heard about earlier, advanced notice can be
25 critical.

1
2 So, I have long advocated for community planning
3 and a pre-ULURP effort in order to allow communities
4 an opportunity to have an early say in how their
5 neighborhoods grow and build. However, not a lot of
6 that came through in the Charter Revision 2019
7 despite our best efforts. But I believe this
8 legislation will offer an analogous benefit for as of
9 right developments. I support the legislation; I
10 urge the Committee to support it and I thank the
11 Community Boards that are considering it. I know
12 Board 12 and Board 8 are here and the other Boards in
13 Manhattan are all taking it up.

14 Thank you very much.

15 CO-CHAIR SALAMANCA: Thank you. I just have one
16 quick question. Can you just briefly explain your
17 pre-ULURP process?

18 GALE BREWER: Ah yeah, we tried. I mean with the
19 larger rezoning's, which you are only too familiar
20 with, we would have liked to mandate something
21 similar to what maybe you did at Jerome or what we
22 did in East Harlem, which was we had in that case,
23 two years, a year in a half before the clock started
24 ticking at the City Planning Commission.

1
2 We did the same thing with South Street Seaport.
3 We obviously did it with East Midtown, with Council
4 Member Garodnick. So, in stead of having you know,
5 50, 60 days at every juncture, you have a good time
6 period legally to state we would like to have
7 community input. So, you have more time and you have
8 a better process.

9 We tried to get that through the Charter 2019,
10 Jim Caras was then our rep. We were not successful;
11 the Mayor's Office reps did not want it.

12 CO-CHAIR SALAMANCA: Interesting, alright,
13 Council Member Kallos, you have a question.

14 COUNCIL MEMBER KALLOS: Thank you for coming out
15 in support and for your patience.

16 GALE BREWER: Thank you.

17 COUNCIL MEMBER KALLOS: Folks have been critical
18 of introduction 1701 calling it a nimby bill. Do you
19 feel that it would be nimby or what tools would it
20 provide?

21 GALE BREWER: Well, what I tried to say is that
22 we feel that predictability is important for the
23 owners and I know that's what they want, but I think
24 at this point, at this juncture in our city, we need
25 to know when buildings – we know so many religious

1
2 institutions for instance. The owner gets a call of
3 the building, the religious institution could be the
4 faith-based leader or the owner of the faith-based
5 building and their told, do you want to purchase?
6 We'll buy your air rights. Nobody in the community
7 has any sense that this is taking place.

8 So, I think, I don't believe it's nimby. I
9 believe it's better planning and I think obviously,
10 it's these community boards, elected officials have
11 become quite used to trying to figure out how to work
12 as a group, as a committee, as a community. But with
13 absolutely blind sided, particularly I have deal with
14 hundreds of applications up here with the faith-based
15 situations. We lose your building; you have no sense
16 that it's even taking place. All of a sudden you
17 have a new building going up right next door, across
18 the street, wherever the air rights allow you to go.

19 So, I think better planning is what I would call
20 it, similar to what the earlier discussion was. How
21 do we plan better for the city and I think this would
22 be part of it.

23 COUNCIL MEMBER KALLOS: If there's public notice
24 around the transfer of air rights, do you believe
25 that people in the community, at religious

1 institutions, or even just living in some of the
2 buildings, whether owners or tenants would make their
3 decisions differently knowing that it was part of an
4 air rights assemblage versus just a typical
5 transaction?
6

7 GALE BREWER: Yeah, I mean, I think a little bit
8 of a leading question Council Member, but I do think
9 that what I'm trying to say because I know there is
10 owners and there's community and sometimes there's a
11 difference of opinion, but I do think we all need to
12 plan better together. And this would be an example
13 of how it could happen, we are really getting blind
14 sided by the air rights.

15 COUNCIL MEMBER KALLOS: Thank you.

16 GALE BREWER: Thank you, thank you very much.

17 CO-CHAIR SALAMANCA: Thank you Borough President.
18 Alright, so, we're going to bring up our next panel
19 and my apologies if I mispronounce your name.

20 We have George Janes, Sean Khorsandi, Andrea
21 Goldwyn, Thomas Devaney, come up Thomas and Olive
22 Freud.

23 And we're going to ask the Sergeant at Arms to
24 give them two minutes each. Yes, you can begin.
25 Yeah, we can start from the right, yes.

1
2 GEORGE JANES: Okay, I'll go first. My name is
3 George Janes; I'm an urban planner, I am here to
4 support 1691, 1692 and 1701. I prepared testimony, I
5 have a lot of testimony written that I've given to
6 the Sergeant at Arms to pass around, but I'm going to
7 actually break from it to respond to some things I
8 heard today.

9 Council Member Reynoso asked if it would be in
10 DCP's interest to have this, and I will answer this
11 definitively, it would absolutely be in DCP's
12 interest to have this. Whatever you do in EIS, I'm
13 going to just pick one. Whatever you do in EIS, you
14 have to do a reasonable worst-case development
15 scenario. You know, so you have to go through and
16 look at what's going to happen in the area just as of
17 right and so, for instance, in the Sutton Place
18 rezoning that just happened recently, there is a soft
19 site that is in the reasonable worst-case development
20 scenario that has a 500-foot building on it.

21 You know, it had sold all of its development
22 rights 50 years previously, but it went through
23 certified by DCP, went through public review, and you
24 know, made it to law. And that building should not
25 have been in the environmental review.

1
2 Council Member Cabrera asked how common the parts
3 of tax lots were. They're very uncommon. It doesn't
4 happen very often at all. During the 200 Amsterdam
5 BSA hearings, the attorney's on both sides did
6 research and as I recall in my head, the number was -
7 one side came up with nine, the other side came up
8 with 17 over the past, since 1977.

9 So, fewer than one a year in all cases. But we
10 have to do this, we have to build the database of tax
11 lots and I see I'm out of time, but I just want to
12 show if you have my testimony, the picture, this is
13 the picture of the 200 Amsterdam tax lot. They have
14 a map; I have the full size one and then a detailed.
15 You can't read the numbers on the map, right, you
16 can't read these numbers. We have to actually start
17 building this database right now, because if we
18 don't, we're just going to end up in a complete
19 administrative nightmare.

20 CO-CHAIR SALAMANCA: Thank you for your testimony
21 and for your presentation.

22 SEAN KHORSANDI: Good morning Chairs, Council
23 Members; Sean Khorsandi for Landmark West.

24 Landmark West finds the proposed legislation to
25 daylight the transfer of development rights a welcome

1
2 change to an unnecessarily opaque procedure, one that
3 too often a neighborhood only learns of when a
4 development creeps far above its surrounding context,
5 months and sometimes years into the construction
6 process.

7 By alerting the impacted community within five
8 days, this legislation will bolster transparency and
9 allow communities to make informed decisions on how
10 best to pool, save and expend their resources. Or in
11 other words, triage and plan in the absence of an
12 organized city-lead approach to planning and zoning
13 which results in the haphazard skyline defining our
14 city today.

15 It will also provide opportunity for neighbors to
16 evaluate comparable sales of TDRs when in negotiation
17 with a developer who is hoovering unused rights from
18 any given block, assuring them a level footing for
19 fair negotiations.

20 Further, sharing this information will then make
21 individual community boards stewards of the records,
22 so they may better be able to trace and track any
23 future movement of sold air rights, to make sure they
24 are not realized and resold again elsewhere.

Ascribing a simple forward in a nominal expense is a nominal expense of time and digital age and comes at no cost of postage. There is no hardship imposed by this legislation to any party but rather a pure benefit to the public.

Added breadth to this legislation would impose a penalty for noncompliance, as such there is not one listed. Landmark West supports Intro. 1701.

ANDREA GOLDWYN: Good day Chairs Salamanca, Council Member Kallos; I'm Andrea Goldwyn, speaking for the New York Landmarks Conservancy. For nearly five decades, the Conservancy has been dedicated to preserving, revitalizing and reusing New York's buildings and neighborhoods.

The Conservancy supports Intro. 1701. This bill will increase transparency in real estate transactions and give fair warning to elected officials and residents when unused development rights are being assembled.

For too long, owners have been able to subvert the intentions of the Zoning Resolution and use loopholes to create out of scale, out of context towers. The Department of City Planning has started to address the problem of mammoth mechanical voids,

1
2 but there is more work to do, as we've heard time and
3 time again today, we've seen absurdly small lots used
4 to evade contextual building requirements. We've
5 seen developers pull together FAR from stray,
6 unbuildable lots to create zoning lot polygons that
7 defy planning logic.

8 Intro. 1701 won't solve all of these problems,
9 but it's an important step in the right direction.
10 New York will always grow and change, but this
11 process need to be fair and equitable.

12 We thank you the Council Members who sponsored
13 this bill in conjunction with the Manhattan Borough
14 President and we thank you for taking this deep dive
15 today and unfortunately, encountering some of the
16 frustrations that we've all felt when agencies can't
17 seem to provide the answers, we're all looking for.

18 While the administration has been slow to
19 respond, we're glad to see this branch of government
20 take up these issues and we urge you to vote in favor
21 of this legislation. Thank you.

22 OLIVE FREUD: My name is Olive Freud.

23 CO-CHAIR SALAMANCA: I'm sorry, the microphone.
24 Can you help her there, yeah, just the press the -

1
2 OLIVE FREUD: My name is Olive Freud; I'm
3 President of the Committee for Environmentally Sound
4 Development. We're the ones in litigation over 200
5 Amsterdam Avenue.

6 Before I read what, I have to say, I want to say
7 that up until now, you've been asking this question,
8 how do we put a limit on height. One of the ways and
9 it's been all through history, is that you take the
10 number of stories and you multiply by ten. And then
11 that's the way you get the height, until now, until a
12 few years ago.

13 Thank you so much for looking into the operation
14 of the Board of Standards and Appeals and Zoning Lot
15 Mergers. My organization, the Committee for
16 Environmentally Sound Development, is in litigation.

17 In contention is whether a zoning lot can consist
18 of two or more tax lots or can consist of two or more
19 lots plus parts of additional tax lots. The minority
20 report of the BSA, their June report, June 25th,
21 supports our contention that a zoning lot can only
22 consist of tow or more tax lots. This has never been
23 a question before because mergers have always been
24 two or more lots.

1 I shouldn't have said never, I think it's seven
2 cases over the years that were not and this one.

3 The Developer of 200 Amsterdam Avenue submitted a
4 brand-new interpretation of mergers which has led to
5 the 39-sided zoning lots shown on page two.

6 If you have my thing that I handed out, you could
7 just turn it over and see what happens when you don't
8 do two - yeah, I see the picture there, just turn it
9 over. That's it, the little yellow is their lot and
10 the thing in red is what he managed to fool them into
11 buddy handed in. We cannot allow this to set a
12 precedents, allowing our parks and green areas to be
13 used as parts of mergers. That's going to happen all
14 over the city if we allow this to go on.

15 The language has been clear to all developers.
16 That is, there are lots of developments going on in
17 this city that do it the way they should do it. Two
18 lots, no partials. Nobody bothers them and they go
19 ahead and put up their building.

20 This is your opportunity to erase all ambiguity
21 in the zoning regulations. Zoning regulations have
22 to be a factor in determining the heights of
23 buildings. We would also like to make the point that
24 manipulation zoning regulations allows for increased
25

1 height and bulk. Once you get a bigger height, you
2 get a tremendous bulk. And that's what's happening
3 with these tall buildings and terrible shadows and
4 it's detrimental to the surrounding community.

5 So, nobody cares about us, it's only the
6 developer that counts.

7 CO-CHAIR SALAMANCA: Thank you.

8 THOMAS DEVANEY: Good afternoon; Thomas Devaney
9 Senior Director of Land Use and Planning at the
10 Municipal Art Society.

11 The transfer of development rights is a
12 frequently used, yet clandestine as of right
13 mechanism that has had a significant impact on
14 development in New York City. Since 2013, when the
15 Municipal Art Society released its first Accidental
16 Skyline report, over 300 million square feet of
17 development rights have been used citywide, the
18 equivalent of nearly double the size of all planned
19 development in Hudson Yards. However, the amount of
20 TDRs used is not known because there is no way of
21 tracking them.

22 Although individual development right transfers
23 are currently recorded on the Department of Finance's
24 ACRIS website, this information can only be accessed
25

1 if a user has a reason to look at a specific address
2 or tax lot. There is no way to be notified of a
3 recorded TDR agreement, nor is it possible to find
4 transfers on a map. Therefore, any comprehensive
5 analysis of TDRs is virtually impossible. The timely
6 series of bills being introduced by the Council
7 should go a long way towards bringing TDR process
8 into the light.
9

10 MAS has long advocated for increased
11 transparency, accountability, and availability of
12 public information in the city's as of right land use
13 decisions. In our 2017 update of the Accidental
14 Skyline report, we noted that existing resources are
15 all too often deficient in informing the public of
16 important real estate transactions and land use
17 decisions until the development process has been
18 completed.

19 As noted in our report, the City lacks an online
20 platform that provides clear and comprehensive
21 information about TDRs and zoning lot mergers. Even
22 when information is provided, as it is on the ARIS
23 site, navigation is often an exercise in futility.
24 In Accidental Skyline, MAS pushed for the City to
25 make all information pertaining to Zoning Lot

1
2 Development Agreements and other real estate
3 transactions accessible by notifying the local
4 community boards and elected officials.

5 The bills being introduced today represent a big
6 step forward in addressing these deficiencies. With
7 that being said, MAS believes that they can be
8 strengthened further. We recommend that the
9 interactive zoning map under Intro. 1692 should be a
10 layer integrated on the City's ZoLa and DOITT map
11 formats, not as a stand along map.

12 Consistent with the recommendations in Accidental
13 Skyline and MAS's recent CEQR report, Tale of Two
14 Rezoning's, the city should update CEQR methodology
15 to require the evaluation of an alternative
16 development scenario that factors in potential
17 transfer development rights in a rezoned area. This
18 would provide a more accurate picture of impacts of
19 potential future development under large scale
20 rezoning's.

21 The time is right for increased transparency in
22 the TDR process. We commend the Council for the
23 bills being introduced and look forward to more
24 progress on this important issue.

1
2 CO-CHAIR SALAMANCA: Thank you, thank you all for
3 your testimony. You have - sorry, you have a
4 question.

5 Alright, just three minutes for Council Member
6 Kallos, I'm sorry.

7 COUNCIL MEMBER KALLOS: Thank you very much for
8 your patience and for being here. Do you think that
9 it would be helpful if this legislation also covered
10 not only the transfer of development rights when they
11 are being recorded, but also, as the practice appears
12 to be that developers will actually collect options
13 to purchase those development rights. That's what we
14 saw in the filings with Sutton during the bankruptcy.

15 GEORGE JANES: So, DCP wasn't wrong when they
16 said this is going to be hard. Right, it's going to
17 be hard; there is no doubt about it, but they still
18 have to do it. When you add in another complexity of
19 options, that may never be realized, right, those
20 options can expire and then would never happen.

21 Then you've got to constantly update. I think it
22 would be great if it were there, but I also think it
23 would be just another impediment on something that is
24 already going to be very hard.

2 COUNCIL MEMBER KALLOS: Okay, that's it, thank
3 you.

4 CO-CHAIR SALAMANCA: Alright, thank you.
5 Alright, so, we're going to bring up the next panel.
6 We have Harry Bubbins, Sheila Kendrick, Richard
7 Lewis, and Alida Camp.

8 HARRY BUBBINS: Thanks for the opportunity to
9 speak in support of Intro. 1701. My name is Harry
10 Bubbins; I am representing Village Preservation, also
11 known as Greenwich Village Society for Historic
12 Preservation. We're the largest membership
13 organization in Greenwich Village, the East Village
14 and NoHo.

15 I am here today to express my strong support for
16 the bill introduced by Council Member Ben Kallos
17 regarding the community notification requirements for
18 transfer of development rights.

19 We feel this legislation could be incredibly
20 helpful and is unfortunately quite necessary. There
21 is nothing inherently wrong with transferring
22 development rights. However, too frequently the
23 stacking of development rights from multiple lots is
24 used to facilitate the construction of super tall
25 towers or other structures which are woefully out of

1
2 scale or character with their surroundings. This too
3 is not necessarily illegal or unethical. However,
4 with alarming frequency, such projects involve some
5 sort of zoning chicanery and manipulation which
6 should not withstand the scrutiny of the light of
7 day.

8 By giving communities notification of these plans
9 as early as possible in the process, this legislation
10 allows them to give these plans the thorough review
11 that they often do not get from city agencies and
12 pursue challenges when necessary.

13 It's a potentially important tool in the ongoing
14 fight of New Yorkers to protect the character of
15 their neighborhood and prevent both overdevelopment
16 and the abuse of zoning regulations.

17 Where city agencies like the Department of
18 Buildings, Department of City Planning and the Board
19 of Standards and Appeals doing their job and ensuring
20 the plans which bend or break the rules are not
21 allowed to move forward, such a measure might not be
22 necessary. But as Justice Brandeis said, sunlight is
23 the best of disinfectants, and this bill would shine
24 much needed sunlight upon this process.

1
2 We therefore urge you to approve this bill as
3 soon as possible. Thank you.

4 SHEILA KENDRICK: I'm Sheila Kendrick with Save
5 Central Park NYC. We work with advocacy groups
6 citywide as we face challenges that impact Central
7 Park and other precious open spaces.

8 Many are startled when plans are finally released
9 to find that proposed towers are completely contrary
10 to what was expected and out of context with their
11 neighborhoods.

12 This bill, which we support, requiring public
13 notice of TDR's within five days, is long overdue.
14 Whether you're an advocacy group, a property owner, a
15 potential buyer, a resident or a developer, all
16 should have access to this information that will
17 allow for informed decisions. It will further limit
18 the secret transactions that have been all too
19 frequent in real estate development to date.

20 Numbering tax lots of record, and proving
21 interactive maps of available air rights, will also
22 provide clarity and transparency to all stakeholder.

23 Thank you.
24
25

1
2 RICHARD LEWIS: Richard Lewis; I'm Board Chair of
3 Community Board 12 in Washington Heights and Inwood
4 to the top of Manhattan.

5 We enthusiastically support this in package of
6 legislation 1691, 1692, 1701. In fact, the entire
7 Board I was say, 40 members have voted unanimously.

8 So, I am going to keep my statement as briefly as
9 possible; you have it on the record and I sat here
10 listening to the testimony of the three agencies DCP,
11 DOB and the BCA. I was a little bit dis-concerning
12 to know that they did not know all the city lots and
13 there's seemed to be great resistance of going
14 backwards and there's some slight enthusiasm going
15 forward.

16 It seems that developers have greater rights of
17 going backwards and putting us in this predicament
18 that we are. This has to change, and I think as an
19 IT professional, I can tell you that it may be
20 problematic to get this information done. It is not
21 impossible. It must be done, the sooner the better
22 and the sooner we can enforce with more deliberate
23 speed, this legislation, it helps the public and
24 that's what we like to know. We need to have this
25 information.

1
2 Thank you very much and I applaud the Council and
3 it's members for doing their hard work and getting us
4 to this point. Thank you, thank you, thank you. Do
5 you have any questions?

6 ALIDA CAMP: Hi, good morning. Thank you, Chair
7 Cabrera, Chair Salamanca and members of the City
8 Council. My name is Alida Camp; I serve as Chair of
9 Community Board 8, Manhattan. I am testing on behalf
10 of 1701, the legislation proposed by Council Member
11 Kallos that would require rapid notification to
12 Community Boards, Council Members the Speaker and the
13 Borough President following the sale of development
14 rights. Thank you for hearing my testimony.

15 Buildings change neighborhoods. Buildings build
16 through the transfer of air rights, because they are
17 larger, taller or more expansive change neighborhoods
18 even more. Not only light, air and center effected.
19 These buildings alter communities including the size
20 and nature of retail. The extent and make up of
21 affordable housing and all manner of diversity.
22 Neighborhood preservation is lost.

23 As prices go ever hire to support the prices paid
24 to buy the development rights and the construction
25 costs to build the larger buildings the rights allow,

1 the financials of the neighborhood change. As more
2 affluent residents move in, the restaurants, shop
3 offerings, athletic facilities, community spaces,
4 community groups and community make up change.
5

6 Furthermore, these high-priced buildings attract
7 far in investment, possibly money laundering. The
8 investors do not live in or contribute to the
9 neighborhood, do not support the local businesses and
10 are not in engaged community members. Physically,
11 the not fully occupied buildings detract from the
12 neighborhood.

13 Community subject to these changes and often not
14 wanting them, should know what is contemplated. We
15 need a head start to evaluate land use proposals;
16 this bill would give us that opportunity. Council
17 Members, CBA urges you to support this bill. It
18 wouldn't give us new rights or greater review, it
19 would give us more knowledge of what others are
20 planning for our communities, what could be wrong
21 with that.

22 I'd also like to remind you of the Saint Monica's
23 transfer 1000,000 square feet in development rights
24 to the Extell development project on 1st Avenue
25 between 79th and 80th. The idea was that they would

1
2 buy air rights from the tenement buildings that were
3 along that street and some of those buildings would
4 be retained while Extel built is building. Instead,
5 when Saint Monica's sold those 100,000 square feet of
6 air rights, all of the tenements were tore down and
7 now the lot is laying vacant for a year or two or
8 more while Extel develops its plans. So, that block
9 is just gone and that piece of community and the
10 affordable housing it might have retained and the
11 small businesses that were in every single building
12 along that street are gone as well.

13 This could help prevent that. Thank you.

14 CO-CHAIR SALAMANCA: Thank you for your
15 testimony. Council Member Kallos. Three minutes for
16 Council Member Kallos.

17 COUNCIL MEMBER KALLOS: There have been concerns
18 about nimby, would this force Boards to be more nimby
19 if they receive this notice or how would your two
20 Boards use this tool?

21 ALIDA CAMP: I don't see what's wrong in
22 evaluating planned proposals. There is something
23 wrong with saying yes to everything which is the
24 yimby approach. Nimby is saying no to everything.

25

1 This would give us the tools to look at and to see
2 whether it makes sense for the community.

3
4 Right now, developers run the show and it
5 shouldn't be that way. People who live here, people
6 who pay taxes, people who run businesses small or
7 large deserve to have a say in their community as
8 well. All this is, is giving us information. It
9 gives us no new rights to say no, no new
10 opportunities to put up obstacles. Really a chance
11 to be able to evaluate and analyze.

12 COUNCIL MEMBER KALLOS: Richard.

13 RICHARD LEWIS: As you know, we do conduct
14 hearings, just like you do, and we'd like to have the
15 information available to us. We do hear testimony
16 from the public. We also hear testimony from the
17 developers. If we don't have that in advance, that
18 puts us at a serious disadvantage. So, the tools are
19 becoming better and better in zoning and both
20 individually as well as other kinds of data and this,
21 I think, will be very helpful. I don't believe it's
22 going to create a nimby approach. I think this helps
23 to avoid a nimby approach. Thank you.

24 ALIDA CAMP: I would just like to add that
25 growth, economic growth is not the only thing that

1 matters in the development of a city and the increase
2 in the fabric of the communities. It's also
3 neighborhood preservation, retention of affordable
4 housing, retention of small mom and pop businesses
5 and so, this again would just allow us the tools to
6 evaluate, to ask questions and to help for the
7 community to decide what really makes sense and
8 potentially to work with the developers.

9
10 No one is saying no to reasonable developments,
11 but the kinds of projects being built at 20 Amsterdam
12 and contemplated on West 66th and 67th street and
13 billionaires row and on the upper east side as well
14 are inappropriate and out of context for the
15 communities.

16 COUNCIL MEMBER KALLOS: And I think by way of
17 example, you had a hearing with Extel on 79th Street
18 about what the community needs were. My office when
19 Extel bought up 3rd Avenue between 94th and 95th
20 street, I was actually able to approach the developer
21 and say, we need a school and we're not going to give
22 you anything for it and they said, okay, we'll put up
23 an as of right building. We paid cash, market value
24 to build I believe, 90 pre-k seats that we
25 desperately needed. They now built a second school

1 and now we're working on hopefully building a 3rd
2 school. So, I think that is an opportunity where
3 folks can actually come to the table, work with the
4 developer and having the knowledge of those zoning
5 lot transfers and mergers is incredibly helpful.

6
7 And then, just to the other two to save Central
8 Park and to Village Preservation, what are you
9 thoughts on Fernando Cabrera's bills relating to
10 actually being able to see the zoning lot mergers on
11 a map?

12 HARRY BUBBINS: I think elementary information is
13 always good and I'm a consistent user of ZoLa myself
14 and the open data is a less clear data set, at least
15 for me to navigate.

16 And so, to the degree that the information that
17 exists is shared moving forward especially as was
18 mentioned today seems easy and doable.

19 CO-CHAIR SALAMANCA: Alright, thank you very much
20 for your testimony.

21 PANEL: Thank you.

22 CO-CHAIR SALAMANCA: So, we're going to call up
23 the last panel. We have Stacey Shub, Geoffrey Elkin
24 and Ray Rogers.

25 Alright, you may begin.

1
2 STACEY SHUB: Thank you, Stacey Shub from the
3 Seaport Preservation. We at the historic south
4 Seaport enthusiastically support anything that will
5 encourage transparency and inform us of these
6 transfers of building rights and changes to owners
7 ability to build as of right earlier in the process.
8 By the time, we the stakeholders find out at the last
9 minute, we feel like we're playing a never end game
10 of whack a mole.

11 We've limited time and resources to be fighting
12 to protect our neighborhoods from out of scale super
13 tall skyscrapers that not only eternally change the
14 face of our skyline but stealer like cast shadows on
15 the less fortunate, overwhelm our infrastructure in
16 schools and contrary to what some may believe, do
17 nothing to create affordable housing. Quite the
18 contrary, any arguably affordable housing including
19 these structures are quickly off set by displacement
20 of long-term residents and skyrocketing rents in the
21 surrounding area.

22 An example of this type of surprise in my
23 neighborhood is 80 South Street. Even today, two
24 years later, most stakeholders have absolutely no
25 idea that because of transference of air rights from

1
2 Howard Hughes Corp to Chinese company that purchased
3 this assemblage, they can now build as of right a
4 super tall, that will be taller than the World Trade
5 Center, let that sink in. 120-foot tower without any
6 notification and no stakeholder input.

7 We would only be involved if they want to trade
8 neighborhood needs for an even larger structure that
9 will fit in nicely with the leaning tower south
10 street, the off kilter building nearby under
11 construction that's leaning three inches to the
12 north.

13 Almost all of the 40, 50 and 60 plus story
14 structures erected on the very narrow Fulton Street
15 between Water and Broadway had been a surprise to our
16 neighborhood. As we watch four story buildings being
17 swallowed up and air rights bought and sold under our
18 noses.

19 I fear we may be setting up for yet another fight
20 within our protected historic district if as
21 expected, Howard Hughes Corp will reveal their plans
22 tonight for a pencil tower at 250 Water Street this
23 evening.

24 I'd hope that the Extell tower nearby, the hated
25 half empty behemoth looming over the Two Bridges

1
2 neighborhood would have served as a warning. No body
3 can honestly look at that 80-story building and say
4 it fits within the intention spirit of the original
5 zoning.

6 We support anything that would help to prevent
7 these types of surprises in the future. Thank you.

8 RAY ROGERS: Hi, I'm Ray Rogers; I represent my
9 organization Corporate Campaign. The importance of
10 passing Intro. 1701 introduced by Council Member Ben
11 Kallos and 1691 and 1692 is to help prevent those
12 real estate tycoons often referred to as billionaire
13 bullies and racketeers who run Rebny, the real estate
14 board of New York from continuing to run rush yard
15 over New Yorkers.

16 For those of you who don't know who some of the
17 most influential leaders in Rebny are, let me name a
18 few. Rebny's current Chair Bill Rudin turned Saint
19 Vincent's Hospital into a billion-dollar luxury condo
20 complex. Former Rebny Chair, Rob Spire of Spire
21 illegally deregulated thousands of rent stabilized
22 apartments in Stuyvesant town and Peter Cooper
23 village in the scheme to steal millions of dollars
24 for more than 27,000 tenants and turn apartments into
25 high priced condominiums.

1 Tax cheat Steven Ross of Related Companies worth
2 \$7.6 billion thinks New York City construction work
3 is at Hudson Yards are pampered and over paid.
4 Slumlord Daniel Brodsky and Extell's Gary Barnett who
5 created the outlawed poor doored entrances and is
6 fueling hypergentrification by populating the city
7 with super tall luxury high rises that block the
8 sunlight and cast a shadow over gardens, parks in
9 communities like Chinatown.
10

11 Political leaders, not in the pocket of Rebny,
12 must fight to pass legislation like that being
13 discussed today and like the small business job
14 survival act which continues to languish before the
15 City Council while small businesses remain in crisis.
16 With proper legislation and proper enforcement, we
17 can, we can and must prevent Rebny from further
18 turning New York City into Rebny Ville. A place
19 known for slumlords, homelessness, mass evictions and
20 displacement, empty store fronts, dilapidated public
21 housing, warehouse buildings, bulldozed
22 neighborhoods, ridiculous super tall luxury
23 skyscrapers, lack of affordable housing, union
24 bashing, corporate criminality, construction work or
25

1 fatalities, massive corporate welfare and political
2 corporation.
3

4 Let's remember what Martin Luther King remind us
5 of. Martin Luther King said injustice anywhere is a
6 threat to justice everywhere.

7 So, I wholeheartedly support the legislation
8 we're talking about today to bring greater justice to
9 all the residents of New York City. Thank you.

10 CO-CHAIR SALAMANCA: Thank you very much for your
11 testimony. Council Member Kallos, no questions,
12 alright, thank you very much.

13 PANEL: Thank you.

14 CO-CHAIR SALAMANCA: Is there anyone else in the
15 public that would like to testify that did not fill
16 out a form with the Sergeant of Arms. Alright, well,
17 we're going to take a two-minute recess.

18 Alright, so we're back. I just want to recognize
19 that we've also been joined by Council Member Mark
20 Treyger and with that, I would like to thank all
21 staff and the public and Council for today's hearing.
22 This hearing is hereby adjourned. [GAVEL]

23

24

25

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 April 1, 2018