

NEW YORK STATE ASSEMBLY

PUBLIC HEARING

ASSEMBLY STANDING COMMITTEE ON CITIES
ASSEMBLY STANDING COMMITTEE ON CODES
ASSEMBLY STANDING COMMITTEE ON HOUSING

THE EFFECTIVENESS OF THE REGULATION AND CONSTRUCTION AND
DEVELOPMENT IN NYC AND THE ENFORCEMENT OF THE BUILDING CODE
AND COMPLIANCE WITH THE ZONING REGULATION

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A S S E M B L Y M E M B E R S :

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JOSEPH LENTOL, Chairman - Committee on Codes

VITO LOPEZ, Chairman - Committee on Housing

MARK WEPRIN, Member of Assembly

DEBORAH GLICK, Member of Assembly

CARL HEASTIE, Member of Assembly

LINDA ROSENTHAL, Member of Assembly

DANIEL O'DONNELL, Member of Assembly

ANNETTE ROBINSON, Member of Assembly

LIST OF SPEAKERS

PATRICIA LANCASTER, Commissioner New York City Department of Buildings.	14
PHYLLIS ARNOLD, Deputy Commissioner for Legal Affairs New York City Department of Buildings.	51
BOB LIMANDRI, First Deputy of Operations New York City Department of Buildings.	53
HONORABLE BETSY GOTBAUM Public Advocate for the City of New York	118
HONORABLE DAVID I. WEPRIN, Councilmember District 23.	126
HONORABLE ROSIE MENDEZ, Councilmember District 2	140
TERRENCE E. O'NEAL, President American Institute of Architects New York State Chapter	148
FRANK MUNOZ, Executive Director New York State Education Department Office of Professions.	173
DANIEL KELLEHER, Director of Investigations New York State Education Department Office of Professions.	179
TONY STRAKA New York Committee on Occupational Safety & Health	199
ADELE BARTLETT, Supervising Attorney MFY Legal Services	223
SUSAN STETZER, District Manager Manhattan Community Board 3.	234
TERESA SCAVO, Chair Brooklyn Community Board 15.	246
DMITRIY SHENKER, President American Institute of Architects, Brooklyn Chapter	252

LIST OF SPEAKERS (cont'd)

RICHARD BEARAK Deputy Director for Planning & Development Office of Borough President Marty Markowitz.	261
MARK C. KRISS, ESQ., Legislative Counsel New York State Society of Professional Engineers	271
SUSAN SIEGEL, Executive Director Flatbush Development Corporation	279
RICHARD SILVERMAN	280
AARON BRASHEAR Concerned Citizens of Greenwood Heights.	286
ROBERT FURMAN, Chairman Four Boroughs Neighborhood Preservation Alliance	299
WILLIAM GATI, President American Institute of Architects, Queens Chapter	312
MARTIN SAFREN	328
ED JAWORSKI, Executive Vice President Madison Marine Civic Association/Homecrest Committee	332
KATHY JAWORSKI, Corresponding Secretary Madison Marine Civic Association/Homecrest Committee	338
ALVIN TOY, Property Owner Elmhurst, New York	340
JACK TOY, Property Owner Elmhurst, New York	346

2 CHAIRMAN BRENNAN: We're going to
3 convene. I am Assembly Member Jim Brennan from
4 Brooklyn, Chair of the Assembly Standing
5 Committee on Cities. This is a hearing on the
6 effectiveness of the regulation of construction
7 and development in New York City and the
8 enforcement of the building code and compliance
9 with the zoning resolution. The hearing is co-
10 chaired by two other Assembly Standing
11 Committees, the Assembly Standing Committee on
12 Codes, Joe Lentol, to my immediate left, and the
13 Assembly Standing Committee on Housing, chaired
14 by Assembly Member Vito Lopez. And we understand
15 Mr. Lopez will be joining us at some point today,
16 and we look forward to seeing him.

17 Also joining myself and Mr. Lentol are,
18 to the far left, on either side are the folks in
19 the middle. Assembly Member Deborah Glick,
20 welcome and thank you. Assembly Member Mark
21 Weprin. To my immediate right, Assembly Member
22 Annette Robinson, Brooklyn colleague. Assembly
23 Member Dan O'Donnell, Daniel O'Donnell to the far
24 right. We thank all of them for coming.

25 This is going to be a relatively long

2 hearing. I want to advise people who are here in
3 the room now that we have 46 witnesses. The
4 issues related to the hearing have clearly struck
5 a chord among people across the City and is
6 clearly a reflection of the broad public concern
7 about the issues related to the hearing,
8 everything from the extent to which zoning is
9 critical to the City's quality of life, to public
10 safety concerns about construction and
11 development and enforcement issues related to
12 them.

13 All the witnesses will be sworn. We
14 anticipate that many of the people who are
15 witnesses who are in the middle or latter parts
16 of the witness list may not testify till early to
17 mid-afternoon. I encourage you to adjust your
18 schedules. We will make sure that everybody has
19 an opportunity be heard either today or at a
20 continuation of the hearing that we intend to, at
21 this time, schedule for November 15. So please
22 be patient. It's going to be a long day. You
23 are all appreciated and welcome in relation to
24 this hearing and the issues that we confront.

25 At this time I'd certainly like to ask

2 any of my colleagues if they have any remarks
3 they'd like to make before we begin the hearing.

4 CHAIRMAN LENTOL: Good morning. Thank
5 you, Assemblyman Brennan. My name is Joseph
6 Lentol, and I am chair of the Assembly Codes
7 Committee. I want to sincerely thank Assemblyman
8 Brennan for coalescing all of the members of
9 various committees together and holding this
10 hearing on the regulation and construction and
11 development in New York City and enforcement of
12 the building code.

13 This is an extremely important and timely
14 topic; even the press doesn't appreciate it as
15 much as we do here in this room, and one which
16 I've been waiting impatiently to discuss.
17 Ironically, I represent the
18 Greenpoint/Williamsburg area. Ironically
19 yesterday, about five o'clock, I received a call
20 from a constituent, an 87 year old woman, who
21 lives in her own private home - I think it's a
22 three story building - and she said to me that
23 she needed a lawyer. And I said, Rose, why do
24 you need a lawyer? She said well, as you know,
25 they're doing construction right next door to me

2 and there's water in my basement and yesterday -
3 excuse me. Last month I couldn't get back into
4 my building because the locks didn't work. I
5 can't do any of the work around the house, so I
6 called my friend the fireman down the street and
7 he came over and he said that it looks like your
8 building must have shifted, that's why you can't
9 open up the doors, and it's probably from the
10 construction going on right next door to you.
11 And the water in the basement is certainly
12 related to that. So the fireman called the fire
13 department. They came in and realized it was a
14 buildings department matter. The buildings
15 department responded. And the buildings
16 department, what did they do? They issued the
17 old lady an unsafe building violation.

18 Now, I don't want to be critical of the
19 buildings department, it's not the first time
20 it's happened and I'm sure it won't be the last.

21 I've been clamoring for months, years already,
22 as development has gone on in Greenpoint and
23 Williamsburg, for some agency to take control and
24 protect people in instances like this.

25 Fortunately this woman was not put out of her

2 house, which has happened all too often in my
3 district. After someone's called the buildings
4 department and they have determined the building
5 is unsafe, they routinely then put them out and
6 they have to find accommodations elsewhere until
7 the building can be declared safe, which is all
8 well in good, but if the problem was resolved in
9 the first place maybe that wouldn't have
10 happened.

11 I think that the buildings department
12 understands that people's lives are at stake and
13 that if the building is unsafe they ought to be
14 taken out of their buildings. But if they could
15 have addressed the problem in the first place, or
16 someone addressed the problem in the first place,
17 we wouldn't be in the mess that we're in all over
18 the City. But I'm going to leave that all for my
19 questions with you, Commissioner, so that we can
20 talk about that in detail.

21 I'm particularly concerned, as Chairman
22 of the Codes Committee, on the issue of public
23 safety, and that's something that we all have to
24 be concerned of especially in light of what we
25 saw happening in the Bronx. We lost two

1 Standing Committees on Cities, Codes & Housing - 9-7-06 10
2 firefighters, as you know, and there will be some
3 questions regarding that today, I'm sure, because
4 we're going to talk about issues of self
5 certification by engineers and whether the
6 buildings department is doing the proper audit of
7 the self certification process, and whether or
8 not they're following up on places where
9 development occurs to make sure that the public
10 safety is protected. I will be focusing on that
11 issue, along with my colleagues.

12 I want to thank the speakers in advance,
13 and I'm certain that their testimony will be
14 informative.

15 CHAIRMAN BRENNAN: Thank you. We've
16 been joined by Assembly Member Linda Rosenthal
17 from Manhattan.

18 ASSEMBLYWOMAN GLICK: I know we have a
19 long list, so I'm just going to raise three
20 points that I hope will be addressed in the
21 course of your testimony. One is the damage to
22 historic buildings. I represent parts of Lower
23 Manhattan. We've seen a lot of development.
24 It's a hot real estate market. And I have to say
25 that there is a growing concern that in some

1 Standing Committees on Cities, Codes & Housing - 9-7-06 11
2 instances the rush to make a quick buck and a big
3 buck, at that, there have been slipshod methods,
4 there's not a lot of inspection or oversight.
5 The self certification is a dreadful problem.
6 What might be appropriate construction techniques
7 on a 20 year old building in no way are adequate
8 or appropriate for a 100 year old building. I
9 don't believe there's any distinction made by the
10 Department of Buildings regarding that. That is
11 a very big problem, especially in older parts of
12 the City. And I happen to represent an area that
13 has a lot of those.

14 The issue of phony demolition is a way to
15 just clear out your building so that you can get
16 rid of your rent regulated tenants, and that's
17 becoming more and more of a problem. And the
18 whole issue of self certification is a disaster.

19 And the use of scaffolding, over which there's
20 no particular regulation, as a means of just
21 harassing tenants, be they commercial or
22 residential.

23 Those are the issues that brought me here
24 today, and I hope that in the course of this
25 hearing - and I'm glad there will be a

1 Standing Committees on Cities, Codes & Housing - 9-7-06 12
2 continuation in November. I'll make sure I can
3 stay for all of that. I know that that's not
4 going to be possible today. But those are the
5 concerns that we have, and I think are shared by
6 many of my constituents who see it happening all
7 around them. It's not an isolated instance. And
8 when we try to get an answer from the Building
9 Department about what went wrong, they can't
10 determine the cause and people are out of their
11 buildings maybe permanently. The tenants are out
12 permanently. The owners don't seem to have a
13 great economic incentive to move quickly to get
14 them back in.

15 Those are the concerns that I have and I
16 hope they will be fully explored and addressed
17 between this hearing and the next.

18 CHAIRMAN BRENNAN: Ms. Robinson.

19 ASSEMBLYWOMAN ROBINSON: Thank you very
20 much, Chairmen Brennan and Lentol. I, too, would
21 like to echo the comments of my colleagues in
22 regards to what happens in the community of
23 Bedford Stuyvesant, Crown Heights, and Bushwick,
24 as well, in terms of the harassment of some of
25 the owners in terms of other people in the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 13
2 community who want to take over their property.
3 Also in terms of the lack of response from the
4 Buildings Department unfortunately, in terms of
5 the kind of permitting process that needs to go
6 on. Many pieces of property are going up all
7 over the Brooklyn communities, specifically the
8 Bedford Stuyvesant community, and many of the
9 people do not have the proper permits. And also
10 in terms of how scaffolding is erected. It's
11 just a building mess all over the place, and it
12 seems as though there's no control over it. So I
13 join with my colleagues in their concerns around
14 that because I see people falling off of
15 scaffolding. People providing demolition work,
16 they do not have helmets, they do not have proper
17 shoes, they do not have proper masks where
18 they're doing the demolition work and things of
19 that nature.

20 So I just offer that in terms of the
21 concerns that I have in regards to what's
22 happening within the district that I represent,
23 which is the 56th Assembly District.

24 CHAIRMAN BRENNAN: Other members? Okay.

25 As I indicated the witnesses will be

2 sworn. And welcome, Commissioner Lancaster,
3 Commissioner of the New York City Department of
4 Buildings.

5 COMMISSIONER PATRICIA LANCASTER, having
6 first been duly sworn by a Notary Public of the
7 State of New York, testified as follows:

8 CHAIRMAN BRENNAN: Thank you. We
9 appreciate your presence here, Commissioner
10 Lancaster. Feel free to begin. Thank you.

11 COMMISSIONER LANCASTER: Thank you.
12 Good morning Chairman, Brennan, Chairman Lentol
13 and Members of the Committees on Cities, Codes
14 and Housing. I am Patricia Lancaster,
15 Commissioner of the New York City Department of
16 Buildings. Joining me here today are Robert
17 LiMandri, First Deputy Commissioner for
18 Operations; Phyllis Arnold, Deputy Commissioner
19 for Legal Affairs and Chief Code Counsel; Marilyn
20 King-Festa, Deputy Commissioner of Technology and
21 Analysis and other staff from my Department.

22 When I accepted the Mayor's appointment
23 to become New York City's Buildings Commissioner
24 in 2002, I knew I had taken on an enormous
25 challenge. I had inherited a neglected agency

1 Standing Committees on Cities, Codes & Housing - 9-7-06 15
2 that was in complete disarray. One-third of
3 staff positions were vacant. Computers crashed
4 daily. Obtaining permits or even information
5 about the status of permit applications required
6 hiring expeditors and took time and expense.
7 Curing violations was similarly complex and often
8 required several visits to the Department.
9 Members of the public, community boards and
10 elected officials had no access to permits and
11 violators issued in their neighborhoods. Staff
12 morale was at an all-time low. Documents and
13 files were unaccounted for. Customer wait times
14 were astronomically high. In fact, it took so
15 long to get an appointment with a plan examiner
16 that people were literally scalping appointments
17 on the streets.

18 Perhaps I, with your permission, can
19 abridge my testimony.

20 There was no choice but to hire a new
21 management team and systematically reform the
22 Department of Buildings from top to bottom. This
23 required us to analyze all of the Department's
24 operations, to revamp every division within the
25 Department, and to review, review and redesign

1 Standing Committees on Cities, Codes & Housing - 9-7-06 16
2 virtually all of our operations and procedures.
3 After setting priorities for the many projects on
4 our must do list, I created a team devoted solely
5 to redesigning and implementing new initiatives
6 and procedures. We call it the operations
7 redesign team, and it consists of eight people
8 who work solely on making the Department function
9 better all day, every day.

10 We had to modernize our facilities. We
11 had to systemize, codify, publish and explain our
12 procedures to staff and the public. We had to
13 fill vacancies and recruit architects, engineers
14 and inspectors, and we had to develop a training
15 program for all staff. Finally, we had to revamp
16 and reinforce our Information Technology
17 equipment and systems to make them reliable and
18 user friendly, and to develop new IT systems by
19 which the information we had could be made
20 accessible to the public. Indeed, IT proved to
21 be perhaps one of the most critical elements in
22 our plans, for only through the speed and
23 efficiencies of IT would it be possible to
24 deliver the increased level of service, plan
25 examinations, and inspections that the people of

2 the City deserved.

3 Thanks to Mayor Bloomberg and the City
4 council and to an outstanding staff that is
5 committed and passionate about the City of New
6 York, we have made some strides in achieving the
7 goals set forth in our first strategic plan. We
8 have substantially increased our headcount,
9 conducting job fairs and bolstering our Human
10 Resources Department to reduce vacancies from
11 276, when I took over, to 49. We developed a
12 forensic engineering unit to investigate
13 accidents, collapses and advise other City
14 agencies on structural engineering issues. We
15 published a Code of Conduct for employees, the
16 first of its kind for the Department, clearly
17 setting forth the standards that staff is to use
18 in conducting business. We provided staff with
19 technology that they desperately needed by
20 purchasing new computers and upgrading the
21 agency's network. We developed PIPES, a handheld
22 technology for our plumbing inspectors that
23 routes them efficiently and enables them to give
24 customers in the field receipts detailing
25 inspection results. We formed a training academy

1 Standing Committees on Cities, Codes & Housing - 9-7-06 18
2 called Buildings University that provides staff
3 with additional training they need. And career
4 development programs are being designed to groom
5 administrative staff for management positions.

6 In early 2003, less than two years after
7 I became Commissioner, we put our Buildings
8 Information System, or BIS, onto the internet,
9 opening the doors to the agency's information so
10 that any member of the public can access
11 application, permit and violation information on
12 all 950,000 buildings that we are responsible
13 for. We have also uploaded hundreds of thousands
14 of Certificates of Occupancy onto BIS and
15 automated Certificate of Occupancy issuance.
16 Permit applications, permits, licensees,
17 complaints and violations, both by individual
18 property and community board, are all available
19 24 hours a day, seven days a week. Anyone with
20 internet access can get access to our many
21 publications at any time. Our website is now
22 taking an average of 380,000 page hits a day.
23 It's quite popular. We have also initiated
24 electronic filing for permit applications, which
25 substantially reduces our customer traffic in our

1 Standing Committees on Cities, Codes & Housing - 9-7-06 19
2 offices and frees our staff from routine
3 processing to work on the more complex
4 applications. Further, IT improvements are being
5 developed as I speak to improve public access to
6 our operations and service to our customers that
7 I will describe later in my testimony.

8 We have come a long way in four years.
9 But I do not pretend that we have finished the
10 job we have set out to do. On top of our mammoth
11 reform agenda, we are involved in a huge effort
12 involving both our own staff and hundreds of
13 engineers and architects from the private sector
14 to completely rewrite the building code. And we
15 are engaged in many efforts to increase safety on
16 construction sites and compliance with zoning and
17 the building code. Additionally, we have
18 developed a second four year strategic plan that
19 sets forth our new set of goals and how we intend
20 to implement them. I am going to go through a
21 quick outline of that, but we have also handed
22 out copies to the members of the Assembly and
23 it's on our website.

24 We have three major goals to ensure
25 compliant construction. And, by the way, this is

2 the top ten projects. The strategic plan
3 consists of about 150 projects and ensures
4 safety. This is about enforcement. It's
5 adopting the model code; reconstructing the plan
6 exam process from top to bottom; and focusing on
7 zoning compliance and also on controlled
8 inspections.

9 We have to keep doing IT, otherwise the
10 volume increases will sink us. And to do that
11 we're going to scan all the images that we
12 receive, except plans. Automate inspections.
13 Develop a business intelligence reporting system,
14 and enable subsequent phases of application
15 filing, eFiling.

16 We also have to keep developing our
17 staff. As you can imagine, they are necessary to
18 keep going as well. We need to keep spotlighting
19 integrity and professionalizing the agency. We
20 keep getting more people, and we need to keep
21 recruiting the highest level that we possibly
22 can.

23 In the remainder of my testimony this
24 morning I want to outline for you the highlights
25 of our plans and challenges for the next three

2 and a half years.

3 We've developed a great team and a great
4 foundation for that team to build on. And I look
5 forward to working with you all on the best way
6 to achieve these goals and on developing a
7 legislative packet that will help reinforce our
8 efforts in making the City a great place to live,
9 to work, and to build.

10 Going to 2.2. A review of our inspectors
11 shows the wide range of knowledge and expertise
12 that lies in the Department.

13 CHAIRMAN BRENNAN: I'm sorry. You're on
14 page eight now.

15 COMMISSIONER LAWRENCE: I am on page
16 eight at the tope.

17 While the number of inspectors has been
18 on the rise, as you know, so has the level of
19 construction activity. In every community in the
20 City old buildings are being torn down and new
21 ones are rising in their place. Vacant land is
22 being developed and older buildings are being
23 renovated at a startling pace, as you all know.
24 In FY06 alone, over 73,000 new construction
25 applications were filed. Our 350 inspectors

1 Standing Committees on Cities, Codes & Housing - 9-7-06 22
2 performed 413,844 inspections, and the Department
3 issued over 158,000 new and renewal permits.
4 While this extremely high level of construction
5 activity is a reflection of the City's
6 extraordinarily robust economy, it is placing
7 strains on the Department and on the communities
8 that you and I serve. The Department responded
9 to 99 percent of the over 118,000 complaints it
10 received in the last fiscal year alone, and its
11 inspectors issued 49,000 ECB and 46,000 DOB
12 violations.

13 Given this high volume construction
14 environment and the demands it puts upon our
15 resources, increased oversight of construction
16 activities, particularly in the early stages when
17 problems are most easily corrected, will require
18 more and better trained inspectors to increase
19 and improve the number of inspections performed.

20 Increased oversight of construction by
21 the Department will also require continued
22 development and implementation of new technology.

23 That technology has enabled the Department, so
24 far, to keep up with increased workloads and
25 increased accuracy. The projects that we have in

2 development will enable us to achieve new
3 efficiencies in our oversight of construction
4 activities.

5 I am going now to page 11 at the top.

6 CHAIRMAN BRENNAN: I just wanted, for
7 the record, your testimony on page nine indicates
8 you've received funding for 71 additional staff
9 this year.

10 COMMISSIONER LAWRENCE: That's correct.

11 CHAIRMAN BRENNAN: Okay. Go on.

12 COMMISSIONER LAWRENCE: I break that down
13 further on in my testimony.

14 Complaint response time and backlogs.
15 While the Department does have several teams of
16 inspectors that proactively inspect properties
17 and construction sites for compliance with the
18 Code, a major share of our enforcement
19 inspections is generated by complaints from
20 community boards, elected officials, civic
21 associations and members of the public. Thus,
22 our enforcement efforts most frequently begin
23 when an inspector observes a violation on a job
24 site or when a member of the public files a
25 complaint. On average, the Department of

2 Buildings receives approximately 300 complaints
3 per day via 311, and, as I said, 118,000 in FY06.

4 Most complaints are responded to in a timeframe
5 well within our goals. That's in the Mayor's
6 Management Report if you want to follow up on
7 that.

8 Depending on the specific situation, the
9 Department's inspectors have an assortment of
10 enforcement tools that can be used to prompt
11 compliance. These include padlocking and the
12 issuance of ECB and DOB violations; criminal
13 court summonses; emergency and immediate
14 emergency declarations; unsafe building notices;
15 vacate order; and stop work orders. We have also
16 equipped most of our inspectors with digital
17 cameras that enable them to record and distribute
18 electronically the actual situation they observe
19 in the field. This has resulted in far fewer
20 factual disputes in court and at ECB and
21 ultimately results in greater compliance with
22 code.

23 A major focus of our concentrated
24 enforcement efforts has been on those buildings
25 that have received multiple ECB hazardous

1 Standing Committees on Cities, Codes & Housing - 9-7-06 25
2 violations. One of these efforts, the Hazardous
3 Re-inspection Program, involves the inspectors in
4 the Department's Special Projects Inspection Team
5 who systematically follow up on hazardous
6 violations issued. If the hazardous condition
7 has not been remedied, the inspector can initiate
8 a number of enforcement actions to foster
9 compliance, including issuance of a second
10 offense violation and appropriate future
11 monitoring.

12 The Department never allows an emergency
13 situation or a condition of imminent peril
14 pertaining to a building's structural integrity
15 to go unabated. In such cases, we issue an
16 emergency declaration. Emergency declarations
17 allow the City to undertake the required remedial
18 action if a property owner is unwilling or unable
19 to do so. For premises that are in danger of
20 collapsing or are considered unsafe, buildings
21 department inspectors have several enforcement
22 options. Inspectors can issue an unsafe building
23 violation that will ultimately results in a court
24 authorized sealing or demolition of the building.
25 They can also issue a vacate order for all or

2 part of a building to ensure that residents have
3 access to safe areas only.

4 I'm going now to page 14, first
5 paragraph.

6 The Department has just published a
7 proposed rule for increased excavation safety.
8 The rule mandates that at least 24 but no more
9 than 48 hours before starting work, anyone
10 intending to perform earthwork must notify the
11 Department electronically or by telephone of the
12 date that the work will begin. Failure to notify
13 the Department will result in a stop work order
14 if the work is found to violate any of the
15 provisions of the building code or zoning
16 resolution or other applicable law, rule or
17 regulation. The work will be stopped for a
18 minimum of three business days, and cannot start
19 again until the stop work order has been lifted.

20 Protection of adjacent properties is an
21 area where we believe that additional legislation
22 is warranted. The building code currently
23 imposes a duty on developers to support adjacent
24 properties only if the excavation is greater than
25 ten feet. I believe this is an antiquated

2 provision. Property owners should have an
3 absolute duty to protect their neighbors'
4 property regardless of the depth of their
5 excavations.

6 In addition, I would like to see
7 legislation mandating that persons performing
8 excavation have substantial insurance to cover
9 damage to adjacent property. The risks and costs
10 of excavation should be the responsibility of the
11 person performing the excavation. And third,
12 adjacent property owners should be required to
13 give access to those who have filed excavation
14 applications, where necessary, to determine what
15 type of support needs to be installed to protect
16 their property.

17 Another initiative the Department is
18 pursuing involves providing notices of demolition
19 prior to the issuance of demolition permits.
20 Currently, the law requires that notice of
21 demolition be provided to adjacent property
22 owners by certified mail with return receipt at
23 least five days before demolition is to occur.
24 However, the public and elected officials have
25 requested that they also be given notice of

2 impending demolitions so that they will not be
3 surprised by the commencement of major
4 construction in their neighborhoods. The
5 Department is redesigning the demolition permit
6 process so that demolition applications will be
7 posted on the web before mandatory preliminary
8 inspections are scheduled. This proposal will
9 become a rule, and has been published for review
10 and comment under the CAPA. We expect it to go
11 into effect within the next few months.

12 The Department also recently implemented
13 an online stop work order notification feature in
14 BIS. The purpose of this project is to help
15 enhance the Department's enforcement capabilities
16 by making it easier for members of the public to
17 identify properties with active stop work orders,
18 or SWOs, and call 311 so we can send an
19 enforcement officer right over to the site.
20 Beginning last month, all properties with an
21 active SWO were flagged to our online property
22 profile page on BISWeb. In addition, the
23 highlighted warning is a clickable link that
24 takes the user to a list of complaints on the
25 property that resulted in a stop work order. And

2 I'd like to add that we're working with the
3 Finance Department, who the Sheriff's Office
4 reports to. The Sheriffs have agreed to go out
5 with us to enforce the stop work because we're
6 thinking that will give us additional teeth.
7 There are some union issues that we're still
8 working out, but that should go into effect
9 fairly quickly.

10 Another initiative that I would like to
11 highlight is the proposed registration of
12 superintendents of construction. This
13 Departmental proposal will promote public safety
14 by assuring that all construction sites in the
15 City are supervised by competent people with
16 appropriate knowledge of construction and risk
17 prevention.

18 Skipping to the last sentence.

19 CHAIRMAN BRENNAN: Do you need
20 legislation for that?

21 COMMISSIONER LAWRENCE: Yeah. It's a
22 rule.

23 I'm skipping to the last sentence in the
24 paragraph.

25 Qualifications include work experience as

1 Standing Committees on Cities, Codes & Housing - 9-7-06 30
2 well as the completion of a site safety manager's
3 course and completion of an OSHA course.

4 Now about zoning and enforcement,
5 something I know that you care about.

6 The increase in land values and shortage
7 of developable plots have increased incentives to
8 violate zoning provisions to get more square
9 footage. While for many years the Department's
10 major focus was on safety, both in building and
11 in construction, soaring land values and
12 development pressures now require that resources
13 be added to ensure zoning compliance. Our
14 several, numerous zoning compliance initiatives
15 are designed to preserve the objectives of the
16 zoning resolution by focusing on specific zoning
17 provisions where the Department has identified a
18 significant risk of over-development or egregious
19 non-compliance.

20 I'm skipping to page 19, 4.3.

21 In the 1990's, the Department implemented
22 a professional certification program, as you
23 know, for registered architects and professional
24 engineers. The program allows them to certify
25 that their plans comply with zoning, building

2 code and other requirements. Because the
3 Department lacks sufficient manpower to review
4 each of the tens of thousands of applications
5 submitted to it each year, the professional
6 certification program enables faster processing
7 of applications. The program is dependent not
8 only on the professionalism, competence and
9 integrity of the professionals using it, but also
10 on effective tools to ensure that the
11 professionals use it properly. With a zoning
12 resolution as detailed and as complex as the
13 City's, covering dozens of different zoning
14 districts, each with numerous different
15 regulations, the Department recognizes that
16 professional certifications must be closely
17 monitored.

18 While most applicants take their
19 professional obligations seriously and submit
20 compliant work, there are those who submit work
21 of substandard quality. We are implementing a
22 number of initiatives, in addition to audits,
23 that we believe will sufficiently tighten the
24 process to minimize the risk of noncompliance
25 that I would now like to describe to you.

2 First of all, the zoning compliance
3 pilot. Under a pilot program started May 15, the
4 Staten Island Office of Buildings has been
5 performing a zoning review of all new building
6 and alternation type-1 applications prior to
7 approval. We have been looking for such major
8 zoning issues such as floor area and open space,
9 density, lot area and width, required yards,
10 height and setback.

11 The Bronx, Brooklyn and Queens offices
12 are now starting this program as well. This
13 enables us to prevent zoning infringements up
14 front and to identify issues and professionals
15 that we must focus upon. This zoning screen does
16 not limit or restrict buildings' ability to
17 perform audits and additional reviews at any
18 stage in the process. As staffing permits, we
19 may expand it to Manhattan.

20 Using monitoring technology. To assist
21 our ability to review zoning, we are also in the
22 process of implementing the Primary Land Use Tax
23 Lot Output, or PLUTO, a tax-lot data file
24 maintained by the Department of City Planning.
25 PLUTO will enable us to match the applicant's

2 zoning information from the application for the
3 permit to the zoning data from City Planning.

4 This will be an incredibly valuable tool, which
5 will automatically verify applicable zoning
6 assumptions. In other words, if an applicant
7 misreads the applicable zoning requirements, he
8 or she will get caught and stopped at the door.

9 There are a number of technical issues to resolve
10 before we can commit to a final roll out date.

11 Special audit plan examiners. Along with
12 the increase in quality of life complaints from
13 community residents and elected officials, the
14 record number of zoning changes in the City also
15 contributes to the need to perform special audits
16 on construction applications. Borough auditors
17 perform the actual audit of selected jobs that we
18 do based on complaints, tips, or elected official
19 requests. An additional seven plan examiners
20 will be added to support this initiative, which
21 covers review of professional certified jobs and
22 those that have gone through regular plan review.

23 These are in addition to the 19 additional plan
24 examiners who have already been added to keep
25 pace with the volume of the applications.

2 An amended rule for revocation of
3 professional certification privileges.

4 Under the Department's existing rules,
5 applicants who abuse the pro cert process can
6 lose their right to certify new jobs. Their
7 license number is flagged in our computer system.

8 They are then required to have a full plan
9 review on each job.

10 Our pro cert rule is currently being
11 amended. The amendment adds new grounds for
12 suspending and/or excluding architects and
13 engineers from procedures for limited supervisory
14 check and professional certification. The new
15 grounds reflect the acts and evidence that can be
16 used to demonstrate lack of professional ethics
17 or competence. For example, under the new rule
18 discipline may be based on the number of times
19 that an applicant may receive a ten-day notice.
20 The new rule will both delineate for the Office
21 of Administrative Trials and Hearings, or OATH,
22 acceptable standards and evidentiary proof and
23 put the applicant on notice regarding the high
24 standards to which he or she will be held. This
25 suspension or exclusion will result in increased

2 Department scrutiny of applications and plans
3 from those particular architects and engineers.
4 This will encourage increased applicant
5 compliance with public safety and zoning
6 requirements in order to have expedited reviews.

7 The new rule has been published for final
8 comment and should go into effect in the new few
9 months.

10 Like other legal processes, disciplinary
11 proceedings, whether concerning revocation of
12 professional certification privileges or
13 revocation of a license, require due process. We
14 refer applicants with egregious violations to the
15 State Department of Education, which licenses and
16 oversees sanctions against professional
17 architects and engineers. We welcome your
18 support in indicating to the State Department of
19 Education the significance you place on these
20 issues and requesting continued focus from the
21 Office of Professional Discipline on those
22 transgressors referred by my Department.

23 I am aware that in the past there have
24 been legislative proposals to give the City
25 Commissioner of Buildings the power to regulate

2 and discipline architects and engineers who file
3 applications with the Department of Buildings.

4 If you wish to consider similar proposals, I
5 would be glad to discuss them with you to
6 strengthen the profession in New York City.

7 Stop work orders. We have been running a
8 pilot program in Queens to more effectively use
9 the SWO enforcement tool. We improved the
10 quality of service and documentation and it seems
11 to be having an impact. To date we are seeing
12 few breaches of the orders in Queens. A breach
13 of the stop work order is a misdemeanor and we
14 will vigorously pursue them in criminal court.
15 We would welcome your support in communicating
16 this to the community and the courts that this is
17 an important issue. The considerable financial
18 consequences of having a job stopped early should
19 serve as a deterrent to those who might otherwise
20 submit substandard and non-compliant work. In
21 FY06 the Department issued 5,801 stop work
22 orders.

23 I want to tell you a little bit about our
24 special zoning enforcement pilot in Manhattan
25 Beach.

2 The Department piloted a new enforcement
3 initiative in the Manhattan Beach area of
4 Brooklyn. The pilot was launched in September
5 2005 and consisted of 58 properties in Manhattan
6 Beach that involved extensive overbuilding. Of
7 these 58 properties, nine are now being
8 constructed, three building owners have been
9 arrested for bribery and may serve up to a seven
10 year sentence, and six criminal court summonses
11 have been issued.

12 Based upon the model utilized in
13 Manhattan Beach, we are establishing a team to
14 initiate enforcement actions in select
15 neighborhoods where projects are being built,
16 undeterred by enforcement efforts, contrary to
17 zoning. Funding has been provided for two
18 inspectors, a plan examiner, an architect, an
19 investigator, an attorney, a paralegal and a team
20 manager.

21 Weekend inspection program. According to
22 the Administrative Code, construction is allowed
23 during the hours of 7 a.m. thru 6 p.m., Monday
24 thru Friday. Only one or two family dwellings
25 are permitted to work on weekends between the

2 hours of 10 and four, as of right. Exceptions to
3 this are given by the Department to properties
4 that receive an after-hours work variance.

5 However, there are contractors who choose to work
6 after-hours without the required variance. This
7 is particularly true in the areas that are being
8 re-zoned, as developers may be tempted to beat
9 the clock by attempting to get their foundations
10 in before new zoning regulations go into effect.

11 As a result, I launched an after-hours
12 enforcement pilot to provide same day response to
13 complaints in all boroughs.

14 As part of this pilot program,
15 construction inspectors were deployed in all five
16 boroughs from 8 a.m. to 4 p.m. on Saturday and
17 Sunday to inspect all complaints. It is our goal
18 to demonstrate to the construction community and
19 the public that buildings can, and will, respond
20 rapidly throughout the five boroughs, even on
21 weekends.

22 Now I'm going to talk a little bit about
23 transparency and integrity initiatives.

24 BIS on the web enhancements. The
25 Department of Buildings is continually exploring

1 Standing Committees on Cities, Codes & Housing - 9-7-06 39
2 ways to enhance the visibility and transparency
3 of our operations. Accordingly, we are now
4 developing a new program for our website called
5 the My Community project. My community will
6 present information already available through
7 BISWeb in a more community focused manner. In
8 its first phase, expected next month, it will
9 allow the public to easily view all the essential
10 information about demolition jobs taking place in
11 their community board in one click. As my
12 community expands over time, more filing types -
13 alternations, new buildings, and the like,
14 already available on BISWeb - will be made
15 available through the easier my community
16 interface.

17 B-SCAN. Currently the Department
18 receives nearly one million documents associated
19 with application filings every year. To deal
20 with the inherent problems of a manual system,
21 where a large staff is necessary to copy and
22 track documents and where documents and folders
23 can be lost or altered, we are developing an
24 electronic document management system we call B-
25 SCAN. B-SCAN will create virtual folders that

1 Standing Committees on Cities, Codes & Housing - 9-7-06 40
2 will be trackable, tamper-proof and not subject
3 to loss.

4 Going down to 5.3, integrity, on the same
5 page.

6 During the past four years, I have
7 endeavored to restore the integrity to the agency
8 by promoting zero tolerance of corruption and by
9 reducing corruption risks. Enhanced screening of
10 prospective employees has enabled the Department
11 to minimize the risk of hiring individuals who
12 may be susceptible to improper influences. I
13 want you to know that eliminating corruption has
14 been and continues to be a cornerstone of my
15 tenure as Commissioner of this Department.

16 Skipping the first paragraph.

17 Eliminating corruption, however, requires
18 a two-pronged approach. The revised and updated
19 second edition of the Code of Conduct was
20 released on May 17, 2006. This 2006 Code of
21 Conduct was distributed not only to our staff,
22 but also to 10,000 of the people who do business
23 with us and to any and all members of the public
24 who wish to obtain a copy. It's also on our
25 website.

2 Other major initiatives, the model code.

3 On May 3 of this year I unveiled the 2006 thru
4 2009 strategic plan. The first and most
5 important initiative of the plan is the model
6 code.

7 The plumbing and administrative sections
8 were signed into law by the Mayor in December
9 2005. Now the 13 technical committees, comprised
10 of over 400 professionals, have completed their
11 drafting, and the model code program is now deep
12 into technical and legal review. We expect to
13 submit the second or completed bill to the
14 Council early next year.

15 B-FIRST. Currently there is no
16 standardized electronic method of scheduling the
17 400,000 or so annual inspections we perform.
18 Inspection appointments are scheduled in person
19 or by phone and are managed manually. As a
20 result, monitoring and managing inspection
21 workload is an extremely challenging and time
22 consuming task. Our new initiative, B-FIRST,
23 will use information technology to maximize
24 efficiency and improve customer service by
25 centralizing and automating the inspection

1 Standing Committees on Cities, Codes & Housing - 9-7-06 42
2 appointment and routing process, much as PIPES
3 did for the plumbing unit.

4 Going to 6.3, eFiling. The Department of
5 Buildings is proud to be one of the first
6 agencies in the City of New York that offers the
7 filing of permit applications on the internet.
8 Last year we piloted eFiling with a program to
9 allow the renewal of select permits online. This
10 year we've expanded it to cover electrical
11 permits, and there are four more phases to go.

12 Going to page 32.

13 We all realize that the reengineering of
14 the Building Department remains a work in
15 progress. But there is no question that we've
16 come an extraordinary distance from the agency I
17 took over in 2002. Staff has increased from 792
18 to 1194. BIS on the web has opened the agency
19 and the development process to the public and is
20 being expanded to further assist constituents.
21 The Department now regularly publishes guides,
22 newsletters, publications to assist the public
23 and we are totally revamping the professional
24 certification program to involve far more review
25 by the department of professional certified

2 applications. The Department's inspectors are
3 re-inspecting properties to ensure correction of
4 hazardous violations.

5 But I have no intention of resting on our
6 accomplishments. We are poised to do more in the
7 second administration than we did in the first.
8 We have a dedicated senior management team,
9 effective technology, and ongoing recruitment and
10 training of additional inspectors and licensed
11 professionals.

12 I know that the members of your
13 Committees and I share common goals - to provide
14 a safe City in which to live and work, ensure
15 that construction is compliant with code and
16 zoning, and build a department that is
17 transparent, responsive and effective. I am
18 proud to look around the Department now and see
19 inspectors, engineers, architects and experts who
20 are passionate about New York's buildings and
21 their safety. I see determined individuals
22 trying to make it easier for our customers to do
23 business with us.

24 I will continue to challenge my staff to
25 strive for excellence and hope that you will

2 recognize their efforts. And I will continue to
3 work with you and your staffs to make the City a
4 better place to live, work, and build.

5 Thank you.

6 CHAIRMAN BRENNAN: Thank you very much.

7 Appreciate your testimony tremendously. Before
8 I ask some questions, let me make a couple of
9 brief announcements.

10 First, we've been joined by Assembly
11 Member Carl Heastie from the Bronx. Welcome and
12 thank you for coming.

13 And to the persons in the audience, once
14 again, we have 46 witnesses. You should check
15 the witness list to determine where you are on
16 that list because we are going to be going for
17 quite a few hours today. And the hearing at this
18 time is planned to be continued on November 15.
19 So that if you do not get a chance today, we will
20 be continuing the hearing. That is subject to
21 change or possibly cancellation. But I just want
22 to let you know that we do intend to continue.

23 COMMISSIONER LANCASTER: I would like to
24 ask for your forgiveness in needing to leave at
25 11:30. I have a previous commitment. I have

1 Standing Committees on Cities, Codes & Housing - 9-7-06 45
2 staff here who has been instructed to take
3 copious notes, as well as let me know what's
4 going on. So I'll be following it with interest.

5 CHAIRMAN BRENNAN: Okay. Well, hopefully
6 if we're passed 11:30 you'll give us an
7 opportunity to continue asking you -

8 COMMISSIONER LANCASTER: A previous
9 commitment.

10 CHAIRMAN BRENNAN: Understood. This
11 hearing was scheduled for today, and you had six
12 or seven weeks' notice. July 27 was the
13 publication of the hearing notice date, and the
14 Mayor's office was informed before that.

15 Okay. Let's get into some questions.

16 Appreciate your many thoughtful new
17 initiatives in respect to many of the issues
18 being presented to the Department. I recognize
19 that the Buildings Department leadership are all
20 dutiful public servants and that you're committed
21 to dealing with the complex challenges faced by
22 regulating construction and development in a city
23 of eight million people.

24 Chairman Lentol pointed out a vacate
25 order or an unsafe building order that had been

2 issued in his district, and I think you are
3 familiar with a vacate order that was issued in
4 my district. That vacate order was withdrawn
5 shortly after it was sent out. But in the course
6 of that situation four families, in the eight
7 family building where the vacate order took
8 place, never returned to the building so that
9 some displacement occurred. I saw from your
10 management report that you issue 626 vacate
11 orders a year.

12 Behind the problem or the difficulty of
13 displacement and other things that relate to
14 vacate orders is the cause of the vacate order.
15 How did it happen in the first place? This
16 brings to our attention what I would call the
17 issue of the scoff law developer. In the
18 situation that occurred in my district we had a
19 multi-year history of problems associated with
20 that particular developer. And of course your
21 website is spectacular. There's tremendous
22 amounts of information on the website. And in
23 the course of researching the problems with the
24 developers I learned there had been 60
25 complaints, five DOB violations, five ECB

2 violations, and tens of thousands of dollars in
3 defaults related to that developer. Some of the
4 violations were A violations, meaning that they
5 were hazardous violations and perhaps should have
6 been re-inspected or the condition corrected
7 before the situation arose. Also, we knew that
8 there was actually a revocation of the permit
9 pending at the time that the building in my
10 district cracked. At the time the building
11 cracked, there was actually a review, an audit
12 ongoing of this particular situation.

13 In the end, the way to address public
14 safety, and I'm sure you agree, is that we need a
15 pro active Buildings Department that is
16 aggressively intervening before dangerous
17 situations get so dangerous that damage to
18 property, vacate orders, displacement, injury or
19 death and construction accidents, that this is
20 the fundamental way in which the Buildings
21 Department can address public safety.

22 And so my question is how do we address
23 the issue of the scoff law developer? You've
24 outlined a variety of initiatives, criminal court
25 summonses. But if you don't undertake them at

2 the moment before the situation gets out of
3 control, then all of the reform initiatives don't
4 come, in the end don't protect the public unless
5 we've got your Department actively involved at an
6 early stage.

7 COMMISSIONER LANCASTER: I substantially
8 agree with what you're saying. And let me just
9 go back over a couple of points.

10 One of them is that that's why we're
11 arresting three owners in Manhattan Beach,
12 because they were the source of the problem
13 behind the breaking of the law. The other thing
14 is a fundamental shift in a paradigm that needs
15 to happen in our enforcement, which is the
16 property is worth so much money now that the
17 violation is see in a fly in the ointment. It
18 doesn't mean much. Now, we can talk - and we are
19 using increasingly criminal court summonses which
20 are acting as a deterrent. But we're also
21 finding that when we get to criminal court the
22 court doesn't seem to recognize the seriousness
23 of the transgressions against the public. It's
24 not a felony. It's not a death. Therefore, what
25 we would like to do is get something that has an

1 Standing Committees on Cities, Codes & Housing - 9-7-06 49
2 enforcement tools or tool that has more teeth in
3 it, like the ability to put tax liens on people's
4 property that would require state legislation to
5 do. One of the reasons that we welcome being
6 here in conversation with you today is I think
7 the time has come where we need a tougher
8 enforcement tool than just a violation to make
9 things happen, and we can't do that alone. We
10 have to have state support for it.

11 CHAIRMAN BRENNAN: Understood. Let me
12 continue to ask. The particular development in
13 the Assembly district that I represent, there
14 were tens of thousands of dollars in defaults
15 from previous violations by the developer.
16 Nonetheless, they were able to get their permits
17 renewed as time went on and the development
18 process continued even though these defaults were
19 taking place. Now I understand there may be a
20 way to correct that legally and we would welcome
21 your submission of any proposals to us that deal
22 with that. But even if we could compel
23 developers to remedy a default or pay a fine,
24 even \$100,000, if they're making millions, and
25 millions, and millions of dollar than even large

1 Standing Committees on Cities, Codes & Housing - 9-7-06 50
2 fines may be insufficient to correct very serious
3 or dangerous kinds of activities by the
4 developer. We have to look at other ways of
5 dealing with the situation that more or less
6 force people to have to take it in the pocket in
7 the sense of they cannot do business. I know
8 that there is an initiative to take a look at the
9 licensing of general contractors so that if
10 someone is a scoff law, if someone has a record
11 of dangerous activity your Department would have
12 the power - or maybe it's the Department of
13 Consumer Affairs - but presumably the Building
14 Department, some City agency would have the power
15 to say you have such a record of irresponsible
16 conduct in the way you handle construction that
17 you cannot do business in the City of New York.
18 Do you agree with that?

19 COMMISSIONER LANCASTER: I certainly do.

20 I guess one of the things that happens if you
21 put the fines and penalties up too high, then
22 people don't apply for the permit in the first
23 place, which is another whole method of
24 researching what other folks are doing.

25 We think that maybe withholding the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 51
2 certificate of occupancy or the temporary
3 certificate of occupancy would be more effective
4 than withholding the permit itself so we don't
5 drive work without a permit under ground. We
6 can't do that right now. It seems, frankly,
7 ridiculous, that if a guy or a woman misbehaves
8 over, and over, and over again, you turn right
9 around and hand them their permit on a platter.
10 We would very much support some way to punish
11 people who repeatedly offend.

12 CHAIRMAN BRENNAN: Are you in the
13 process of developing some legislation or working
14 with the Mayor's office to deal with that
15 situation?

16 COMMISSIONER LANCASTER: Ms. Arnold.

17 MS. ARNOLD: I'm Phyllis Arnold. I'm
18 Deputy Commissioner for Legal Affairs and I'm
19 also sharing responsibility for overseeing the
20 new building code. The current code doesn't
21 enable us to withhold either a permit or a C of O
22 under the circumstances. The new code effort is
23 taking a look at that kind of question as to
24 whether we can pass a piece of legislation
25 locally that will authorize us to withhold a C of

2 O, for example, from a scoff law and whether
3 there are other enforcement tools that give us
4 some added flexibility to deal with the
5 recalcitrant developer.

6 CHAIRMAN BRENNAN: What about licensing
7 of general contractors?

8 COMMISSIONER LANCASTER: We're working
9 with Councilman Otto on a bill that would require
10 general contractors to be licensed. It's getting
11 there.

12 CHAIRMAN BRENNAN: It's not current law
13 in New York City.

14 COMMISSIONER LANCASTER: It hasn't been
15 submitted. No. We license 27 different types of
16 activity, and the State licenses all the
17 architects and all the engineers. General
18 contractors are not licensed.

19 CHAIRMAN BRENNAN: Right.

20 COMMISSIONER LANCASTER: And they should
21 be.

22 CHAIRMAN BRENNAN: The mere
23 authorization to have a license for a general
24 contractor may involve many complex issues and
25 may not necessarily - you may not have adequate

2 authority to fully regulate the industry. You
3 don't want to have a situation where you have
4 some sort of system of licensing and then still
5 not be capable of aggressive enforcement.

6 MR. LIMANDRI: I'm Bob Limandri. I'm
7 First Deputy of Operations. I think you're
8 absolutely correct that the scheme has to be well
9 thought out because there are many different
10 players at the table that get a building built or
11 do alteration work. So you have the developer or
12 the owner of the property whose monetarily
13 incentivized maybe to push the envelope. He goes
14 ahead and he in turn hires the architect or
15 engineers. He is influenced to push them to push
16 the envelope. And then there's also the general
17 contractor who should be in charge of most of the
18 trades on the job. So it's those three different
19 pieces that we have to make sure that we capture
20 the different pieces so that the transgression
21 doesn't move from one to the other. So that if
22 we're talking about an architect or an engineer
23 who is falsely certifying a document, that's one
24 place that we can push at the state. There's the
25 issue of the general contractor license, which

2 you've discussed, and also the actual building
3 owner or developer.

4 What's very interesting when we talk
5 about withholding a C of O, and you're probably
6 very familiar with this. The developer builds
7 the building. He gets the temporary certificate
8 of occupancy. We can't withhold it. All of a
9 sudden there's a condo board and they're
10 responsible now to deal with the problem. This
11 is, in essence, a problem because now you have
12 apartment owners who don't have any part in this
13 transgression and now they own a piece of real
14 estate and they're left holding the bag. So the
15 idea is to marry or stop the gate and say, okay,
16 stop. You can't move any further. We have a
17 problem here and it needs to get resolved so it
18 doesn't move further down the chain.

19 CHAIRMAN BRENNAN: Let me follow up with
20 that. This problem of the developer building the
21 building and then it's sold as a coop or a condo
22 and then these new owners are suddenly stuck with
23 all kinds of liability questions of their own,
24 even though the true cause was the developer.
25 What is your Department's role and experience in

2 these constant issues of coop development and
3 where the construction was shoddy there were
4 defects and you're confronted with issuing the C
5 of O or not.

6 MS. ARNOLD: If I may. The problem of
7 shoddy construction that is not noncompliant,
8 either code or zoning is less front and center
9 for us than the problem of noncompliant
10 construction. I will say we have developed, as
11 this problem has heated up over the last few
12 years, we've developed a fairly strong
13 relationship with the State AG's office with
14 their Bureau that accepts coop and condo offering
15 plans. Frankly, it's been very helpful to resist
16 the potential rejection of a plan or potential
17 prosecution under the Martin Act for fraudulent
18 filing to use as a tool to induce compliance
19 before us. The AG's office has been terrific
20 with this, and we've used them on a couple of
21 very specific projects. They've added staff. As
22 far as we understand, they've added professional
23 licensed architects and engineering staff to
24 review the plans that are coming in as part of
25 coop and condo offering plans. And we've

2 developed with their Bureau a referral system
3 under which we get from them on an all too
4 frequent basis, I'm afraid, referrals of plans
5 that don't look copeaesthetic under zoning or
6 code which we'll take another look, all before
7 the plan is accepted at the state level and
8 hopefully before there's a C of O issued at our
9 level.

10 CHAIRMAN BRENNAN: Let's get back to
11 identification of dangerous conditions and
12 departmental intervention.

13 The situation that occurred in my
14 district with scoff law developer, dozens of
15 complaints, a violations for failure to sure up
16 adjacent property, serious violations,
17 information that the excavation was going too
18 deep in relation to adjacent property. It makes
19 sense if you're building a bigger building and
20 you have to go deeper and the other foundations
21 are more shallow or are shallow in comparison to
22 the excavation that's taking place with respect
23 to the bigger building, all the information that
24 the Department needs to recognize that the work
25 should be stopped or that should be supervised or

2 that conditions need to be corrected before work
3 can be continued. All that information is
4 available to the Department - what remedy do you
5 have for focusing in a better way on identifying
6 dangerous situations and intervening?

7 MR. LIMANDRI: If I may. I would break
8 it down into a couple of different pieces. The
9 first piece, which is the knowing them they're
10 going to do work is very important for us so we
11 can get compliance through deterrence. If they
12 know we're going to show up and perhaps shut them
13 down if they're doing inappropriate work, no
14 matter what the plan says, if the guy who's
15 digging the hole isn't following the plan, it
16 doesn't really help. So we have to be out there
17 when they're doing the actual work, and we're
18 going to do that through the excavation rule.

19 The construction super rule, obviously
20 all of these things are within our purview and
21 are easy for us to implement and do not require
22 legislation, is the construction superintendent
23 rule, which is go get someone on the ground
24 responsible for the job and make sure that they
25 are following the plans the way that they are

2 designed and to be on notice, at a moment's
3 notice for us to be able to talk to them if we
4 find a problem. That's the on-the-ground, I need
5 to reach out and touch someone.

6 The other piece of that which we're
7 missing, which we talked about earlier is the
8 general contractor licensing. If you
9 consistently don't follow the rules and don't
10 follow the plans we need a way to take you out of
11 the business and take away your license and that
12 might be something that we might consider.

13 With that said, the other piece is when
14 it's designed and the means and methods of that
15 design is looking to the architects and
16 engineers, if they have a role here that they're
17 not fulfilling, that might be another area that
18 we can focus on.

19 CHAIRMAN BRENNAN: A follow-up comment,
20 Commissioner?

21 COMMISSIONER LANCASTER: I'm kind of
22 thinking about it.

23 I just wanted to add that one of the
24 things that we have learned from the Manhattan
25 Beach effort, it's not specifically like the

2 homes in your district but it's similar in that
3 having a team of people that are focused that
4 work together, in other words, we've infused a
5 zoning person with a lawyer, with the architect,
6 with the person going after the contractor has
7 allowed us to go after the owners, as well. So
8 three of them were arrested in the Manhattan
9 Beach case. We're trying to hit it at all levels
10 and hit it in a more focused way. So we've
11 gotten this zoning enforcement team from the
12 Office of Management and Budget and that, I
13 think, will help somewhat in addressing your
14 problem.

15 MR. LIMANDRI: Certainly the idea here
16 is just that using that focus enforcement is to
17 deal with recalcitrant problem developers. If
18 you talk to people in the Manhattan Beach area
19 it's a buzz, and it's positive and negative
20 depending on who you are. With regard to if
21 you're a realtor, we've heard issues that
22 realtors are upset because they can't move
23 property. We've heard that people in town are
24 concerned about doing development in that town
25 because of the increased scrutiny. And there are

2 developers and builders that are also concerned
3 because they know that they are under watch.
4 And, of course, there are buildings that are
5 being deconstructed and there are buildings that
6 are sitting vacant. This is something that we
7 have not been able to achieve up until this
8 point, which is basically stop them in their
9 tracks.

10 The idea is to replicate that in a number
11 of areas and use that as a deterrent mechanism of
12 enforcement, because we can't do that everywhere,
13 and then build some other enforcement tools to
14 compliment that so that the run of the mill, we
15 have the pieces in place so that the woman that
16 you described earlier today whose house shifted
17 and she wasn't aware of what was happening, the
18 run of the mill that happens, that maybe this
19 guy, I don't know, but maybe this was a mistake.

20 Maybe the details of that construction were not
21 at issue. But that the case, we have to have
22 other pieces in place to deal with that. So
23 adjacent property and to protect it, as the
24 Commissioner discussed in her testimony, to
25 discuss the deal of how to require those that dig,

2 responsible for adjacent property, whether it's
3 through insurance, whether it's through fines,
4 whether it's through licensing, those are the
5 kinds of things that we would be interested to
6 deal with.

7 COMMISSIONER LANCASTER: Actually, let me
8 add to that as well, with your permission. In
9 the past four years we've struggled a lot, of
10 course, with how to enforce all the zoning
11 resolution and building code provisions over
12 950,000 buildings. Since we have about 1,000
13 people, just assigning 950 of them to each person
14 wouldn't work. What we have come to, after much
15 internal deliberation, is a strategy that says if
16 they don't know where we're going to be that's
17 going to be a deterrent. So you never know where
18 we're going to be, but we're going to be
19 somewhere. You never know what we're going to be
20 checking for, but we're going to be checking for
21 something.

22 And I think what Manhattan Beach proved
23 to us was that there is a perception that the
24 Building Department wasn't home. You could do
25 whatever you wanted to and nobody ever said

1 Standing Committees on Cities, Codes & Housing - 9-7-06 62
2 anything or did anything. We'd go issue a
3 violation and then nothing else would happen
4 after that. What happened when we took these
5 actions in Manhattan Beach, we would go out there
6 and be seen in the streets and arrest owners, is
7 that the contractors knew immediately. It was
8 like a whisper game, incredibly quickly, and are
9 choosing not to build there anymore which I think
10 is good because they're not rich people, in
11 short. I'm hoping, knock on wood, that the
12 combination of these strategies and support from
13 the communities and kind of the momentum we've
14 built up will let us function like an inspection
15 and enforcement SWAT team. Strike it fast,
16 strike it hard and strike it deep and then move
17 on.

18 CHAIRMAN BRENNAN: Thank you. In the
19 interest of time, I'm going to defer to my
20 colleagues for the remainder of your time. But
21 let me just say that as we work together to think
22 through and attempt to provide safeguards for the
23 public, I think it's very important for your
24 agency to remind the Mayor and the Office of
25 Management and Budget that you play an absolutely

2 vital role in the City of New York. You're a
3 very small City agency. You don't have the big
4 budgets the way, the billions of dollars like
5 many other city agencies. The audience here
6 today and the concern reflect the significance
7 and importance of the work of your agency, so I
8 hope you will be mindful of that when you seek
9 more money from the Mayor.

10 COMMISSIONER LANCASTER: Thank you. I
11 absolutely agree with what you're saying, and I
12 think that he does too. But more than that, the
13 world has changed. With the property value
14 escalation over the last three years, when I took
15 office people were complaining about
16 transparency. I guess we made it transparent.
17 That was then and this is now, and it's a
18 different world. It's a world where property is
19 worth so much that we have to assume a different
20 profile.

21 CHAIRMAN BRENNAN: No question about it.

22 CHAIRMAN LENTOL: Thank you, Mr.
23 Chairman. Ironically when I was coming here this
24 morning I heard on the radio about the concern
25 over 9/11 and homeland security. People in New

2 York were questioned about how concerned they
3 were and what their priorities are in New York
4 City. Invariably all of the people who were
5 asked had little - I shouldn't say little. They
6 had concern about homeland security, but most of
7 their concern was about housing and development
8 in New York City. Unfortunately, the press
9 doesn't get that, but we do.

10 I want to start out by saying that you
11 are to be commended, Commissioner, for the great
12 work that you've done in really taking on a job
13 that was monumental when you took it over and
14 have done bringing it into the 21st Century and
15 computerizing, technology, transparency. But I
16 have say -

17 COMMISSIONER LANCASTER: Thank you.

18 CHAIRMAN LENTOL: But I have to say that
19 after I have said that - wait for the but.

20 COMMISSIONER LAWRENCE: I thought I'd get
21 it in there while I could.

22 CHAIRMAN LENTOL: While you were doing
23 that and you are to be commended for it, I
24 believe that Rome was burning and you didn't
25 notice that it was happening maybe until it was

1 Standing Committees on Cities, Codes & Housing - 9-7-06 65
2 too late. At least for some people who have been
3 forced out of their homes needlessly and have had
4 experiences with the Buildings Department that is
5 not such a good one - and you and I have shared
6 this so you know of what I speak. And there have
7 been too many, especially in my district,
8 homeowners and tenants who have been displaced
9 because nobody took the time - and you said
10 earlier that the important part of the job is to
11 get there when the work stops. That's not the
12 important time. The important time is to get
13 there before the work starts and to determine the
14 integral structure of the buildings in question
15 before the work begins so that we can make a
16 determination as to whether or not this building
17 ought to be torn down without maintaining the
18 structural integrity of the adjoining buildings
19 first.

20 Mr. Brennan really talked about many of
21 the things that I want to ask questions about.
22 What he said specifically was when you start
23 digging, then you destroy a lot of the structural
24 integrity. But maybe the fact is that these
25 adjoining buildings, to the one that's being torn

2 down, are unable to withstand the teardown, and
3 nobody makes that determination. It's not the
4 fault - the buildings may well be able to stand
5 forever were it not for the fact that the
6 building between them was being torn down. But
7 having this traumatic experience of rebuilding a
8 building in between the two buildings was just
9 too much, and they are unsafe and something has
10 to be done.

11 I believe that our job as public servants
12 is to make sure that that doesn't happen and try
13 to stop it before it does happen. That's one
14 aspect of the thing that I didn't see in your
15 testimony. I was very glad to see that you
16 talked about other things that I've been talking
17 about for a long time, and that is to have
18 developers and construction people carry
19 insurance. But I want to go further, and I don't
20 know if you've seen my bill. Maybe you ought to
21 have seen it. But the bill provides for an
22 escrow deposit or, if we change the bill, maybe a
23 bond to be filed by the contractor so that if
24 there are damages to adjoining property that it
25 can be paid quickly.

2 Also, I'd like to see a quick claims
3 process so that people don't have to languish in
4 court for years in order to get damages from
5 somebody who has damaged their property, like the
6 88 year old woman that I talked about. Her
7 reason for calling me was to get her a lawyer
8 because she wanted to sue the contractor. Then
9 when she told me her whole tale of woe, I had to
10 go over to her house to see for myself because
11 she's an elderly woman and not feeling well. As
12 a matter of fact, I missed an appointment with
13 some very important people yesterday as a result
14 of having to go over to her house and make an
15 inspection of it myself to see what was going on,
16 to look at the water in the basement. This all
17 could have been corrected, I believe, if somebody
18 had been there and took a little bit of time to
19 make sure that something should be done.

20 I'm getting to a question. I believe
21 that there is some talking about because it is,
22 in my opinion, one of the most important aspects
23 of the problem, people being displaced and turned
24 out of their homes because - not their fault -
25 but because people want to make money on

2 rehabilitating buildings.

3 Where people have been vacated from their
4 homes in this way, we allow the developer to
5 continue to operate. We don't let the people
6 back in their homes, but we let the developer
7 continue to build. I think there should be a
8 rule, oh, no. If we're going to put these people
9 out possibly because of your negligence, we'll
10 get to that later, then you can't continue to
11 work until these people are back in their homes.

12 That might give them a little bit of incentive
13 to help out the adjoining property owner.

14 We talked about issues - and I'm asking
15 you, maybe you can address these. I know I'm
16 making a long speech, but I've thought about this
17 extensively and I think I have some remedies that
18 might fit.

19 We may have to enact a policy, if all
20 else fails, of strict liability for people who do
21 this kind of work and don't take the time to
22 protect their property owners alongside of the
23 building that they're construction. So maybe you
24 can comment about what I said and I can ask a few
25 more questions, but I'd like my colleagues to ask

2 some before you leave too. Those are the most
3 important issues, as far as I'm concerned, and I
4 think as far as the people of the City of New
5 York are concerned too.

6 COMMISSIONER LANCASTER: I don't disagree
7 with anything that you've said. I think that the
8 complexities involved in the enforcement
9 strategies that we've outlined are something that
10 you'll be pleased with. What, for instance, the
11 construction super rule, which his a rule, now
12 it's capped the process, not legislation, so it's
13 almost here, is going to give us the ability to
14 withdraw that registration. So that if someone,
15 if we have grounds and it goes to OATH and OATH
16 has promised us a quick turnaround on it - if we
17 do extract the registration from someone then
18 they can't build, and that's something that we
19 don't have the power or wherewithal do to
20 currently. So I think that will go a long way in
21 addressing what you're talking about.

22 Now with regard to the 88 year old woman
23 case, the case of the 88 year old woman, I want
24 to say that's the demolition notice initiative.
25 It's intended to let us be there when they are

2 starting excavation, like in that case, so that
3 we can observe for ourselves what the plans say
4 that they're supposed to do because we think, and
5 we've done a lot of initiatives around this. We
6 have details on our website and blah, blah, blah.

7 We think that some of the smaller contractors
8 have no idea that you have to sure up an adjacent
9 foundation or it could collapse, especially in
10 Brooklyn where there's lot of rubble foundations.

11 That's when that guy was killed. They didn't do
12 what was common, regular practice in a normal
13 situation and put the right sure in. So if we
14 have notice then we can go and observe that
15 before it happen.

16 With that said, there are contractors
17 who, just like you're saying, are doing it on
18 purpose because they want the adjacent building
19 to fall down or be vacated because they want to
20 buy that because, et cetera, et cetera, et
21 cetera. And in that case, those are bad people
22 and we'll do what we can to get them. You might
23 need some help with that in enforcement tools
24 from the state level.

25 CHAIRMAN LENTOL: Anybody else?

2 CHAIRMAN BRENNAN: Mr. Weprin.

3 ASSEMBLYMAN WEPRIN: Thank you, Mr.
4 Chairman. Commissioner, thank you for being here
5 today. You started off your testimony by talking
6 about the enormous challenge that you said you
7 took when you came on board. It was an agency
8 that everybody loves to beat up. It still is an
9 agency everyone loves to beat up.

10 COMMISSIONER LANCASTER: I think that's
11 correct.

12 ASSEMBLYMAN WEPRIN: And it was one with
13 terrible, terrible corruption and other problems.

14 I hate to commit a political Pharisee here. You
15 really have done a phenomenal job, you and your
16 staff, in trying to clean up that image and to
17 take care of so many of the problems that are out
18 there. And your testimony today really does
19 point to a lot of initiatives that you have done
20 and are continuing to do.

21 So I will take the path of not attacking
22 you today but just to try to focus a little bit
23 on some of the things that you mentioned that you
24 need that maybe we could be helpful with and
25 maybe we could be helpful by sort of pushing the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 72
2 City Council and the Mayor to fund some extra
3 projects. You are correct, the world has
4 changed. The number one issue far and away in my
5 area that complaints you get is new construction
6 going on, whether it's McMansions or illegal
7 conversions or anything going on. But every day
8 there's another complaint about what's going on
9 at this site. So let me just focus on the
10 enhancement or the enforcement tools that you
11 spoke about.

12 If you had the pot of money that Jim
13 Brennan was advocating for in order to help give
14 the agency, how would you focus those? Would it
15 be on inspectors? Would it be on plan examiners?

16 Would it be on increasing the information
17 technology that you've already started? What
18 would be a priority as far as spending money?

19 COMMISSIONER LANCASTER: You hit it; the
20 top three, plan examiners, inspectors and
21 information technology is the top needs. Now
22 that said, last year we got 100 heads, lines,
23 people, and this year we just got 71. So
24 absorption is an issues and training are issues.

25 I don't want to overstate the need in such a

2 ways that we couldn't assimilate. And space,
3 too, we're out of space.

4 ASSEMBLYMAN WEPRIN: As far as
5 Commissioner LiMandri and yourself both talked
6 about, and Mr. Brennan, about the scoff law
7 developers, the fact that there are certain
8 actors out there who are really causing the
9 problems and that it's not the majority. We're
10 talking about a few developers, general
11 contractors, architects, who are repeatedly the
12 ones who are causing these problems. Is it
13 limited to a small number or is it so widespread
14 that it's hard to get a handle on?

15 COMMISSIONER LANCASTER: One of the
16 issues that we found when we came to the
17 Buildings Department in the very beginning was
18 that there's no data about anything. So now we
19 are starting to be able to have data that lead us
20 to the conclusion that there are a very small
21 number of people that do a very large number of
22 bad things. That said, it has some complexities
23 in identifying those individuals. For instance,
24 we did this project about thinking that we were
25 going to bring to justice the people who owed the

2 most money in ECB violations. And when we
3 identified the top ten, went out and reinspected
4 those violations and found that they had been
5 corrected. So they didn't pay the fines. We
6 have a problem with collection. It wasn't a
7 problem with the violation itself; they just
8 never had told us that they had corrected the
9 violation.

10 ASSEMBLYMAN WEPRIN: Let's look at the
11 bad actors then, in particular. I see they're
12 testifying later on - the Office of Professional
13 Discipline with the State Education Department.
14 What has your experience been with them, not to
15 have you talk about other students in the class
16 here? But what has your experience been with
17 that state group? As far as going after them,
18 are there things that we could provide for them
19 to make their job easier and to work with you to
20 help go after some of these bad actors since it
21 tends to be a limited number in particular that
22 are the problems?

23 COMMISSIONER LANCASTER: We work very
24 closely with OPD and the Department of
25 Investigations in trying to identify these

1 Standing Committees on Cities, Codes & Housing - 9-7-06 75
2 scoundrels and get after them. It seems so far
3 that it has been difficult to make a case that
4 was strong enough, and we still have a couple of
5 rouges, frankly, that we think are rouges out
6 there that just haven't been able to build an
7 adequate case for. With that said, we're
8 successful, as you know, in disciplining an
9 architect recently that did not go to OPD to get
10 justice. And I think that our Rule 21 changes
11 are going to address some of that where before it
12 was like don't - the law was something like don't
13 do bad things and then we try to identify the bad
14 things and it wouldn't be bad enough. Now we
15 have 19 new provisions of this is bad enough,
16 that's bad enough, that's bad enough, so you can
17 refer to the rule and use that as the art stick
18 against which to measure the bad things, and I
19 think that that will make the cases stick more.

20 ASSEMBLYMAN WEPRIN: This last point,
21 because I know that other people have questions.

22 The legislative agenda, I know I saw in the
23 audience the new Director of the Mayor's
24 Legislative Office in Albany. This is the
25 biggest issue for my community, the issue of

2 building and city planning. Those issues are the
3 ones we hear about the most. I'd like to see,
4 and I don't know if the issues you brought up -
5 the supporting adjacent properties, the insurance
6 coverage - have they been part of the Buildings
7 Department legislative agenda in the past? Do we
8 know?

9 COMMISSIONER LANCASTER: No, enforcement
10 wasn't the focus for the first term, it was
11 safety and transparency. So we have not yet
12 asked the state for the things that we think we
13 could ask for now. I, frankly, recall that we
14 were told it wouldn't go anywhere. Now the world
15 has changed. It's a new world. I think it could
16 go somewhere. And one of those things might be
17 being able to withhold filing from architects
18 without having to go to the state.

19 ASSEMBLYMAN WEPRIN: I mean I don't want
20 to comment on the specific bills and whether they
21 are going anywhere or will go anywhere.
22 Obviously it would be very helpful to have the
23 Mayor make it a priority, to have the Buildings
24 Department make it a priority so I can go back to
25 my constituents and say this is what we're

2 pushing for because this is what we need. It
3 might even pass the Senate. One of them is
4 Assemblyman Lentol's bill; I know that you
5 referred to.

6 But I would just mention to the people
7 from the Albany legislative office this is
8 something, a priority. I wouldn't mind getting a
9 separate sheet just on Buildings Department
10 agenda just to know what those are so I can put
11 them right on the radar and go help push for
12 those, not to diminish the importance of other
13 agencies. But in my district that's the
14 complaint. There are some people in the audience
15 here who are probably mad at me because I said
16 nice things about the Buildings Department
17 because that's so much of the focus of the
18 complaints is on buildings issues. And, again, I
19 don't blame you particularly. But the agency
20 needs some help and we'd like to provide it where
21 we can and we want you to provide it where you
22 can.

23 COMMISSIONER LANCASTER: I appreciate
24 your comments very much. They called me crazy
25 when I took the job, which was a little bit true

2 actually.

3 ASSEMBLYMAN WEPRIN: Some still do.

4 COMMISSIONER LANCASTER: But what I can
5 say is we'll get you the summary of the agenda
6 and work with Assemblymen Brennan and Lentol on
7 it. With your constituents at my back, I don't
8 feel any knives yet, but really we, I think, want
9 the same thing. Working with you will be more
10 productive than beating up on us because we want
11 to get it done and it takes energy to get beat
12 up. So it helps when you say can we help, then
13 we might be able to get it done. I think because
14 of the history of the Buildings Department it's a
15 heavy life, and I don't think we can do it by
16 ourselves.

17 ASSEMBLYMAN WEPRIN: Thank you,
18 Commissioner. Thank you, Mr. Chairman.

19 CHAIRMAN BRENNAN: Mr. O'Donnell.

20 ASSEMBLYMAN O'DONNELL: Thank you very
21 much. I'll try to be brief.

22 You said in your testimony that as it
23 relates to self certification by engineers and by
24 architects that if it was determined to be
25 egregious you would notify the Department of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 79
2 Education. Is that correct? You used the word
3 egregious.

4 COMMISSIONER LANCASTER: Something like
5 that.

6 ASSEMBLYMAN O'DONNELL: Can you define
7 egregious in this terminology? Because I'm an
8 attorney and if I filed an affidavit with the
9 court that committed perjury I would be turned in
10 like that. And so the question is is your
11 statement too high in terms of when you turn them
12 over to the Department of Education for possibly
13 getting their licenses revoked?

14 COMMISSIONER LANCASTER: What I know is
15 that Rule 21 covers that in a very thorough way,
16 and the reason that we did that - I can get a
17 copy of that for you. The reason that we did
18 that was because - I mean, egregious, what is
19 egregious, right? But it's wrong if you falsify
20 a document. It's wrong if you statement
21 something that's not true. It's wrong if you use
22 the seal and stamp of someone else. It's wrong
23 if it's not ethical - if you accept bribes, if
24 you do this or do that. There are 19 provisions,
25 which I am sorry I don't have memorized. They

2 definitely do try to do exactly what you are
3 saying.

4 ASSEMBLYMAN O'DONNELL: Would you
5 consider making that not even getting to that
6 point, referring anything that comes to you to
7 the licensing authority? It seems to me that
8 whether or not it rises to the level of
9 disciplinary action by the Department of
10 Education in terms of their license is not really
11 your purview; it's their purview. And if someone
12 files something that turns out to be clearly not
13 correct, it could be an innocent mistake, they
14 could make the case out it was an innocent
15 mistake in the licensing procedure. But if
16 possibly, if the people who were signing these
17 things had the sense that if they do it once they
18 may get investigated by the licensing authority,
19 you may, in fact, get better compliance with that
20 rule.

21 COMMISSIONER LANCASTER: Actually what we
22 found is that the strongest cases are made when
23 we find multiple violations because then they
24 can't say it was a simple mistake. The building
25 code is very complex and the zoning resolution is

1 Standing Committees on Cities, Codes & Housing - 9-7-06 81
2 Talmudic. And between the two of them, if you
3 find one thing it's really hard to say, oh, gosh,
4 silly me I made a mistake.

5 CHAIRMAN BRENNAN: He's Irish. Does he
6 know what Talmudic meant?

7 ASSEMBLYMAN O'DONNELL: My Speaker is
8 Shelly Silver. Yes I do. Let me move on a bit,
9 if I may.

10 About a year ago there was a collapse of
11 a building on Broadway and 100th Street. I'm sure
12 you remember it because it got a lot of press.
13 It got a lot of press because a building
14 collapsed onto a bus shelter. The bus shelter
15 collapsed onto a child. The child's life was
16 saved because of the structural integrity of the
17 stroller. Okay. It's true. I'm not making this
18 up.

19 COMMISISONER LANCASTER: That's in the
20 building code.

21 ASSEMBLYMAN O'DONNELL: Yes, I'm sure it
22 is. Now what was shocking to me and to all of my
23 constituents was that the cause of the collapse
24 was that there was a tractor on the roof with a
25 jackhammer that was attached to it where the

2 first pound of the jackhammer caused the collapse
3 of the 100 year old building onto the bus shelter
4 and onto the stroller, and yet putting a tractor
5 on a 100 year old building with a jackhammer
6 apparently is in compliance with your rules.

7 And so I wasn't smart enough to be an
8 engineer or an architect so I became a lawyer.
9 But it struck me as unusual that you would put
10 this kind of thing on the roof of a 100 year old
11 building and then be surprised when it didn't
12 stand up. Is there something internally wrong
13 with your own rules and regulations that this
14 demolition crew was complying with your rules and
15 yet seriously threatened the safety of my
16 constituents?

17 COMMISSIONER LANCASTER: We identified
18 the cause of that collapse as being multiple
19 reasons. Now one of them was that they used a
20 machine - we gave them a permit for mechanical
21 demolition but they used a machine different from
22 the one that they filed for. So that's the first
23 thing.

24 I want to come back to something that we
25 are doing that is going to make it different, and

2 that is the demo notification. If we had
3 observed what they were doing then we could have
4 stopped what they were doing. People can pull a
5 permit and then they can do the demolition
6 whenever they choose.

7 ASSEMBLYMAN O'DONNELL: That brings me to
8 my next point because then I learned a whole lot
9 about a lot of things I knew nothing about, like
10 asbestos removal. And one of the frustrations
11 that I had was what I would define as a lack of
12 coordination between your agency and other
13 agencies. An asbestos removal company showed up
14 at four o'clock in the morning with their big
15 machine and whatever else it is and then low and
16 behold that's not your responsibility. And then
17 we try to get the people who are responsible for
18 asbestos control to get there and they say they
19 have a DOB permit. This goes on, and on, and on.

20 It's like a cat trying to chase its own tail, in
21 terms of trying to get somebody in the government
22 who can say, hey, this collectively is not being
23 done correctly, and why is it that you can't get
24 it done? And then the asbestos removal people
25 would say that's really a state rule. And they

2 would say - they referred to them. You would
3 call them up - and not you, I - I would call them
4 up and say I'm looking at the truck now, and they
5 would say we'll get there. Then they get there
6 and low and behold the truck is gone and they
7 have a DOB permit.

8 What are you doing to try to improve the
9 coordination so that the other components of
10 this, in terms of whether it's DOT or asbestos or
11 something else, that if they do something else
12 wrong that it results in the pulling of your
13 permit? Because you seem to be the people who
14 everyone says, we'll they're in compliance with
15 the DOB and therefore we can't do anything.

16 COMMISSIONER LANCASTER: The way that I
17 would answer your question is to say that I think
18 it's an amazingly positive answer. The Mayor
19 hates it when people do this. And the agencies
20 that he has control over, he started a Mayor's
21 Office of Operation with a director of inter-
22 agency cooperation that is new this term, that is
23 supposed to be the one that does projects where
24 the agencies are utilizing each other. So I
25 think you'll see some strides in that way. Now

2 there's a point person that I can go to and ask
3 that question and get back to you.

4 ASSEMBLYMAN O'DONNELL: One more
5 question. Before we began I praised you for the
6 responsiveness of some of your employees on this
7 previous Friday where there was a problem on my
8 street. You do not want to be a politician and
9 have a problem on your street because they knock
10 on your door.

11 COMMISISONER LANCASTER: I know.

12 ASSEMBLYMAN O'DONNELL: Okay. So there
13 was a problem directly across the street from
14 where I live. Your employees were
15 extraordinarily responsive to my call and they -
16 well, they claimed they pulled the building
17 permits on Friday. Whether that happened or not
18 - the question I have is these people got a
19 building permit and then they got a DOT street
20 closing permit. And when I called DOT to say if
21 the DOB permit is pulled does that mean that your
22 permit would be pulled? And they said yes, but
23 we very rarely know about it. So if the
24 Department of Transportation is taking away
25 parking spaces or taking away lanes of traffic to

2 do a building permit job it seems to be that you
3 ought to be notifying anybody else who is giving
4 out permits that connects to your permit when you
5 pull that, and they seem to think that that
6 doesn't happen.

7 COMMISSIONER LANCASTER: I'd have to
8 check on that.

9 ASSEMBLYMAN O'DONNELL: Okay. I have one
10 final question. That particular structure that I
11 was referring to has numerous outstanding
12 building violations. And my understanding, and
13 correct me, that the current rules permit you to
14 give out a building permit for someone to build
15 an addition on a building that is not in
16 compliance with the building rules and
17 regulations?

18 COMMISSIONER LANCASTER: They force us to
19 by law.

20 ASSEMBLYMAN O'DONNELL: That's wrong.
21 Thank you.

22 CHAIRMAN BRENNAN: Okay. Ms. Rosenthal.

23 ASSEMBLYWOMAN ROSENTHAL: Hi.

24 Commissioner, I would like to applaud your
25 efforts in terms of information technology. I

2 love the website. Hopefully you'll add more and
3 more information. But in my spare time I
4 sometimes peruse that website and I find a wealth
5 of information, but also information that
6 generates a wealth of questions. Since you have
7 to leave I will just ask you about a few of the
8 things I found.

9 You said the world has changed or is
10 changing. In my district on the Upper West Side
11 and parts of Clinton, the world changed a long
12 time ago. There are more than 40 or 50 projects
13 that are ongoing, and I'm sure more and more
14 permit applications are being submitted every
15 day. The Upper West Side is more expensive these
16 days than the Upper East Side.

17 One of the things that has added to the
18 dwindling of affordable housing is SROs that are
19 classified as SROs. Class A are being taken over
20 by landlords who have turned them into illegal
21 hotels, which means that they rent rooms
22 illegally online to people abroad and nationally.

23 They come. They rent rooms by the night. These
24 rooms are, therefore, no longer available for SRO
25 tenants. However, as far as I understand it,

2 that is an illegal use of the building.

3 COMMISSIONER LANCASTER: It depends on
4 the district.

5 ASSEMBLYWOMAN ROSENTHAL: Upper West
6 Side.

7 COMMISSIONER LAWRENCE: We have a case
8 going through the court system now for just such
9 infractions, and we're using the online evidence.

10 So, Phyllis, would you like to comment on that?

11 MS. ARNOLD: Sure. The law is not -
12 whether it's illegal will depend on a number of
13 factors. It will depend on the zoning district,
14 on the type of occupancy that's reflected in the
15 certificate of occupancy - a Class A or Class B,
16 an SRO or any other sort of multiple dwelling -
17 and it will also depend on provisions not just of
18 local law, but on the multiple dwelling law. A
19 lot of this is governed by the MDL.

20 The case that - as I'm sure you're aware
21 of, the case will help test our theory that it is
22 illegal to rent on a short-term basis, for less
23 than a week at a time or less than a month at a
24 time, rooms that or units that are permitted to
25 be occupied as Class A SROs or Class A

2 apartments. We've been flooded with complaints
3 about this phenomenon you described of online
4 booking, and we're working very closely with HPD
5 and with the Law Department and with members of
6 the Council as well, and we will be happy, of
7 course, to continue to work with you also to
8 target our enforcement activity in a way that
9 reveals the illegality and prosecutes to the
10 fullest extent we can. I don't think I know yet
11 whether we need relief from you, but we will know
12 that, I think, at the conclusion of the court
13 matter.

14 ASSEMBLYWOMAN ROSENTHAL: I know the one
15 particular hotel you're talking about. There are
16 many flourishing on the West Side. And, in fact,
17 the only way one of these was ended was because
18 the City decided to turn a particular SRO into a
19 homeless shelter. Maybe some of those homeless
20 people had originally been in SROs that turned
21 into illegal hotels and now they're back only as
22 a homeless client.

23 What about the legality of housing
24 homeless individuals in existing SROs with SRO
25 clients, SRO residents in place? In one case on

1 Standing Committees on Cities, Codes & Housing - 9-7-06 90
2 West 94th Street they put families, two people in
3 a room thus forcing 12 people to share one
4 bathroom, for example. There's a whole litany of
5 code violations that we believe exist in that
6 particular SRO.

7 MS. ARNOLD: As I said, because all of
8 these are highly factual dependent on the C of O,
9 if there is one, on the zoning district, I'd be
10 happy to pursue this with you offline.

11 ASSEMBLYMAN ROSENTHAL: I think vigorous
12 DOB enforcement would help a lot in fixing those
13 problems.

14 Another question I have is when landlords
15 illegally subdivide apartments, they don't get
16 permits, my understanding is then they just cure
17 it and then it's fine. Can you comment on that?

18 One particular building I'm aware of, when they
19 filed with DHCR for rent control increases, lists
20 the number of apartments as 29. If you count the
21 number of mailboxes there are 60, which means
22 that they've subdivided half the apartments.
23 What kind of punishment does the landlord get for
24 that? These are cases where there was no permit
25 involved.

2 MS. ARNOLD: If the work has been done
3 contrary to code, meaning in a way that
4 substantively departs from standards or that was
5 done without a permit, or that violates zoning,
6 obviously we will, if we are called to inspect,
7 we will issue violations.

8 ASSEMBLYWOMAN ROSENTHAL: What kind of
9 violation?

10 MS. ARNOLD: The same kind of violations,
11 we have the authority and we routinely issue now.

12 ECB violations. If it's a recalcitrant owner we
13 can do multiple offenses. We can go to criminal
14 court. None of these remedies has injunctive
15 relief attached to it so there isn't a whole lot
16 in our enforcement arsenal, with the exception of
17 judicial action under certain circumstances that
18 the corporation council can commence on our
19 behalf that has injunctive remedies attached to
20 it. So, again, it harks back to the
21 Commissioner's comments about the new world it
22 is, the fly in the ointment that a small penalty
23 might represent. But it is at this point really
24 what we have available in the way of enforcement
25 tools.

2 ASSEMBLYWOMAN ROSENTHAL: So if you need
3 state legislation to increase those penalties,
4 I'm sure we'd all be very happy to help you with
5 that. I have two more quick questions.

6 This is regarding availability of plans.

7 There are two buildings in my district, six
8 stories, it's probably a 70 year old building,
9 and the landlord bought these previously
10 undesirable buildings. I know because I grew up
11 in one of them. It was Amsterdam and 93rd, not a
12 desirable neighborhood years ago. Now it's very
13 desirable. Somebody bought the buildings for, I
14 don't know, 50, \$60 million and submitted
15 applications, building plans, to construct nine
16 stories above these two buildings. The tenants
17 in the existing building have been unable to get
18 their hands on the building plans. Naturally
19 they're very worried about the structural
20 integrity of the existing buildings. The
21 harassment that the landlord is allegedly
22 perpetrating on the people to try to get them
23 out, especially on the top floor.

24 We've been told that one of the reasons
25 they can't get the plans is because the

2 Department of Buildings surrendered the plans
3 back to the developer. It appears that the
4 reason that they cannot get the plans is not a
5 legal one, that they are not entitled to it, just
6 a matter of DOB doesn't have the space for them.

7 Can you comment on this?

8 MS. ARNOLD: If the application has been
9 issued a permit there's no reason we shouldn't
10 have the plans -

11 ASSEMBLYWOMAN ROSENTHAL: It has not yet
12 been issued a permit.

13 MS. ARNOLD: If it has not been issued a
14 permit, the plans don't come into the
15 Department's possession until permit.

16 ASSEMBLYWOMAN ROSENTHAL: Well they're in
17 your possession while you're reviewing it.

18 COMMISSIONER LANCASTER: We review. We
19 object. They go back, they revise. They
20 resubmit.

21 ASSEMBLYWOMAN ROSENTHAL: And then what?

22 COMMISSIONER LANCASTER: If they are
23 approved then we issue a permit and we take the
24 drawing.

25 ASSEMBLYWOMAN ROSENTHAL: They didn't ask

1 Standing Committees on Cities, Codes & Housing - 9-7-06 94
2 for a permit; they just asked for review of the
3 plans. So you reviewed them. Perhaps they
4 corrected and you gave them back. But the people
5 who live in the affected building have no way of
6 knowing what's going to happen to that building
7 and no way of perhaps fighting the proposal
8 because they fear for the safety of their homes.

9 COMMISSIONER LANCASTER: What we've done
10 in other situations like that is broker a meeting
11 between the owner/developer and the tenant
12 association.

13 ASSEMBLYWOMAN ROSENTHAL: Well that
14 hasn't happened in this case.

15 COMMISSIONER LANCASTER: You can request
16 that though.

17 ASSEMBLYWOMAN ROSENTHAL: We actually did
18 have a meeting with Mr. Santouli (phonetic), who
19 has been very helpful, but we haven't had a
20 meeting - the developer apparently doesn't have
21 to comply and isn't, even though he told the *New*
22 *York Times* within 30 days I will present those
23 plans. The *Times* doesn't have enforcement
24 capabilities, but neither do any of us. It's
25 very frustrating when a big time developer has

2 all the power and there's nothing that the
3 electeds can do, there's nothing that the tenants
4 can do, there's nothing that anyone can do to
5 actually see those plans and try to stop them,
6 negotiate, fix them before a permit is issued.

7 COMMISSIONER LANCASTER: It would seem to
8 me like you and I together could get the tenants
9 with the owner to sit down.

10 ASSEMBLYWOMAN ROSENTHAL: I would really
11 love that. Thank you.

12 And one last thing I do in the middle of
13 the night when I'm busy, when I'm not busy
14 sleeping is going through buildings seeing how
15 many fines could be collected. So we did a thing
16 in my office of two square blocks on the Upper
17 West Side. One square block, \$72,950 were owed
18 and another square block \$63,550 were owed on
19 violations. Now, there's no way for us to
20 determine if these were fixed, if these were
21 paid, if these were collected or not, and
22 probably there could be more violations not
23 listed and more money could be collected. Can
24 you explain the collection process? It seems
25 like a lucrative way to get more money to hire

2 more inspectors, more code enforcers.

3 COMMISSIONER LANCASTER: Yes. The ECB
4 fines are collected payable to the Finance
5 Department, and collection is in their purview.
6 I believe that this Mayor's office of operations
7 interagency director is also looking at the
8 enormous amount of outstanding fines that exist.

9 Second point is that the disposition of
10 ECB violations is on our website. So you could
11 go into the property address and check and see if
12 that's been corrected. That won't tell you
13 whether the fine has been paid because that's not
14 tracked in our system.

15 ASSEMBLYWOMAN ROSENTHAL: Could there
16 perhaps be a link established? But how do you
17 actually go after collecting these fines?

18 COMMISISONER LANCASTER: I think you
19 might not have come in yet, but what I was asking
20 for the state to help us get enforcement tools
21 that would help us do other collections. In
22 other words, if you disobey our violation or
23 don't correct or whatever, then we'd like to put
24 a tax lien on your property, but we can't do that
25 now.

2 ASSEMBLYWOMAN ROSENTHAL: That's one way.

3 We can certainly do that and work on others.

4 One last thing -

5 COMMISISONER LANCASTER: Hey, you said
6 two.

7 ASSEMBLYWOMAN ROSENTHAL: I'm sorry. I
8 said two. I did two. I have one last thing I
9 just remembered I wanted to ask.

10 COMMISISONER LANCASTER: I really do need
11 to go.

12 ASSEMBLYWOMAN ROSENTHAL: My office gets
13 a lot of complaints about Departments of
14 Buildings and other agencies. I think it would
15 be enlightening and elucidating for the community
16 if you and some of your top staff would appear at
17 a community meeting in my district to discuss how
18 the DOB works, how you can work with the
19 community to make sure that the places they live
20 are safe and healthy.

21 COMMISSIONER LANCASTER: We'd be happy to
22 do that.

23 ASSEMBLYWOMAN ROSENTHAL: Good. Thank
24 you very much.

25 COMMISSIONER LANCASTER: Thank you.

2 CHAIRMAN BRENNAN: Commissioner, hold
3 on. Each of the remaining members on the panel
4 does have one or two brief additional questions.

5 So if you'd just hold on, be patient. Ms.
6 Glick.

7 ASSEMBLYWOMAN GLICK: Thank you. I
8 appreciate the fact that you were looking at the
9 Manhattan Beach zoning enforcement pilot as a
10 means for putting it into effect in a couple of
11 places to send a message. I'm offering my
12 district. I think it would send a big message if
13 a district that is under extreme pressures. In
14 the last two years we've had at least three
15 partial building collapses within, I guess it's
16 about a 10 or 12 block area. It seems to me that
17 there are a lot of people who are doing
18 construction work, renovation work. These were
19 collapses due to work. I'm making that
20 assessment. We haven't actually gotten an
21 assessment from the Buildings Departments. I'm
22 making the assessment. The work being done in
23 the apartments, in the buildings, in an
24 inappropriate fashion in these very old buildings
25 led to imminent collapse, so they were vacated.

2 One was high profile. It was Annie Liebowitz
3 (phonetic) doing illegal work in her building and
4 the people next door, just before Christmas, they
5 and their kids had to leave. Ultimately it was a
6 lawsuit situation. She bought the building and I
7 guess it's all her problem. I think we could
8 only ascertain that there was a like a \$500 fine
9 for, what was that, failing to brace the
10 buildings.

11 We have a situation where several people
12 have had to vacate. Maybe they'll be back in a
13 year. The guy who owns the building is saying
14 the building is totally unsafe, totally cannot be
15 repaired, and that was after he directed work,
16 which cut through major supports. So he maybe
17 right about that. Clearly there's a process
18 under way in older valuable properties, and it's
19 a serious problem. I think if the Buildings
20 Department is serious about sending a message,
21 one might go to where the extreme high values
22 are, in fact, creating these serious problems and
23 really send a message that you're not going to
24 take people willy nilly doing illegal work, doing
25 improper work, and trying to get rid of their

1 Standing Committees on Cities, Codes & Housing - 9-7-06 100
2 tenants and losing valuable housing stock and,
3 frankly, valuable historic building structures.

4 The question is does the Department have
5 a - what is the line between demolition and
6 renovation? I raise this because we have more
7 and more building owners applying to DHCR, the
8 state agency, for demolition permits so they can
9 evict their rent regulated tenants, and in fact
10 all they're doing if renovating the interior of
11 the building. And so what is the position of the
12 Buildings Department? Where is the line drawn
13 between demolition and renovation?

14 COMMISSIONER LANCASTER: That is a very
15 good question which is not made clear by the
16 building code or zoning resolution. However, in
17 the new code we are addressing that.

18 MS. ARNOLD: It's interesting because
19 usually we have the opposite problem. Usually
20 the problem is somebody's coming in pretending to
21 do an alternation or renovation and, in fact,
22 they're taking the whole building out, rather
23 than the other way around. So the DHCR interface
24 here makes this a much more complex issue.

25 I think one of the things we are looking

1 Standing Committees on Cities, Codes & Housing - 9-7-06 101
2 at in the code is actually something the Council
3 is, which is should we draw a bright line between
4 construction that eliminates the exterior and the
5 foundations and call that demolition and call
6 everything else an alteration? I don't think we
7 have an answer for it yet. But the problem I
8 think you've addressed is it's one of sort of
9 these extrasential quandaries that I think we're
10 going to have to wrestle with in some more
11 meaningful way in the new code. I welcome your
12 input because, as I said, I don't think I've been
13 aware of the converse problem, and so that, to
14 me, presents a real risk of going too far the
15 other way.

16 ASSEMBLYWOMAN GLICK: We will be happy to
17 send you a lot of the information that we have.
18 There are several law firms who represent
19 landlords and this is their - they're very clear
20 about how you can get rid of your tenants through
21 a legal loophole, and then go to you and get
22 permits for whatever. It may say alteration and
23 renovation, but they've already gotten something
24 stamped it's demolition and so they can get rid
25 of people.

2 COMMISSIONER LANCASTER: That's right.

3 And people often file - in fact, we had this with
4 an architect that we disciplined recently where
5 they file under an Alt 2 because it flies lower
6 off the radar screen, then come in what we call a
7 post approval amendment after that and change the
8 entire design to be something completely
9 different.

10 ASSEMBLYWOMAN GLICK: Again, I would
11 direct this - I appreciate the fact that you
12 inherited a mess. The prior administration was
13 very hot on self certification and very low to
14 care what anybody did under that. So I
15 understand that you're climbing up a hill. But
16 while you're in the process of doing that, one
17 would wonder what is the percentage of self
18 certified plans that are audited? What volume
19 can you handle? Obviously you've given us a lot
20 of numbers that are quite large. What's the
21 capacity at this juncture and what are you aiming
22 towards in order to give some certainty to the
23 public that people won't be able to willy nilly
24 do what they please?

25 COMMISSIONER LANCASTER: The answer comes

1 Standing Committees on Cities, Codes & Housing - 9-7-06 103
2 in a couple of parts. One part is that because
3 overdevelopment is the number one concern
4 citywide now, we are now, in every borough except
5 Manhattan, checking zoning on every application
6 whether it's professionally certified or not.
7 This is a big change, we weren't doing that
8 before.

9 Thing two is that we don't think that
10 we're going to get gobs and gobs of new people
11 and can do away with pro cert, so we have to live
12 within it. What we've done and done already is
13 change what we're auditing so that we're auditing
14 more new buildings than less Alt twos. So the
15 percentage - our goal is always about 20 percent;
16 we're doing 17.5 now. That's about 10,000. But
17 we've altered the balance to see if we can find
18 the most egregious exceptions. There's that word
19 again.

20 ASSEMBLYWOMAN GLICK: My final point, and
21 I appreciate the forbearance of my colleagues.
22 As you're going forward in the new building code,
23 and I am by no means an expert in any of this, is
24 there any way that there is some way to bifurcate
25 the approach so that there is some sensitivity to

1 Standing Committees on Cities, Codes & Housing - 9-7-06 104
2 the very old buildings? Because clearly there
3 are differences in how things were constructed
4 versus how they're constructed of more recent
5 vintage, and there are differences in the way in
6 which those renovations, alternations should take
7 place. So I would hope that there would be some
8 way of doing something that separates historic
9 putting whatever is an appropriate age, and that
10 those things would be handled somewhat
11 differently, because those buildings next door,
12 we have a lot of them. People have very
13 expensive properties that they got for not that
14 much many years ago and they really don't have
15 the ability, they're not the new multi-million
16 dollar person who comes in and doesn't care if
17 they only live in the place for 90 days a year.
18 These are people who live there and their
19 properties are all they have and they don't have
20 the ability to do major renovation when the
21 person next door screws up and damages their
22 building. That's sort of what many of us are
23 facing. Is there something that you're at in the
24 building code or can look at to segregate those
25 things and create special class for the older

1 Standing Committees on Cities, Codes & Housing - 9-7-06 105
2 structures and requires some different
3 protections for those structures?

4 COMMISSIONER LANCASTER: Yes it's a good
5 idea, and it's also something that is in the
6 model code that we're adopting for the City of
7 New York, where historical structures are treated
8 very, very differently from the way that they are
9 in code today.

10 ASSEMBLYWOMAN GLICK: Just to follow up.
11 How are historical structures defined? Is it
12 just simply the age or is it going to be whether
13 it's "a landmark" or of certain value? Because
14 we have a lot of old buildings that people -
15 they're old, but people wouldn't call historical.

16 MS. ARNOLD: I think your point is well
17 taken that a building or structure that is not a
18 designated landmark may nonetheless be deserving
19 of more protection than a 10 or 15 year old
20 structure next door.

21 Our effort on the code, speaking of
22 bifurcating, is going to be bifurcated into new
23 construction and existing buildings. Our efforts
24 these days and over the course of the next few
25 months are on the new construction part of the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 106
2 new code, and then we're going to be separately
3 tackling, quite precisely because existing
4 buildings present some of these really thorny
5 issues. We'll be tackling the existing buildings
6 provisions separately and with a whole new sort
7 of energy and focus that's directed exactly to
8 this.

9 So I think your point is well taken. The
10 answer the Commissioner indicated is yes we
11 probably - we can do something like that and we
12 will bring that consideration into our code
13 review of the model code in its adaptation.

14 ASSEMBLYWOMAN GLICK: If you don't mind,
15 our office would like to be involved in having
16 some conversations.

17 MS. ARNOLD: Sure.

18 COMMISSIONER LANCASTER: We would welcome
19 that.

20 CHAIRMAN BRENNAN: Mr. Heastie.

21 ASSEMBLYMAN HEASTIE: Thank you. Thank
22 you, Mr. Chairman. I just want to follow up on a
23 couple of the comments my colleagues Joe Lentol
24 and Mark Weprin made.

25 The Assembly district that I represent in

1 Standing Committees on Cities, Codes & Housing - 9-7-06 107
2 the Bronx is pretty much under siege. The
3 overdevelopment has become such an issue that
4 approximately one-fifth of my Assembly district
5 is under the process of being rezoned just so
6 that we can protect what few one family homes we
7 still have. I do want to commend you and commend
8 your office, particularly Donald Raaske
9 (phonetic) who is here, because I almost feel
10 like I have him on speed dial because of the
11 number of times that I get these complaints.

12 My question really is two-fold. The
13 coordination between, let's say, DEP and DOT -
14 and I think Danny touched on this as well. Is
15 there anything that looks at what the impact of
16 the granting of these permits that you're
17 allowing people to tear down a one family home,
18 and in some places I've had four three-family
19 homes in place, one one-family home. Is there
20 anything that looks at the impact of what this
21 does to the rest of the potential services
22 between DEP and DOT? That's my first question.

23 And my second question is the review
24 process. I would loved to have brought pictures
25 that another one family house was turned down and

1 Standing Committees on Cities, Codes & Housing - 9-7-06 108
2 a three family house went up and the existing one
3 family house that was next door, you literally
4 can't even stick a piece of paper in there now so
5 that the people can't even look out their bedroom
6 window anymore. In that review process what
7 determines the impact of what it does to the
8 existing neighborhood or the adjoining structures
9 or the neighbors? Like I said, these people
10 can't even look out their bedroom windows now
11 because they've now built up. And I know that
12 there's an as of right as long as it's zoned that
13 it can be built. I think that some consideration
14 should come into the fact that these people can
15 now not look out the right side of their home.

16 COMMISSIONER LANCASTER: People lose lot
17 line windows all the time because they weren't
18 supposed to be there in the first place. It
19 depends on what zoning district you're in. And
20 it's not sometimes easy to figure out what that
21 is.

22 With that said, the City is actually
23 zoned by the zoning resolution for 11 million
24 people and it's only built for eight million
25 people. And the disparity between that three

1 Standing Committees on Cities, Codes & Housing - 9-7-06 109
2 million people is what's causing this
3 overdevelopment thing to happen.

4 I don't know whether DEP and DOT - Bob
5 will have a whack at this too. But I don't know
6 whether DEP and DOT are built for 11 million
7 people or not, but that's how the zoning
8 resolution looks at it.

9 Bob, do you want to say something?

10 MR. LIMANDRI: Yeah. I would like to add
11 that, for example, with DEP. The zoning
12 resolution does take into account and does
13 consult with the services that are in the street,
14 for example, for refuse of sewers, et cetera.
15 And DEP does two things. One is that if it's
16 zoned R6 but it's really only built R3, meaning
17 two family, three family homes versus six family
18 homes, most likely that neighborhood under the
19 street is built for an R6. That said, we also,
20 through the review process, we take in those
21 applications, we review them, but then also there
22 is a coordination between us and DEP. So DEP is
23 aware of what's being built and the usage and how
24 we need to let them know what the usage is with
25 regard to water and sewer. So from that

1 Standing Committees on Cities, Codes & Housing - 9-7-06 110
2 perspective that's where that coordination
3 happens. And certainly DOT is much trickier.
4 However, there is a coordination process and they
5 have standards for streets, sidewalks, curb cuts,
6 et cetera, that we follow and they audit as well.

7 ASSEMBLYMAN HEASTIE: My final question.

8 And I thank you for staying, Commissioner.

9 The review process before a permit is
10 granted, can you just give me a timetable on what
11 that is? I may exaggerate a little on this. The
12 way that it's been going in my neighborhood, you
13 can go to any real estate website and by the time
14 you even think to look at a house there it seems
15 that the house has already been sold, the permits
16 have already been granted for them to tear down
17 this structure, and again these three-family
18 monsters are now being built. So can you just
19 give me a timetable on what the review and permit
20 process is when, I guess, a contractor or
21 developer comes to you with a plan to tear down a
22 one family home and build back a few three family
23 homes in that one space?

24 COMMISSIONER LANCASTER: I'd be happy to.

25 When I took office there was a 16 week wait to

1 Standing Committees on Cities, Codes & Housing - 9-7-06 111
2 get a plan appointment in the Bronx and it's
3 currently at 1.2 days. I was very successful.

4 ASSEMBLYMAN HEASTIE: I don't think my
5 constituents will be too happy with that one.
6 That might be one time that we would like to see
7 the City agencies be a little slower.

8 COMMISSIONER LANCASTER: We'll go back to
9 the way we were doing it before. No. But if you
10 professionally certify and you bring in your
11 application by noon, you can have your permit by
12 that night.

13 ASSEMBLYMAN HEASTIE: I just would hope
14 that, and again hopefully with a high head count
15 you'll be able to do this, that a visual can
16 actually be seen on what this new building is
17 actually going to bring to the neighborhood and
18 that could be some part of this review process
19 when people submit these plans to you. That was
20 my final question.

21 COMMISSIONER LANCASTER: Sure. This
22 brings us back to something that Assembly Member
23 Rosenthal touched on which is that until -- the
24 Buildings Department doesn't have possession of
25 the drawings until the plan is issued. So there

1 Standing Committees on Cities, Codes & Housing - 9-7-06 112
2 is no graphic image of what it's going to look
3 like in any public domain until we have it.

4 ASSEMBLYMAN HEASTIE: That seems a little
5 radically extreme.

6 COMMISSIONER LANCASTER: But the other
7 thing that I wanted to mention is about what we
8 call my community that's coming this next month,
9 which is that will give you an opportunity to see
10 at a glance easily what's happening in your
11 district. Right now -

12 ASSEMBLYMAN HEASTIE: So I'll be hearing
13 complaints sooner. Thank you, Commissioner.

14 COMMISSIONER LANCASTER: Thank you.

15 CHAIRMAN BRENNAN: Last but not least,
16 Assemblywoman Annette Robinson.

17 ASSEMBLYWOMAN ROBINSON: Thank you very
18 much to Chairman Brennan. And to Commissioner
19 Lancaster, I want to thank you for your very in-
20 depth presentation and awareness of the process
21 that takes place with the Department of
22 Buildings. I have three questions that I think
23 that are not extensive.

24 What is the option for homeowners who are
25 adjacent to construction or confronted by abusive

2 developers?

3 COMMISSIONER LANCASTER: Call 311.

4 ASSEMBLYWOMAN ROBINSON: Okay, call 311.

5 And the other question I have is in regards to
6 what Assembly Member Glick was speaking about in
7 terms of older buildings, I personally live in an
8 older building - it's over 100 years old - in an
9 historic district, and next door to me there is
10 going to be construction and I'm very anxious to
11 hear how my house is going to be protected in
12 terms of development because my house was there
13 before this school was there. So, therefore,
14 they're like merged together now. They're not
15 talking about taking down the footprint, but they
16 are going to do major redevelopment in that
17 building because they're going to provide
18 housing. It was formerly a school. I'm anxious
19 to know exactly what the Buildings Department,
20 what kind of actions the Buildings Department
21 will be taking to ensure that, as Assembly Member
22 Glick said, to be able to make sure that the
23 properties are taken care of. Because too many
24 people have to come me at my office to say that
25 they become the victims of the developing that's

1 Standing Committees on Cities, Codes & Housing - 9-7-06 114
2 taking place and sometimes they have to move out
3 of their houses or they have to incur additional
4 fees and costs to be able to stay where they are.

5 COMMISSIONER LANCASTER: Something about
6 that project next door to your house doesn't
7 sound right to me. Could you email me the
8 address and we'll check it?

9 ASSEMBLYWOMAN ROBINSON: Surely. I'll do
10 that. And the other thing is, you indicated you
11 talked about the plans for 11 million people.
12 Does that take into consideration those people
13 that use their houses for social service
14 purposes? Within the community you have people
15 that bring in different people to live in their
16 homes. Is that taken into consideration?
17 Because sometimes I don't know if people know
18 that all of these other people are there.

19 COMMISSIONER LANCASTER: That's a problem
20 alright.

21 ASSEMBLYWOMAN ROBINSON: Yes it is a
22 problem because you have people that are running
23 social service programs in their homes and -

24 COMMISSIONER LANCASTER: They're supposed
25 to be licensed with the state.

2 ASSEMBLYWOMAN ROBINSON: when you look up
3 you may have more than what you think.

4 Therefore, the over expansion in building, it
5 really increases the density, extreme density of
6 the community. And sometimes I don't think that
7 the infrastructure is prepared to take all of
8 what is being developed at that particular time.

9 COMMISSIONER LANCASTER: Social services
10 entities that exist in residential neighborhoods
11 are licensed by the state. I guess if they're
12 doing it without getting licensed then there
13 certainly is now way. Certainly we have people
14 doubled up all over the City and when we find out
15 about it we deal with it.

16 But that said, the 11 million number is a
17 zoning planning number, and the eight million is
18 from census. If the census doesn't pick up the
19 people that are in the social service facilities,
20 which I think they intend to, then that, indeed,
21 could be an issue.

22 ASSEMBLYWOMAN ROBINSON: Finally, the
23 conceptualization of the buildings that are being
24 built. In the community, you look at the brick
25 it is not the same. It looks so out of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 116
2 character. If you're coming into an historic
3 district or you're going down the block and see a
4 house up here and one down there, the brick is
5 totally out of line with whatever is being
6 constructed. So that's something that needs to
7 be looked at as well in terms of the
8 contextualization of the buildings and the size
9 of the buildings within the neighborhoods.

10 COMMISSIONER LANCASTER: I have a
11 fantasy. My fantasy is that I'm captain of the
12 aesthetic police and that people can't put bad
13 brick in an offensive way next to the brick
14 that's been there for years and years. However,
15 that is not in the building code jurisdiction.
16 Bulk, and mass, and density are in the zoning
17 that we enforce. Aesthetics is not in our
18 purview. However, if you want to change the rule
19 that would be great.

20 CHAIRMAN BRENNAN: Mr. Lentol, a
21 comment.

22 CHAIRMAN LENTOL: Not necessarily a
23 question, but just a comment. You understand
24 that we're expecting, hopefully from you, the
25 legislative proposals that you might recommend to

2 us so that we can draft them.

3 COMMISSIONER LANCASTER: We appreciate
4 that.

5 CHAIRMAN LENTOL: You can give them to
6 Ms. Goldstein's office or submit them to us
7 directly so that we can have an opportunity to
8 review them.

9 One of the things that maybe you could
10 also comment on was the issue of 11 million
11 people in the planning process. Is that an
12 administration number?

13 COMMISSIONER LANCASTER: No, that's left
14 over from 1961.

15 CHAIRMAN LENTOL: Oh, okay. Because, you
16 know, I think it concerns all of us that if we're
17 going to have planning for 11 million people in
18 this City that we'd want to know about energy,
19 fire, police, schools, and all of the other
20 things that go with it.

21 Thank you very much.

22 CHAIRMAN BRENNAN: Thank you,
23 Commissioner.

24 COMMISSIONER LANCASTER: Thank you very
25 much.

2 CHAIRMAN BRENNAN: And, as you know, the
3 hearing is continued on November 15th. Thank you.

4 Our next witness is Public Advocate Betsy
5 Gotbaum. Welcome, Madam Public Advocate. It's
6 great to see you.

7 MS. GOTBAUM: Thank you. Thank you,
8 nice to be here. Oh, Carl just left. I was just
9 going to say Carl has gone on speed dial or
10 almost on speed dial. I have the two numbers of
11 Commissioner Lancaster and Carl in my head. I
12 have to compliment them on their quick response
13 to almost weekly telephone calls from me and my
14 office.

15 Thank you very, very much.

16 CHAIRMAN BRENNAN: Mr. Stenographer,
17 will you swear her in?

18 BETSY GOTBAUM, having first been duly
19 sworn by a Notary Public of the State of New
20 York, testified as follows:

21 CHAIRMAN BRENNAN: The hearing is
22 continuing, please be quiet. Thank you. Go
23 ahead.

24 MS. GOTBAUM: Thank you very, very much
25 for allowing me and giving me the opportunity to

2 testify. As has been mentioned here today, not
3 so slowly but surely, the landscape of New York
4 City is changing. The insatiable demand for
5 housing has triggered waves of new development.
6 In response, the City has rezoned certain
7 neighborhoods to preserve their unique character
8 and protect their quality of life. But these re-
9 zonings have had an unfortunate unintended
10 consequence. Unscrupulous businessmen, seeing
11 the opportunity for high-density, high-profit
12 development in these neighborhoods slip away, are
13 rushing to launch out-of-scale, out-of-character
14 projects before the rezonings takes place.

15 The rush to build phenomenon has a
16 drastic impact on safety and quality of life.
17 Workers illegally continue construction after
18 daylight hours, filling the night with noise.
19 Hazardous conditions endanger the lives of
20 neighbors and workers. And when the city fails
21 to shut down sites that violate its codes, the
22 community gets stuck with exactly the kind of
23 ugly, imposing buildings that rezoning is
24 supposed to stop.

25 Recently, the residents of South Park

1 Standing Committees on Cities, Codes & Housing - 9-7-06 120
2 Slope scored a victory against rushed and illegal
3 development when the city voted unanimously to
4 stop the Global Development Company from building
5 an 11 story tower on 15th Street. Global was
6 using poor and illegal construction practices to
7 beat an emergency rezoning that would limit large
8 scale construction in that neighborhood.

9 I have advocated vigorously on behalf of
10 the residents of South Park Slope, so I'm pleased
11 by the City's decision. It's important to note
12 though, that 15th Street isn't the only site where
13 developers have engaged in illegal practices.
14 Across the neighborhood and in other communities
15 throughout the City, inaccurate, self-certified
16 architectural plans have been filed. Stop work
17 orders have been flagrantly violated. Hazardous
18 construction practices have been flaunted. In
19 August of 2005, a construction worker named
20 Arturo Gonzalez was killed at 187 20th Street, a
21 site that was operating with open violations from
22 the Department of Buildings.

23 Unlike the tower at 15th Street, many of
24 these projects have been given the go ahead by
25 the City. The Department of Buildings simply

1 Standing Committees on Cities, Codes & Housing - 9-7-06 121
2 isn't living up to its responsibility to monitor
3 development in New York City, protect residents
4 from unsafe practices, and stop projects that
5 fail to meet city codes. Today I would like to
6 propose two simple reforms to empower the DOB to
7 better fulfill its mission.

8 First, Department of Buildings needs to
9 institute a policy of required, follow-up
10 inspections when an initial inspection does not
11 lead to a conclusive finding. Under the current
12 system, when Department of Building inspectors
13 cannot gain access to a site that's been subject
14 to complaint - when, say, no one is present at
15 the site and the fence or door is locked - they
16 simply file a no access report and the inspection
17 is never completed. This lax approach makes it
18 far too easy for unscrupulous developers to act
19 recklessly without consequences. The DOB must
20 strengthen its commitment to verifying complaints
21 and stopping illegal practices.

22 Second, the DOB must take aggressive
23 steps to curb the abuse of the self certification
24 process for contractors, as many of you have
25 noted today. A plumber may be required to use

2 brass piping in a particular type of building,
3 but if he uses cheaper copper piping while
4 falsely certifying that he has obeyed all city
5 codes, no one will know the difference until the
6 pipes begin to deteriorate and residents are
7 stuck with the mess.

8 Similarly, there is currently no
9 comprehensive verification process to ensure that
10 developers and architects stay within the
11 boundaries of zoning resolutions. In most cases,
12 the DOB is content to take them at their word.
13 Predictably, this approach has led to rampant
14 noncompliance.

15 I have already mentioned the situation in
16 South Park Slope. My office has also received
17 complaints about buildings blatantly being used
18 for commercial purposes in residential zones and
19 buildings constructed with more stories than
20 legally allowed. The first step toward curbing
21 this flagrant disregard for the law is to send
22 inspectors to many more building sites to
23 determine the accuracy of self certification
24 filed by contractors, architects and developers.

25 The second step is to stiffen penalties

1 Standing Committees on Cities, Codes & Housing - 9-7-06 123
2 for false self certification. At present, false
3 self certification is a misdemeanor that results
4 in a fine of \$1,000 to \$5,000. Needless to say,
5 this amount isn't even close enough to give a
6 determined developer pause. Many simply write it
7 off as a business expense. In some cases, false
8 self certification can also lead to suspension of
9 the right to self certify or suspension of the
10 guilty party's license to do business. But even
11 this is not an effective deterrent. Architects
12 whose right to self certify has been suspended
13 have been known to simply pass off their self
14 certification responsibilities to someone else in
15 their firm.

16 We need to get tough on contractors,
17 architects, and developers who knowingly file
18 false self certifications as a way of cutting
19 corners and thumbing their noses at communities
20 that have successfully lobbied for rezoning. I
21 have already co-sponsored legislation in the City
22 Council raising penalties for developers who
23 violate stop work orders or work without a
24 permit. Today I recommend a similar increase for
25 false self-certification, as well as suspensions

2 that affect not only individual violators but
3 also the firms for which they work or which they
4 own. This reform will help the Department of
5 Buildings live up to its responsibility to
6 protect neighborhoods throughout New York City.
7 No community should feel like it's under siege
8 from developers hell-bent on turning a profit at
9 the expense of quality of life.

10 Perhaps the greatest damage inflicted by
11 the bad developers in the bunch, because many of
12 them are good, is that their unsafe, illegal,
13 practices cause many New Yorkers to think of all
14 development as the bad. Development is not the
15 enemy. Development is a good and necessary
16 thing. Our City desperately needs more housing
17 if it is to sustain and grow its middle class.
18 But our City also needs government to do its job
19 and ensure that development is undertaken in the
20 interests of the people, not in spite of them.

21 Thank you very much.

22 CHAIRMAN BRENNAN: Thank you, Ms.
23 Gotbaum, for your thoughtful testimony. And
24 there are a number of people from South Park
25 Slope here today, and I think some of them may be

1 Standing Committees on Cities, Codes & Housing - 9-7-06 125
2 testifying shortly - or at some point this
3 afternoon. I just wanted to let you know that my
4 office and they appreciate your significant
5 involvement in a lot of the development issues
6 and rezoning issues that took place and are
7 continuing to take place.

8 You have a number of key points regarding
9 self certification and they are much appreciated.

10 As you undoubtable are aware from the
11 interaction between us and the Buildings
12 Department, there are many complicated, both
13 state and city legal issues, involved in the
14 process of regulating construction. And so it is
15 my hope that you will share with the members of
16 the Assembly here today all of your office's
17 views and legislative points, even if it's City
18 Council, because we have to be working with City
19 Council in many respects so that we can try to
20 disentangle the legal issues and deal with them.

21 So I hope you will work with us and perhaps your
22 office will meet with us and your counsel can
23 help us.

24 MS. GOTBAUM: Absolutely. Nothing would
25 give me more pleasure. I think all of us working

1 Standing Committees on Cities, Codes & Housing - 9-7-06 126
2 together - the Council, the State Legislature and
3 citywide elected officials - is a very effective
4 force. So anything I can do, I will do.

5 CHAIRMAN BRENNAN: Thank you very much.

6 MS. GOTBAUM: Thank you all very much.

7 CHAIRMAN BRENNAN: Appreciate it. Thank
8 you.

9 Okay. I believe Borough President
10 Stringer and Borough President Markowitz are not
11 here at this time. Mr. Stringer was here. I
12 believe he has a staff member who we will permit
13 to testify later.

14 Our next witness will be the Honorable
15 David Weprin, member of the City Council from the
16 23rd District, Chair of the Finance Committee.

17 COUNCILMEMBER WEPRIN: It's nice to see
18 my Assemblyman Mark Weprin. Nice to see you. I
19 haven't seen you in a couple of days. Chair
20 Brennan, Chair Lentol, Assemblywomen Robinson and
21 Glick, it's always a pleasure to testify before
22 the State Assembly, and of course to have my own
23 State Assemblyman present as well.

24 CHAIRMAN BRENNAN: We have to swear you
25 in.

2 DAVID I. WEPRIN, having first been duly
3 sworn by a Notary Public of the State of New
4 York, testified as follows:

5 COUNCILMEMBER WEPRIN: My name is David
6 Weprin. I Chair the City Council Finance
7 Committee, as you referred, and I represent a
8 district in Eastern Queens, the 23rd District in
9 the City Council. The majority of my district I
10 made up of one-family homes, co-ops and garden
11 apartments where the skyline rarely reaches
12 higher than three stories. Our quiet tree lined
13 streets and top notch schools have attracted
14 first-time homebuyers and growing families for
15 decades. In recent years, however, my district
16 has attracted a new group of people, developers.

17 Due to a combination of dated zoning regulations
18 and poor enforcement policies, my community has
19 become a vulnerable and profitable target for
20 developers. Thankfully, through a collaborative
21 effort with the Department of City Planning, we
22 in the City Council have been able to address the
23 zoning issues in the district. The enforcement
24 issues, however, are still a major problem.

25 Arguably, the enforcement policy that has

2 proved most detrimental to my community is the
3 Department of Buildings Professional
4 Certification Program, commonly known as self
5 certification, as Public Advocate Gotbaum just
6 testified to and I know Commissioner Lancaster
7 addressed in her testimony. Self certification
8 allows a developer's architect to file and
9 approve their own plans, and even print out their
10 own work permits without the review of any
11 Department personnel. It should come as no
12 surprise that a policy such as this has attracted
13 the unprofessional and unethical building
14 practices that we are often dealing with today.

15 With less than 20 percent of self
16 certification projects being audited, it simply
17 pays for developers to roll the dice, so to
18 speak, when it comes to illegal construction. In
19 addition to those profitable odds, punishment for
20 violating plans and codes are minimal, if
21 existent at all. A five or six figure fine,
22 which the public advocate referred to, is an
23 acceptable gamble for a multi-million dollar
24 project. In fact, most builders today admittedly
25 budget in such fines as an expected expense.

2 What kind of message does this send to our
3 community? The answer is a shameful one.

4 The self certification policy needs to be
5 reformed immediately. Such a program might be
6 acceptable for minor construction, such as Type 2
7 and 3 alterations, but it is highly inappropriate
8 for larger projects such as demolitions and Type
9 1 alterations. I have introduced legislation,
10 which I believe the public advocate referred to
11 as her co-sponsoring, which is currently pending
12 in the City Council, to address this problem.
13 The legislation would prohibit demolitions and
14 Type 1 alterations from being self certified.

15 The punishment for violating these laws
16 must also change. Penalties must be more severe,
17 otherwise they lack any punitive value. Self
18 certification is a privilege, not a right. There
19 should be a zero tolerance policy in place for
20 architects and developers who violate the law.
21 Developers must be made to understand that you do
22 not get a second chance when you betray the
23 public trust. In addition, projects that are
24 undertaken illegally and out of code need to be
25 taken down. As I mentioned already, fines are

1 Standing Committees on Cities, Codes & Housing - 9-7-06 130
2 not effective when there is significant profit to
3 be made. Illegally constructed projects need to
4 be torn down and restored to their original
5 state.

6 Self certification was a program born out
7 of convenience rather than diligence, with hast
8 rather than thoughtfulness. It has been the
9 cause of extensive and irreversible damage in
10 many other communities throughout New York City.

11 Its continuance is really unacceptable.
12 Stricter zoning regulations for many communities
13 have already passed through the City Council,
14 with more pending. And I'm referring to the down
15 zonings that have been proliferated throughout
16 the City and I believe are a positive affect on
17 most neighborhoods. It is imperative that the
18 policies for enforcing building and zoning codes
19 be reformed immediately. Their effectiveness is
20 vital to upholding the new re-zonings, or down
21 zonings, and to preserving the character of our
22 neighborhoods.

23 Thank you for the opportunity to testify
24 this afternoon. I'd be happy to answer any
25 questions.

2 CHAIRMAN BRENNAN: Thank you for your
3 testimony and also your patience in waiting to
4 get through the Buildings Department and the
5 public advocate.

6 You mentioned you're carrying a bill in
7 the Council on self certification at the moment.

8 And I know that there are many pieces of
9 legislation in the Council that attempt to
10 address these enforcement issues. I wonder why
11 they're not passing.

12 COUNCILMEMBER WEPRIN: The Building
13 Department generally opposes most of them. And
14 actually the prior chair of the Buildings
15 Committee generally - it was a secret - generally
16 didn't support legislation that the Buildings
17 Department strongly opposed. I think there's
18 more receptivity on the part of the current
19 Buildings Department Chair, although I'm happy to
20 hear in Commissioner Lancaster's testimony that
21 she seemed to be much more open to amendments and
22 changes in the self certification process. And I
23 would be very happy to work with her and if we
24 can do it administratively with the cooperation
25 of the Department, I'd be happy to do that as

1 Standing Committees on Cities, Codes & Housing - 9-7-06 132
2 long as the goal is accomplished. It's not
3 necessary all the time to have legislation.
4 Sometimes when we introduce legislation it kind
5 of wakes up the Buildings Department.

6 But I have to tell you, and I know it's
7 not unique to my district, that probably one of
8 the major complaints that civic associations that
9 we attend in our district - I attended one last
10 night, the North Bellrose Civic Association. I
11 installed the officers. And the number one
12 complaint at every civic meeting we go to, every
13 town hall meeting we go to is the Buildings
14 Department. So something is obviously wrong
15 because if the Buildings Department is doing all
16 these great things, they're not obviously getting
17 out that message properly to the public. I know
18 it's not unique to my district; it's prevalent in
19 all the districts in the City.

20 CHAIRMAN BRENNAN: Thank you. Deborah.
21 Ms. Glick, do you have a question?

22 ASSEMBLYWOMAN GLICK: Two quick
23 questions. It's good to see you. One is whether
24 or not you think there is the possibility in the
25 future of getting additional resources.

2 Obviously there's a million places that the City
3 needs money. They've clearly added some
4 staffing. For some of the things all of us would
5 like to see, they'd need substantially more. Do
6 you think there's any possibility that there
7 could be some measure of additional resources for
8 the Buildings Department?

9 COUNCILMEMBER WEPRIN: In our budget
10 process we've tried to allocate additional money
11 to the Buildings Department for inspectors and
12 for individuals to help out in the, say, self
13 certification process. Part of the problem has
14 been that the Buildings Department or the
15 Buildings Commissioner has not requested the
16 money. Sometimes it's a funny situation when
17 you're dealing with the budget process. And when
18 we're trying to provide money, but if we don't
19 have a cooperative other side that is willing to
20 spend the money, as you pointed out correctly
21 Assembly Member, there are a lot of other ways to
22 use the money that can be spent and spent
23 effectively. I think it does create, it does
24 require some form of cooperation.

25 There is a task force that the Council is

1 Standing Committees on Cities, Codes & Housing - 9-7-06 134
2 doing now that Speaker Quinn appointed, Chaired
3 by Minority Leader Otto, who has been actually as
4 a Republic Minority Leader, ironically has been
5 the most critical of the Buildings Department.
6 There's a series of hearings going on throughout
7 the City, and we're hoping that as a result of
8 those hearings we'll be able to earmark money in
9 next year's budget specifically that hopefully
10 will be spent where it could properly be spent
11 and not just go into some general fund without
12 accomplishing the goals that we all want to
13 achieve.

14 ASSEMBLYWOMAN GLICK: Thanks. One last
15 question.

16 I believe since self certification is a
17 very pernicious problem left over from the past
18 administration, one of the problems seems to be
19 this notion that if you get caught having made a
20 mistake in how you've certified something there
21 seems to be some willingness to change that
22 violation and hold somebody more accountable for
23 that, lost their right to self certify. I
24 believe the public advocate pointed out or
25 somebody, maybe it was you, that they simply pass

2 off that responsibility to somebody else in the
3 firm. Do you think there's any possibility,
4 almost a vicarious liability situation where if
5 anybody in the firm winds up being found to have
6 inappropriately self certified in a serious
7 matter that the firm would be suspended for some
8 period of time and that would put the peer
9 pressure and business pressure on everybody to do
10 the right thing, not simply have one sacrificial
11 lamb and then somebody else comes into the queue.

12 So I don't know what your legislation does and
13 whether it addresses that issue, but maybe that
14 something for either a separate piece of
15 legislation or something that you could look
16 into.

17 COUNCILMEMBER WEPRIN: That's a very good
18 suggestion. It was the public advocate that
19 raised that issue. I was hear when she
20 testified. And I agree that that's a terrible
21 loophole that should not exist. It should really
22 apply to the firm. Clearly, when someone
23 certifies on behalf of a firm they're really
24 certifying on behalf of the firm, on behalf of a
25 client and it really should apply to the entire

1 Standing Committees on Cities, Codes & Housing - 9-7-06 136
2 firm. And if there is that loophole, I think we
3 should definitely close it. I will go back to my
4 office and look into either amending my
5 legislation or other legislation to deal with
6 that because I think that's a great suggestion
7 and that's true.

8 The other thing the public advocate
9 referred to was the monetary fine, which is 1,000
10 to \$5,000 per violation. As I pointed out in my
11 testimony, those are just nuisance fees to
12 developers in large projects. It's almost like
13 people in the trucking business have a budget for
14 parking tickets. It's just a monthly fee that
15 they spend. These are serious violations and
16 they should not be in those same categories. And
17 the answer there is to increase the fines into
18 the hundreds of thousands instead of the one to
19 5,000.

20 ASSEMBLYWOMAN GLICK: Thank you very
21 much.

22 ASSEMBLYWOMAN ROBINSON: Chairman Weprin,
23 let me ask you this question. In regards to the
24 various, I guess you would say, buildings that
25 have collapsed throughout the City of New York,

1 Standing Committees on Cities, Codes & Housing - 9-7-06 137
2 could you tell me how many claims against the
3 City have been filed and what may be the dollar
4 amount in that regard?

5 COUNCILMEMBER WEPRIN: My guess is there
6 are a lot. I'm a lawyer myself, as many members
7 of the panel are. As you know, lawyers file
8 suits against everyone and then they worrying
9 about absolving people later or the courts worry
10 about dismissing people. So my guess is that the
11 City of New York is always a defendant. Very
12 often they're dismissed at a later date. So when
13 the official statements for the bond issues of
14 the City of New York are written, they always
15 include potential liabilities. The lawyers
16 require that for any large lawsuits pending.
17 It's generally known that most of the lawsuits
18 are settled against the City at a much smaller
19 level and in many cases the City is totally
20 exonerated and removed as a defendant at a later
21 date.

22 My guess is that almost all the cases
23 that occur in the City of New York with the City
24 as a defendant, I would say that in a very large
25 percentage of those the City ends up being

1 Standing Committees on Cities, Codes & Housing - 9-7-06 138
2 discontinued against.

3 ASSEMBLYWOMAN GLICK: Thank you.

4 CHAIRMAN LENTOL: I just wondered, since
5 you have introduced a bill regarding changing the
6 penalties for certain clients - and I agree with
7 you, they're not effective the way they are -
8 whether or not you've queried your Assembly
9 Member to determine whether you should or
10 shouldn't introduce legislation because the City
11 Council may be limited to the kind of penalties
12 and fines.

13 COUNCILMEMBER WEPRIN: All I know is any
14 time I go to one of these civic meetings and I
15 get yelled out, I say call your Assemblymen.
16 When he's at a civic meeting and they yell at
17 him, he says call your Councilmen. We have this
18 all the time.

19 CHAIRMAN BRENNAN: Just a comment,
20 Chairman Weprin. You mentioned adding money for
21 inspectors. Inspectors give out thousands of
22 violations. And what we see is the Department is
23 unsuccessful in correcting the conduct that is
24 the basis of the violation. And I hate to
25 mention lawyers, but it seems like the Department

1 Standing Committees on Cities, Codes & Housing - 9-7-06 139
2 needs to get to court more often than it
3 currently does and have some people trained to go
4 before a criminal court judge and threaten
5 someone with arrest if they don't do something
6 that they're not doing.

7 COUNCILMEMBER WEPRIN: As I said, as the
8 Commissioner testified and the public advocate
9 testified, it is a misdemeanor in the law and
10 that is a criminal penalty. There is no question
11 that people should be properly trained and have
12 the ability to do that. I agree.

13 CHAIRMAN BRENNAN: Thank you very much.
14 Appreciate your testimony.

15 COUNCILMEMBER WEPRIN: Thank you.

16 CHAIRMAN BRENNAN: I'm sure your brother
17 appreciates your testimony, too, Assembly Member
18 Mark Weprin.

19 COUNCILMEMBER Tony Avella, is he here?
20 Okay. Councilmember Rosie Mendez, Second Council
21 District. Just walking in. Councilmember
22 Mendez, you've been called.

23 The stenographer will swear you in.

24 ROSIE MENDEZ, having first been duly
25 sworn by a Notary Public of the State of New

2 York, testified as follows:

3 CHAIRMAN BRENNAN: Nice to see you.

4 Thank you. Welcome and begin.

5 CHAIRMAN LENTOL: Welcome.

6 COUNCILMEMBER MENDEZ: Thank you,
7 Assembly Member Brennan. It's a pleasure to be
8 here in front of many Assembly members, one of my
9 own, Deborah Glick, and a former Assembly Member
10 of mine, Joseph Lentol, and my good friends,
11 Linda Rosenthal and Danny O'Donnell. Just not to
12 leave anyone out, it's a pleasure to see you,
13 Assembly Member Robinson and Assembly Member
14 Weprin.

15 As a member of the New York City Council,
16 one of my committee assignments is the Committee
17 on Housing and Buildings, which is Chaired by
18 Councilmember Erik Martin-Dilan from Brooklyn.
19 Among other things, the Committee serves as
20 oversight to the Department of Buildings on the
21 municipal level. As such, I share your concern
22 as legislators about issues relating to
23 development, the building code, and zoning
24 compliance.

25 I would like to begin my testimony by

1 Standing Committees on Cities, Codes & Housing - 9-7-06 141
2 thanking the Department of Buildings for recent
3 efforts that they have made in my district and
4 the city at large. While I recognize that in
5 this healthy economic period a great deal of
6 development is under way in Lower Manhattan and
7 throughout the City, I believe more needs to be
8 done. DOB's limited workforce of inspectors is
9 very hard pressed to keep up with the pace of
10 development. Despite this overwhelming
11 responsibility, DOB has made a very deliberate
12 effort to respond to and address issues that
13 arise in my district. I am encouraged by the
14 communication channels that have been established
15 and the agency's willingness to work with my
16 office on some very thorny issues that have
17 arisen.

18 My district, which covers much of the
19 East Side of Lower Manhattan, presently faces
20 incredible development pressure. While it lacks
21 the open space of Staten Island to allow for new
22 developments, the DOB has informed us that more
23 alternation permits are issued to modify existing
24 buildings in the Lower East Side than anywhere
25 else in the City. Market pressures here are

1 Standing Committees on Cities, Codes & Housing - 9-7-06 142
2 tremendous and many developers are renovating
3 buildings with tenants in occupancy, trying to
4 turn rent regulated units into market-rate
5 apartments, often with flagrant disregard for the
6 health and safety of the remaining tenants. Many
7 owners are also attempting to enlarge tenement
8 buildings, skirting the fire and egress concerns
9 raised in the New York State Multiple Dwelling
10 Law, as well as the City Sliver Law restrictions.

11 As of late, DOB has worked cooperatively
12 with us to ensure that the Multiple Dwelling Law
13 provisions regarding the fireproofing of tenement
14 buildings remains a requirement for enlargement.

15 The MDL was a clear example where the State
16 appropriately chose to safeguard the citizens of
17 the City from danger. We have also been
18 encouraged by the Department's recognition of the
19 Sliver Law's applicability to enlargements of
20 narrow buildings on narrow streets that
21 characterize much of our community, although we
22 have still not yet agreed on the use of
23 penthouses which the DOB seems to see as an
24 exception to the height limitations. We find
25 such an additional story to be at once a safety

1 Standing Committees on Cities, Codes & Housing - 9-7-06 143
2 concern, an eyesore, and an affront to the
3 historical character of the tenement buildings.

4 While I am pleased with the recent
5 actions of the Department, enforcement efforts
6 remain a challenge. Some unscrupulous developers
7 appear to deliberately select a few architects or
8 engineers who, under the privileges of the self
9 certification program, file plans that create
10 excess floor area beyond that allowed under the
11 zoning resolution. This risk has almost always
12 been rewarded, as they know the DOB has rarely
13 ever forced a developer to take down a building
14 or a floor once it already exists, and so long as
15 they work feverishly it becomes a fait accompli.

16 Four East Third Street is one publicized example
17 of a building in my district where this occurred.

18 I find it hard to believe that a few self
19 certified architects and engineers who have
20 submitted more than one set of non-compliant
21 plans remain ignorant of the law again and again.

22 The DOB, in the past, had rubber-stamped many of
23 these applications. I believe that the
24 Department must develop clear criteria for
25 banning certain bad apples from benefiting from

2 the privilege of self certification.

3 This is another area in which New York
4 State and DOB can cooperate. Specifically, the
5 State's Department of Education, the agency that
6 grants licenses to architects and engineers,
7 could and should take a more active role in
8 sanctioning those that abuse the privilege,
9 discredit the profession and take away business
10 from those who undertake their responsibilities
11 with integrity. I would urge my state colleagues
12 to pursue this matter further in an effort to
13 provide the City with better enforcement tools.

14 We are very encouraged that last week the
15 DOB announced that in all four boroughs, outside
16 of Manhattan, it would now audit all self
17 certified new and alteration applications prior
18 to issuing a permit. We would be very grateful
19 for the institution of this practice in our
20 borough as well.

21 One of the most important elements in
22 improving DOB's reputation hinges on better
23 communication with concerned citizens, community
24 boards, and elected officials. Just as the
25 Department of Buildings has to ensure that

1 Standing Committees on Cities, Codes & Housing - 9-7-06 145
2 architects, engineers, and expeditors follow
3 proper procedure when submitting plans, it is
4 equally important that DOB follow procedures
5 relating to public access. In my community, many
6 of us have had to become very proficient in
7 zoning intricacies to assist DOB as the local
8 watchdogs. It is very important that those
9 intimately affected by building plans have timely
10 access to them and that the determinations of the
11 DOB are clearly and speedily communicated. Only
12 through such clear communication can we pursue
13 faulty determinations of the code or, when
14 necessary, amass sufficient evidence to bring a
15 case to the Board of Standards and Appeals, a
16 citizen's last recourse.

17 Presently, there are several pieces of
18 the City Council legislation relating to better
19 communication - requesting notification of the
20 local community board and local Councilmember,
21 particularly in cases of demolition or other
22 invasive building - by making notification part
23 of the building application process. I endorse
24 these simple efforts.

25 This creative approach to solving

1 Standing Committees on Cities, Codes & Housing - 9-7-06 146
2 problems might be applied to other areas.
3 Comprehensive approaches to addressing these
4 issues would be very useful. Coordination among
5 DOB's legal unit, plan examiners, and inspectors
6 would be very useful, as well as coordination
7 with other City agencies. Frequently, a
8 complicated issue might involve the police, the
9 Fire Department, HPD, that's Housing Preservation
10 and Development, Department of Transportation,
11 the Office of General Counsel, or the District
12 Attorney's office. I would like to see a more
13 cooperative and proactive interagency approach to
14 resolve problems creating greater efficiency and
15 ultimately restoring the public's confidence in
16 government. The Mayor's Office of Mid-Town
17 Enforcement offers an excellent model for greater
18 cooperation throughout the City to handle issues
19 where the expertise of multiple agencies is
20 required.

21 I am also very concerned that current DOB
22 practice is to attempt inspection of a complaint
23 two times, but if access is denied on both
24 occasions, no additional follow-up is done and
25 the complaint is dropped. My district has seen

1 Standing Committees on Cities, Codes & Housing - 9-7-06 147
2 many egregious situations remain unaddressed
3 because of this practice. Additional thought
4 must be given to providing the agency with the
5 necessary power to secure access.

6 In closing, I want to reiterate that the
7 Department of Buildings has made strides forward,
8 and assure them that their efforts are
9 appreciated. As a member of the City Council, I
10 pledge to continue to work with DOB to accomplish
11 our goals, and I thank the members of the New
12 York State Assembly for their commitment to do
13 the same.

14 Thank you.

15 CHAIRMAN BRENNAN: Thank you
16 Councilmember Mendez for your thoughtful
17 testimony. Let me please ask you to continue to
18 share with us any legislation or other thoughts
19 or ideas you have about this process because the
20 Legislature and the City Council need to be
21 working together in this matter.

22 COUNCILMEMBER MENDEZ: Thank you. And my
23 Assemblywoman and I are working together on
24 companion pieces in the State and in the City.
25 And I'm looking at all the other City legislation

1 Standing Committees on Cities, Codes & Housing - 9-7-06 148
2 that's pending to see where else we can
3 collaborate. I thank you very much, Mr. Brennan.

4 CHAIRMAN BRENNAN: Thank you,
5 Councilmember Mendez.

6 Honorable Gale Brewer, is she here?
7 Okay. Terence O'Neal, President, American
8 Institute of Architects, New York State Chapter.
9 Thank you for your patience.

10 TERENCE O'NEAL, having first been duly
11 sworn by a Notary Public of the State of New
12 York, testified as follows:

13 CHAIRMAN BRENNAN: Welcome. Thanks for
14 being here.

15 MR. O'NEAL: Thank you. Good morning,
16 Assemblyman Brennan - I should say good afternoon
17 - Assemblymen Brennan, Lentol and members of the
18 Assembly. My name is Terence O'Neal, President
19 of the American Institute of Architects, New York
20 State, sometimes referred to as AIANYs. I am
21 here representing AIA New York State, the state
22 organization of the American Institute of
23 Architects, sometimes referred to as AIA.

24 I will add that, it's not in my remarks,
25 I am also an architect in practice in New York

1 Standing Committees on Cities, Codes & Housing - 9-7-06 149
2 City. Although I'm here representing an
3 organization that's based in Albany, I am in
4 practice in New York City.

5 First, we would like to note that in the
6 last several years, as Commissioner Lancaster
7 said, significant improvements have occurred in
8 the operations of the New York City Department of
9 Buildings. These improvements have made the DOB
10 more professional in approach and more responsive
11 to the needs of the public and the construction
12 industry.

13 We have only answered the questions that
14 were distributed several weeks ago to which we
15 can contribute, and also to avoid redundancy with
16 other testimony.

17 What is the current backlog of complaints
18 and violations? How are complaints, violations
19 and enforcement actions prioritized, categorized
20 and imposed? How many hazardous violations of
21 the building code are outstanding and what is
22 their status?

23 AIANYS does not have access to data on
24 the number of complaints and violations.
25 However, the AIA recognizes in its Code of Ethics

1 Standing Committees on Cities, Codes & Housing - 9-7-06 150
2 that it is the architect's duty to design within
3 zoning and building code regulations. Architects
4 take this responsibility seriously in order to
5 protect the public health, safety and welfare.

6 Is there a central reporting and
7 investigations system for accidents and injuries
8 to persons and property related to building,
9 construction and demolition safety?

10 Although others have addressed this
11 question, we would add that the system is vastly
12 improved with the introduction of 311, which has
13 eliminated anonymous complaints and allows for
14 tracking of results. This system could be
15 further improved to include a mechanism to report
16 complaints in written form, which are not
17 currently tracked in the same manner.

18 What external notice, review and
19 monitoring systems exist for construction and
20 development activity and when are they triggered?

21 Construction activity filed through the
22 DOB is in the public record, accessible by all,
23 and as someone clarified, after a permit has been
24 issued. These records are accessible by all.
25 Code enforcement, however, should remain with

1 Standing Committees on Cities, Codes & Housing - 9-7-06 151
2 those public agencies licensed and authorized to
3 do so, in order to protect the health, safety,
4 and welfare of the public.

5 How does the current Department of
6 Buildings system ensure document integrity?

7 We at AIA do not know the specific issue
8 to which this question is addressed, but AIA New
9 York State believes that there should be systems
10 in place to ensure that documents submitted to
11 the Department of Buildings are authentic and
12 that appropriate safeguards should be implemented
13 to ensure that once documents are filed by a
14 design professional, they are retained and
15 available to the applicant.

16 Are DOB policy and procedure notices
17 applied consistently?

18 Policy and procedure notices are not
19 applied consistently. They are generally applied
20 for short periods of time; they vary between the
21 boroughs in implementation, interpretation and
22 duration. There should be a means for public and
23 professional review prior to implementation of
24 PPN's, as well as a central resource where these
25 can be researched both by public and

2 professional.

3 When are Department of Buildings'
4 objections and audits available to the public and
5 under what circumstances?

6 Objections, as part of a normal process
7 for plan approval, should not be in the public
8 record. Objections should be issued to the
9 architect and owner only. All objections must be
10 cleared prior to issuance of plan approval and,
11 subsequently, a building permit. Thus, issuance
12 of objections to the public would serve no
13 purpose, in our view, since objections are part
14 of a process involving a work in progress.
15 Audits should be in the public record, only in
16 those cases where action has been taken by the
17 Department of Buildings, such as revocation of
18 the building permit. Any action taken by
19 Department of Buildings must be consistent with
20 the principles of due process to protect all
21 parties against potential abuses. Where the
22 audit results in administrative penalties, the
23 Department of Buildings may refer the person or
24 persons for alleged professional misconduct or
25 the illegal practice of architecture, which are

1 Standing Committees on Cities, Codes & Housing - 9-7-06 153
2 currently defined by state law and only those
3 state authorities currently mandated to take
4 action, that is to say the State Education
5 Department, Office of Professional Discipline,
6 may take action as appropriate.

7 What is the current status of the New
8 York City self certification program by
9 architects and engineers? Does self
10 certification allow excessive noncompliance with
11 the building code and zoning resolution?

12 We will refer to self certification as
13 professional certification, as Commissioner
14 Lancaster also referred to it as professional
15 certification, which was its original name when
16 first instituted. Professional certification was
17 originally instituted to facilitate the approvals
18 process. Professional misconduct is to be
19 addressed by the New York State Education
20 Department Office of Professional Discipline.
21 Where there are repeated cases of noncompliance
22 or abuse of professional certification privileges
23 that do not constitute either professional
24 misconduct or illegal practice of architecture,
25 as legally defined, the Department of Buildings

1 Standing Committees on Cities, Codes & Housing - 9-7-06 154
2 should have the right to suspend or revoke, after
3 an OATH proceeding, professional certification
4 privileges, consistent with its approved
5 procedures and clear guidelines.

6 Should self certification be abolished
7 and/or restricted?

8 No additional enforcement or oversight is
9 required with proper DOB guidelines in place.
10 Office of Professional Discipline has adequate
11 enforcement powers over professional misconduct;
12 laws are in place to address the issue of illegal
13 practice. The design professionals are licensed
14 by the State of New York and are allowed to
15 practice statewide. There currently is not, nor
16 should there be, a requirement for licensure
17 specific to the City of New York. The right to
18 professionally certify is, however, a privilege
19 granted by the Department of Buildings, who
20 should have the ability, consistent with
21 appropriate and legal due process to suspend or
22 revoke that privilege.

23 The Department of Buildings has neither
24 the resources nor, more importantly, the legal
25 standing to take any further action against a

1 Standing Committees on Cities, Codes & Housing - 9-7-06 155
2 licensed design professional. As previously
3 stated, where there exists either professional
4 misconduct or illegal practice, action can and
5 should be taken only by those bodies empowered to
6 do so and only consistent with all the tenets of
7 due process.

8 In conclusion, I wanted to review some of
9 the suggestions that we have made. Number one,
10 implement a mechanism to report and track written
11 complaints regarding building safety, in similar
12 fashion as 311 calls are now documented for these
13 complaints.

14 Number two. Code enforcement should
15 remain with those public entities licensed and
16 authorized to do so.

17 Number three. Department of Buildings
18 objections should not be in the public record.

19 Number four. There should be a means for
20 public and professional review prior to
21 implementation of PPN's, as well as a central
22 resource where these can be researched both by
23 public and professionals.

24 Number five. Audits that results in
25 action by the Department of Buildings should be

1 Standing Committees on Cities, Codes & Housing - 9-7-06 156
2 in the public record, other audits should not be
3 in the public record.

4 Number six. Where audits result in
5 administrative penalties, the Department of
6 Buildings may refer the person or persons for
7 alleged professional misconduct or illegal
8 practice of architecture to the state agency
9 currently authorized to take action, that is to
10 say, the State Education Department, Office of
11 Professional Discipline.

12 Number seven. Department of Buildings,
13 having granted the privilege of professional
14 certification, should have the right to suspend
15 or revoke that privilege, through due process,
16 perhaps an OATH proceeding.

17 Number eight. No additional enforcement
18 or oversight is required from the State Education
19 Department or other entities with proper
20 Department of Buildings guidelines in place for
21 the professional certification process.

22 Nine. There should not be a requirement
23 for licensing of a design professional specific
24 to the City of New York. The design
25 professionals are licensed to practice statewide.

2 Although AIA New York State believes that
3 professional certification should not be
4 abolished, we will support that decision should
5 it be made. However, all parties involved -
6 architects, engineers, contractors, owners, the
7 Department of Buildings, and the public - benefit
8 from professional certification due to reduced
9 time, less bureaucracy, and less staff required
10 at Department of Buildings. The City of New York
11 has benefited greatly from the reduced costs
12 associated with the system. We should not lose
13 sight of the majority of instances where
14 professional certification works, and works well
15 to all of our benefit. Additional resources
16 would be needed for Department of Buildings to
17 review all construction plans if professional
18 certification were abolished. Although AIANYS
19 does not believe that abolition of professional
20 certification is the answer, our prime concern is
21 the protection of the public health, safety and
22 welfare. Our second concern is that discipline
23 for professional misconduct remains with the
24 State Education Department, Office of
25 Professional Discipline.

2 Thank you.

3 CHAIRMAN BRENNAN: Thank you, Mr.
4 O'Neal. Appreciate your testimony.

5 You say that DOB objections should not be
6 in the public record, and I don't know if I agree
7 with you. There are many instances - I'm sure
8 you're familiar with the ten day notice. DOB
9 issues a ten day notice to a project and that
10 means that the architect has to respond to a
11 group of objections. Do you think the ten day
12 notice should not be in the public record?

13 MR. O'NEAL: That's a good question. I
14 think similar to audits, perhaps the ten day
15 notice should be in the public record. I think
16 what I would like to do is get some feedback from
17 some of our membership and we'll get back to you
18 on that.

19 CHAIRMAN BRENNAN: The problem with DOB
20 objections not being in the public record is that
21 there are many issues of public safety involved
22 with construction and there are frequently local
23 citizens who may have seen initial plans, know
24 that plans are under construction, dispute the
25 propriety of the Department's issuing a building

1 Standing Committees on Cities, Codes & Housing - 9-7-06 159
2 permit in the first instance. A lot of these may
3 have been professionally certified. You also
4 have this difficulty involved with the
5 exploitation of the post-approval amendment
6 process where once the permit has been granted
7 and the project is under way, construction is
8 under way, then there are changes, all frequently
9 self certified, that make it very unclear what's
10 really under construction, what's really been
11 approved. If there are major issues involved
12 with excavation, unsafe construction activities,
13 familiar to sure up adjacent property, if the
14 public doesn't know what is actually under
15 discussion in the Buildings Department, then the
16 public has no way to hold the Buildings
17 Department accountable for assuring that the
18 project is being constructed in a safe manner. I
19 really question whether you're right or not.

20 MR. O'NEAL: Your point is well taken. I
21 think that our point is code enforcement issues
22 should remain with those that have the authority
23 to kind of enforce codes. And until a particular
24 situation is resolved and until it is determined
25 if it is that there was some wrongdoing, of

2 course the wrongdoing should be in the public
3 record and I think that I said that in our
4 testimony. But until it gets to that point,
5 we're saying that it should not be.

6 CHAIRMAN BRENNAN: I understand. Just
7 to give you an example. The situation that
8 occurred in my district where there was a vacate
9 order to a building, eight families in the
10 building had to leave because there was
11 excavation that was undermining that building in
12 the developed lot adjacent, and there was a
13 pending DOB audit in place that had been
14 generated by local complaints that the self
15 certified building in fact violated the zoning
16 and the excavation was too deep. And that was
17 the public safety issue that people were raising.

18 If the public had known that in fact DOB was
19 expressing the same objection to the developer
20 that the public was concerned about, the ability
21 of the public to more aggressively advocate that
22 DOB take action could have taken place and the
23 damage and displacement could have been averted.

24 MR. O'NEAL: My answer to that is that
25 the Department of Buildings does, indeed, need

1 Standing Committees on Cities, Codes & Housing - 9-7-06 161
2 more inspectors. More inspection does have to
3 take place. During Commissioner Lancaster's
4 comments she did say that they are starting to go
5 out to buildings when construction has started so
6 they can see these situations and do something
7 about them before it becomes a problem. To us
8 that's more so the answer than putting -

9 CHAIRMAN BRENNAN: I'm referring to a
10 situation where the permit is already granted,
11 construction activity is already occurring.
12 There's a DOB audit ongoing. There are clearly
13 objections being made or having been issued.
14 There are public safety concerns in place. The
15 construction activity is ongoing, therefore
16 people are at risk. It's not a question of the
17 permit not having been granted and therefore
18 there's no construction activity taking place.
19 Under those circumstances I think it would be
20 appropriate for the public to know what DOB is
21 telling the developer.

22 MR. O'NEAL: Perhaps in that circumstance
23 that's a good point. I think that what we'll do
24 is look at similar circumstances such as those,
25 and perhaps there is a mechanism. It does seem

1 Standing Committees on Cities, Codes & Housing - 9-7-06 162
2 to me that the Department of Buildings staffing
3 problems are none, should be on top of a
4 situation such as that. I mean if an audit is
5 showing -

6 CHAIRMAN BRENNAN: I would agree with
7 you.

8 MR. O'NEAL: If an audit is showing that
9 there is a potentially dangerous situation, then
10 obviously they should be right on the case. It
11 should not take objections being in the public
12 record and then a public outcry to get them to
13 that point.

14 CHAIRMAN BRENNAN: I hear -

15 MR. O'NEAL: In other words, if they know
16 from an audit that there is a potentially
17 dangerous situation - I can understand your point
18 in that if the objections were in the public
19 record they could apply pressure to fix the
20 situation and you're probably right. You're
21 probably exactly right. However, if it takes
22 that then that's another problem in and of
23 itself.

24 CHAIRMAN BRENNAN: It shouldn't have
25 gotten to that point. There are 626 vacate

1 Standing Committees on Cities, Codes & Housing - 9-7-06 163
2 orders a year.

3 MR. O'NEAL: I understand your question.

4 That might be answered through additional
5 inspectors. It might also be answered - others
6 have, Public Advocate Gotbaum brought up the
7 point that if there's an inspection and there's
8 no access to the building then it should be
9 required, which is a good idea, for the inspector
10 to go right back out there and not to just write
11 no access and leave. So that's another possible
12 solution to such a situation.

13 CHAIRMAN BRENNAN: Mr. Lentol.

14 CHAIRMAN LENTOL: I think we discussed
15 this privately, but I'd like to get it on the
16 record because I'd just like the Association's
17 opinion of what we've heard, at least Mr. Brennan
18 and I, and that is that some architects and some
19 engineers would prefer not to have self
20 certification because they'd rather go through
21 the process and have somebody give their approval
22 to it so that they don't have the worry of being
23 accused of malpractice or worse. And I wondered
24 if you could comment on that in the first
25 instance.

2 MR. O'NEAL: Well this is true, some do
3 see it as taking a little bit more of a risk.
4 However, I think that we really wanted to point
5 out in our testimony that there have definitely
6 been, at least there appeared to have been abuses
7 of the system and there seems to be no question
8 about that. However, generally it's a system in
9 many instances that works. I suppose in the
10 instances in which it does work we don't really
11 hear about that. We're hearing about the
12 disasters that occur out there. But it is true
13 that many professionals, and I'd probably count
14 myself among them - I have professionally
15 certified plans I think three or four times, we
16 don't make it a habit. You're exactly right;
17 many professionals do not professionally certify
18 plans and go through the rather lengthy process
19 of a plan approval.

20 CHAIRMAN LENTOL: And then the next
21 question is if we did that now at this late date,
22 I guess it's since the 90's that we've had self
23 certification, would the system grind to a halt
24 given the Building Departments' caseload.

25 MR. O'NEAL: That's a good way to put it.

2 I think it probably would. It's taking an awful
3 lot of manpower, pressure off of the Department
4 of Buildings. And again, I hate to over
5 emphasize this, but in the majority of cases it's
6 working and working well. It's just that when it
7 does not work those are the cases that we hear
8 about and that's why we're all here today.

9 CHAIRMAN LENTOL: And I really wanted to
10 ask you about something that's not in your
11 testimony and hasn't been discussed yet today,
12 and that is what kind of scrutiny, what kind of
13 enforcement and what kind of legislation may be
14 necessary to reign in or control the use of
15 expeditors either by developers or by architects
16 or by anyone else who can go to the Building
17 Department and are not regulated presumably by
18 anybody.

19 MR. O'NEAL: They have more regulation
20 than they did ten years ago. Now they all need
21 ID's. It's a little bit tighter. I don't think
22 examiners believe them anymore when they leave
23 the examiner, go out and come back half an hour
24 later and say I got the architect's signature on
25 this item. I think that the system of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 166
2 identification that's required of expeditors, the
3 identification card kind of being registered with
4 the Department of Buildings, you can't walk into
5 the Department of Buildings like you could 10, 15
6 years ago and say, hi, I'm an expeditor. Now you
7 have to have an ID. You have to be registered.
8 It seems like there is a lot more responsibility
9 required of expeditors now than there was.

10 CHAIRMAN BRENNAN: Mr. O'Donnell.

11 ASSEMBLYMAN O'DONNELL: I would like to
12 go also back to the question about the
13 objections. This sort of reminds me of Enron
14 because what you have is you have professionals,
15 in that case accountants, saying the books are
16 fine. The books are totally fine, it's not a
17 problem. And then it turns out the books weren't
18 so fine. And so if you have an architect who
19 self certifies that a building is in compliance
20 with the zoning and lo and behold it's not in
21 compliance with the zoning, what is the remedy
22 for the population at large? And it seems to me
23 that if they're an individual architect is making
24 a habit of that, A. there ought to be very severe
25 penalties for doing that, but the second part of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 167
2 that is whether or not the process at buildings
3 is sufficiently open that allows the people who
4 will be negatively impacted by that to pay
5 attention. Because the stuff that is happening
6 in my community where that has occurred, there's
7 no timeframe. There's a hole in the ground
8 before we even can figure out what it is that the
9 architect claims is totally in compliance with
10 whatever else it is. It seems to me that the
11 good ones, which I'm putting you in, would want
12 to make sure that the bad ones are not getting
13 away with it. Because if it is a benefit to have
14 this, then you should also want the process, when
15 this is being utilized, to be opened up in a
16 greater way to prevent the fraud from occurring.

17 So I would suggest to you that you go
18 back to your organization and present, as it
19 relates to the objections component of it to say
20 let's look at this again because if someone is
21 getting the advantage of self certification, I
22 think there ought to be a disclosure price from
23 the community benefit that we get to see that at
24 an early stage than we currently do. Not to
25 discourage the good guys, but acknowledging that

1 Standing Committees on Cities, Codes & Housing - 9-7-06 168
2 sometimes people are doing things that they
3 shouldn't be doing.

4 I have a fabulous bill that's pending in
5 Albany that would make it a really serious crime
6 in the Department of Education for you folks to
7 do that, like take away your license for a year.

8 MR. O'NEAL: Well, for any kind of an
9 incorrect zoning analysis or -

10 ASSEMBLYMAN O'DONNELL: Well for signing
11 off on plans saying it's complying with zoning
12 when it's not really.

13 MR. O'NEAL: We would agree that there
14 should be.

15 ASSEMBLYMAN O'DONNELL: Then I'll send
16 you a copy of my bill and maybe you can help it
17 through the Committee system.

18 MR. O'NEAL: As long as those penalties
19 are assessed by the State Education Department.

20 ASSEMBLYMAN O'DONNELL: It absolutely
21 stays in the State Education Department. But the
22 problem is as a person out there, if we get one
23 of these and the community comes along and says
24 that 12 story building is not allowed to be 12
25 stories, it's only allowed to be eight, and they

1 Standing Committees on Cities, Codes & Housing - 9-7-06 169
2 already have it 12 stories up, where does that
3 leave us? And that architect is laughing all the
4 way to the bank. It seems to me if they're
5 laughing on the way to the bank, we ought to be
6 able to have severe penalties to make sure that
7 maybe they wouldn't do it again or maybe the
8 person in the next office drawing something else
9 says, hey, look. The penalties are so severe,
10 you've got to double check and make sure that you
11 are in compliance if you're going to certify it.

12 MR. O'NEAL: I think you're exactly
13 right. As long as there is a due process
14 proceeding to establish that misconduct is taking
15 place - and I'll say this on the zoning code
16 which did not come out in our testimony.

17 The zoning resolution is very open to
18 interpretation, and we've got to think. It was
19 one of the first. Actually, in the 1920's it was
20 the first zoning resolution in the country. In
21 1961 it was completely revamped. I have to think
22 that it's open to interpretation for a reason.
23 The writers must have wanted it that way. Many
24 things can be seen as a violation of the zoning
25 resolution. There might be an interpretation

1 Standing Committees on Cities, Codes & Housing - 9-7-06 170
2 that says that it isn't. Maybe the architect saw
3 things a different way.

4 There have been in the past memoranda
5 written, reconsiderations to certain objections
6 during the regular plan approval process that
7 might say a certain interpretation of the zoning
8 resolution is correct, you can do it that way.
9 Under a regular plan examination, if an examiner
10 disagrees with an architect on interpretation of
11 a piece of the of the zoning resolution, it comes
12 out right there, right on the table and it's
13 right out front now. If that happens after the
14 fact, then disagreements are going to occur.

15 ASSEMBLYMAN O'DONNELL: Right. But that
16 would seem to weigh in favor of allowing the
17 objections to be public. Because if you file
18 something and you say that you think based on
19 your interpretation it's compliant with the
20 zoning and someone says maybe it's not. Let's
21 look at that. Why shouldn't the other people in
22 the community affected about that know that that
23 issue may be unresolved? It seems to me that not
24 only would it benefit the public, it actually
25 would benefit those architects who are, for lack

1 Standing Committees on Cities, Codes & Housing - 9-7-06 171
2 of better terminology, on somewhat grayer ground
3 than a simple yes or no.

4 I know is zoning is extraordinary
5 complicated, so I'm not trying to suggest that
6 it's not. But it seems to me that your
7 organization would want that stuff opened up in
8 order to allow for dueling architects. We have
9 dueling architects all the time. It's like a
10 little - this one says this one is allowed. Put
11 two attorneys in the room and you get three
12 opinions. It's the same exact kind of thing.
13 And if the community can benefit and we open up
14 the process, it seems to me that that would both
15 benefit the Buildings Department, as well as
16 benefit the architects who are trying their best
17 to comply with the rules.

18 MR. O'NEAL: It still seems to me that
19 it's best if that process remains between the
20 professional and the Buildings Department until
21 it gets resolved. After it's resolved, put it in
22 the public record.

23 ASSEMBLYMAN O'DONNELL: Yes, but the
24 problem then is there's no access for the public
25 to weigh in on that. Maybe there's a bigger,

1 Standing Committees on Cities, Codes & Housing - 9-7-06 172
2 better architect who claims that your analysis is
3 wrong. Maybe there are other interpretations.
4 Maybe the people who live in the buildings
5 adjacent to where you're building has an opinion
6 as to what that is and they should be allowed to
7 weigh in. If we're not aware of the objection
8 process, we have no way to do that.

9 Thank you very much.

10 CHAIRMAN BRENNAN: Anybody else?

11 (No verbal response.)

12 Thank you very much, Mr. O'Neal.

13 Appreciate your patience and your testimony a
14 great deal. And we hope to continue to work with
15 you as time goes on.

16 Our next witness, Frank Munoz, Director
17 of the Office of Professions, New York State
18 Education Department and Daniel Kelleher,
19 Director of Investigations. Thank you for coming
20 from that wonderful place, Albany, New York,
21 where we're so glad we're not there. We're glad
22 you're in New York City.

23 MR. MUNOZ: We're both former New Yorkers
24 too.

25 FRANK MUNOZ, having first been duly sworn

2 by a Notary Public of the State of New York,

3 testified as follows:

4 DANIEL KELLEHER, having first been duly

5 sworn by a Notary Public of the State of New

6 York, testified as follows:

7 CHAIRMAN BRENNAN: Let me just thank

8 Assemblywoman Robinson for her presence here

9 today. You play an important role in this

10 subject matter, and we appreciate your presence

11 and your testimony.

12 MR. MUNOZ: And we thank you for the

13 opportunity to share our views and our

14 perspectives on this issue. I am accompanied by

15 Dan Kelleher, who is the Director of

16 Investigations in the Office of Professional

17 Discipline. The Director of the Office of

18 Professional Discipline is also here.

19 As you know, in New York State the 47

20 licensed professions comprising of over 800,000

21 licensees are regulated by the Board of Regents,

22 and that regulation is administered by the

23 Education Department. So our discussion of

24 architects and engineers comes within the context

25 of the regulation of those 47 professions,

1 Standing Committees on Cities, Codes & Housing - 9-7-06 174
2 involving the health professions, the design
3 professions and the business professions.

4 The focus from the Board of Regents is
5 insuring competent practice on the part of
6 licensed professionals and protection of the
7 public. It's a very, very serious mission by the
8 Board of Regents.

9 We have submitted, in advance of this
10 hearing, material that details our experience
11 with professional certification over the last ten
12 years. We don't intend to cover every part of
13 that six page submission, but would like to
14 discuss the key points.

15 We begin by applauding this Committee's
16 effort to address abuses of the professional
17 certification process. At the development of
18 this process in the early 90's, we were told that
19 the former process of requiring approval of
20 inspections in every case would be replaced with
21 the professional certification and we were
22 assured that the enforcement and monitoring would
23 be provided through the auditing of at least 20
24 percent of submissions as a means of assessing
25 the licensed professional's work and to monitor

2 the quality of the submitted designs. We note
3 parenthetically that we have no jurisdiction over
4 the expeditors within the context of the current
5 problem.

6 During the last ten years or so, we have
7 investigated every case and complaint that has
8 been referred to us by the New York City
9 Department of Buildings. We have received 132
10 referrals. Whether that is enough, whether that
11 is too low, whether that is too high is a
12 subjective matter. As a matter of fact, we have
13 received 132 complaints. We have investigated
14 every one of them. They have been -

15 CHAIRMAN BRENNAN: These are architects
16 and engineers -

17 MR. MUNOZ: Yes.

18 CHAIRMAN BRENNAN: From New York City
19 DOB to you.

20 MR. MUNOZ: Yes. And we have taken
21 action against 41, Regents actions. These are
22 permanent discipline actions. There have been
23 three license surrenders, and there have been
24 four or five actual suspensions, which means that
25 the penalty imposed, which normally can run from

1 Standing Committees on Cities, Codes & Housing - 9-7-06 176
2 revocation of the license to censure and
3 reprimand, that the penalty imposed included a
4 period of actual suspension, which means that
5 that architect or engineer could not practice of
6 the period of time. And the period of time was
7 three to six months. Our submission contains in
8 detail on those referrals. We have the names of
9 the closed cases and the dates. Dan Kelleher
10 will, since his unit has investigated every one
11 of those, will give you a sense of the types of
12 referrals that we have gotten. And we note,
13 however, that there has been, within the last
14 three years, a decline in those referrals.

15 We have also taken action against
16 licensees when complaints have come to us from
17 other sources. And we've instituted both civil
18 and criminal investigations in other cases. We
19 have relationships with the various district
20 attorneys' offices. I came from the Manhattan
21 District Attorney's office. Dan came from the
22 New York City Detective Bureau. So we have close
23 relationships and we use those relationships when
24 appropriate. We are ready to continue that
25 commitment to work and to address every referral

1 Standing Committees on Cities, Codes & Housing - 9-7-06 177
2 that is made to us, and also to receive
3 complaints from individuals, as Dan will share
4 with you.

5 We also want to point to the fact that I
6 think when we met at one of the Assembly offices
7 we were asked if we received direct complaints,
8 and the answer is a loud yes. We have an 800
9 number and we have a website that allows
10 consumers to file complaints of professional
11 misconduct against licensees. The website is
12 conductatmail.nysed.gov. That is
13 conductatmail.nysed.gov. The 800 number is 1-
14 800-442-8106.

15 As I said, we stand ready to continue
16 that commitment to work with the New York City
17 Department of Buildings and to investigate every
18 complaint. Whether it comes from them or it
19 comes from us, we are ready to work with the
20 Legislature in any way that we can to assist in
21 any legislative drafts.

22 The one point that I must strongly stress
23 is that we strongly urge that this Committee not
24 support legislation that would authorize the New
25 York City Department of Buildings or any other

1 Standing Committees on Cities, Codes & Housing - 9-7-06 178
2 municipal or state agency, for the first time and
3 without demonstrated need, to take action against
4 any of the 47 professionals licensed under Title
5 8 of the Education Law. We have a process that
6 is effective, that has received awards. We are
7 very serious about investigating and prosecuting
8 professional misconduct. We have a process that
9 works. The regulation of 47 professions at one
10 time is a complex undertaking. It involves
11 interpreting scopes of practices. It involves
12 issuing guidance on practice matters. So while
13 we understand that municipal agencies or other
14 state agencies can have a role in regulating the
15 practice of licensees -- for example, the
16 Securities and Exchange Commission has a very
17 direct role in regulating the practice of CPAs
18 and they take action against CPAs. They don't
19 take action against the license. They take
20 action against the CPAs that really need to
21 continue to practice before the SEC, they then
22 refer that case to us for discipline against the
23 license. Similarly, the Department of Health,
24 the New York State Department of Health has a
25 statutory obligation to refer to us, those cases

1 Standing Committees on Cities, Codes & Housing - 9-7-06 179
2 in which they have taken action against a
3 licensee within the Article 28 facilities, and
4 then they refer those cases to us to adjudicate
5 the complaint against the license within our
6 process. So we strongly urge you to not consider
7 any such legislation.

8 We think that any departure from the
9 existing process would undermine the
10 effectiveness of that process, and I am not
11 exaggerating. It would cause chaos in terms of
12 our ability to consistently regulate not only the
13 discipline, but also the day-to-day practice of
14 the 47 licensed professions.

15 With that, I'd like to turn to Dan
16 Kelleher who has worked most directly with the
17 New York City Department of Buildings and has
18 recently met with them and can share with you
19 some of the information from those meetings.

20 MR. KELLEHER: Thank you, Frank. Thank
21 you members of the Assembly for inviting us here
22 today.

23 One of the things that I learned from my
24 prior life in the Police Department is that
25 you're usually as good as your sources of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 180
2 information. And in this case I'm referring to
3 the Department of Buildings and maintaining a
4 relationship with them through meeting with them
5 every two months, developing new ways of
6 approaching cases that they are bringing to our
7 attention. And I think Assemblyman Brennan,
8 after we met in Albany that seemed to heighten
9 that sense of urgency that we get together a
10 little bit more with the Buildings Department,
11 and we did. In the early part of April we did
12 meet with members of the Department of
13 Investigation, the Inspector General's office for
14 the Buildings Department, Dennis Curran
15 (phonetic) and he introduced us to Mr. Woods who
16 was newly appointed as the Inspector General.

17 CHAIRMAN BRENNAN: He's the DOI liaison.

18 MR. KELLEHER: Yes. Yes he is.

19 As a result of that meeting, we
20 determined that the best way we can serve the
21 public is to open up our books, the
22 investigations that we have in New York City on
23 engineers and architects, open them up to the
24 Buildings Department. They, in turn, did the
25 same thing with us. They opened up and they

1 Standing Committees on Cities, Codes & Housing - 9-7-06 181
2 showed us all the investigations that they have.
3 The purpose of that is that we don't duplicate
4 our efforts.

5 In addition, we developed new ways of
6 exchanging information. No longer a standing on
7 protocol for letters, et cetera, et cetera, we're
8 going to be meeting every six weeks. And it's
9 not only myself and Curran that will be meeting,
10 it's every supervisor that I have in New York
11 City and every one of his individuals that are
12 responsible for making referrals to us.

13 We also have planned joint training
14 sessions so that the Department of Buildings know
15 exactly what we need to pursue a case and to
16 bring it to fruition if a discipline is warranted
17 or not. The number of referrals that we had
18 received from the Buildings Department in the
19 past related basically to fee disputes or
20 contract disputes, which is something that we
21 really do not become involved in.

22 Joint investigations, illegal practice
23 cases, and I think several of the other
24 testifiers had touched on the expeditor's role
25 and what we had uncovered over the past five to

1 Standing Committees on Cities, Codes & Housing - 9-7-06 182
2 six to seven years; expeditors, assuming roles
3 that they don't have and actually practicing
4 architecture or engineering.

5 Any cases that involve the public safety,
6 they get an immediate priority. About six months
7 ago I had established a unit out of our main
8 office at 475 Park Avenue to specifically handle
9 referrals coming from the Buildings Department.
10 In addition, in development of every single one
11 our cases against a licensed professional, where
12 we're talking about practice issues, we involve
13 an architect and/or an engineer, whatever
14 expertise is required for us to develop that
15 case, we bring that person right into the
16 investigative stages of the case.

17 I guess we're open for questions.

18 MR. MUNOZ: The only addition to that is
19 that we do have - one of our prosecutors is a
20 licensed an architect and we have investigators
21 with expertise and background in this field, as
22 we do in many of the 47 professions.

23 CHAIRMAN BRENNAN: You mentioned that
24 DOB had referred 132 cases to you over the past
25 period of years.

2 MR. MUNOZ: Ten years.

3 CHAIRMAN BRENNAN: Ten years. But that
4 there had been a significant fall off in the past
5 three years. Did DOB explain to you why that was
6 the case?

7 MR. MUNOZ: As we shared with you in
8 Albany, we had met with the Commissioner in
9 Albany in April to discuss strengthening the
10 relationship and the referral process, but we
11 didn't explicitly discuss it. Dan, do you know?

12 MR. KELLEHER: No, they didn't give any
13 specific reason for the falloff in referrals.

14 CHAIRMAN BRENNAN: The New York City
15 real estate market is obviously related to the
16 intense activity that is generating so much
17 money, so much profit that people have an
18 incentive to cheat. We've had some extremely
19 egregious examples of architects whose privileges
20 have been revoked, whose self-served privileges
21 have been revoked - Rudusky and Steranno
22 (phonetic) operating primarily in Brooklyn but I
23 think across the City. You read the oath
24 petition against the architect Steranno and there
25 are like 70 separate assertions of knowing

1 Standing Committees on Cities, Codes & Housing - 9-7-06 184
2 violations of the zoning resolution. No elevator
3 in a six story building. It is self certified
4 without an elevator in a six story building, you
5 can't not know that the zoning resolution
6 requires that there be an elevator in a six story
7 building. That's not a technical interpretation.

8 It just seems like we're confronted with a
9 significant amount of abuse and we're not getting
10 the DOB to zero in, give you the case or pursue
11 situations where public safety is at risk.

12 MR. MUNOZ: Assemblyman, I think we,
13 first of all we do statutorily prohibit it from
14 discussing the information in the investigative
15 file against a licensee. I think that we can say
16 that we have a number of cases open against those
17 individuals, and at the end of the process the
18 potential penalties are revocation of the license
19 and up to \$10,000 per specification.

20 I also want to mention, and I talked
21 about 40 cases. There are another 21 cases that
22 are inactive in terms of our records and that is
23 because they have been brought to the various
24 district attorneys' offices. So it is possible
25 that, and I do recall getting phone calls from

1 Standing Committees on Cities, Codes & Housing - 9-7-06 185
2 the Manhattan District Attorney's office and they
3 were looking at this. I think the Queens
4 District Attorney's office has also been active
5 in this area. So it is possible that the
6 Buildings Department at some point decided to
7 move those cases in that direction as opposed to
8 us. At any rate, we have investigations on those
9 21, in addition to the 40 Regents actions.

10 It may be a matter of staffing. I know
11 that there was a restructuring in the
12 investigative staff. I think that the DOI became
13 involved in those investigations one or two years
14 ago, and those are the folks that we're working
15 with now. Anything beyond that would be pure
16 conjecture on my part.

17 CHAIRMAN BRENNAN: Mr. O'Donnell asked a
18 question of Commissioner Lancaster, and I hope he
19 doesn't mind if I try to follow up a bit on it.
20 The question related to what is the duty of the
21 Department of Buildings to report violations to
22 you?

23 MR. MUNOZ: I think at this point there
24 is no statutory obligation to report those cases
25 to us. I can tell you that Section 2803, some

1 Standing Committees on Cities, Codes & Housing - 9-7-06 186
2 letters of the Public Health Law require the
3 Department of Health to refer matters to us.

4 CHAIRMAN BRENNAN: You had a
5 conversation with my staff about that?

6 MR. MUNOZ: Yes. And it's in our
7 submitted testimony.

8 The Corrections Law requires the
9 Probation Department to refer to us any cases in
10 which a licensed professional has been convicted
11 of a crime. On the federal level, the Securities
12 and Exchange Commission is required to refer to
13 us actions against CPAs. There is no statutory
14 requirement of a referral from New York City DOB.

15 That's a short answer.

16 CHAIRMAN BRENNAN: Okay. New York City
17 DOB has expressed an interest in State Ed
18 providing a registration system that is publicly
19 available through a website or something so that
20 when an architect or engineer does a self-cert or
21 actually submits anything to the Department, even
22 to a plan examiner, that they can make absolutely
23 certain that the person is registered and is a
24 licensed professional, that right now they can't
25 normally ascertain that.

2 MR. MUNOZ: Well, Assemblyman, about ten
3 years ago we developed a system in which every
4 one of our 800,000 licensees, as indicated as
5 either being licensed or not, and that's
6 available by going to our website. Not only
7 that, you can also look to see whether there has
8 been prior discipline against a licensed
9 professional. That system exists now.

10 If you had an architect by the name of
11 Smith who was practicing in Brooklyn and you had
12 the first name and the business address, you went
13 to our website, you can see whether that person
14 is licensed.

15 CHAIRMAN BRENNAN: So they ought to be
16 able to, through their database and their system,
17 acquire that information and be able to accept or
18 reject.

19 MR. MUNOZ: Absolutely. The Department
20 of Health does not allow anybody to work within
21 the Article 28s without first looking at our
22 website. We also can work with the New York City
23 Department of Buildings by doing data sharing.
24 If they want a subset of our data files, we have
25 done that with many agencies. So that if they

2 want to get a subset of the architect and
3 engineering population, we can have discussions
4 with them and then do a data share with them.
5 That we've done plenty of times.

6 Mr. O'Donnell.

7 ASSEMBLYMAN O'DONNELL: You make
8 reference to my legislation in your letter,
9 A.1103, and you call it redundant, which is
10 ironic because that's exactly what the people in
11 the Assembly central staff told me my bill was,
12 and I will sort of look at that. But the real
13 question that comes up is - in the example that
14 Mr. Brennan used, without using anyone's name, it
15 seems to me that the first time somebody
16 certifies a report that a building that requires
17 an elevator doesn't have one, they should be
18 suspended or revoked. Not five times. Not 73
19 times. Once. And what unfortunately has
20 happened, and this is certainly not your fault
21 and I'm not looking to blame anyone, is that the
22 process by which Buildings either reviews and/or
23 refers them to you us so slow and lackluster that
24 it gets to be 73.

25 In the case - I know that you were here

1 Standing Committees on Cities, Codes & Housing - 9-7-06 189
2 earlier because I saw you - that I referred to
3 with the building collapse, if, in fact, what Ms.
4 Lancaster said is factually accurate in that the
5 demolition company put on the roof of a structure
6 a different kind of machine than they were
7 authorized to do so, if that baby had died that's
8 criminally negligent homicide. And yet what
9 happened?

10 Now I didn't want to go at it with her
11 because she was way too late and whatever else it
12 was. Commissioner Lancaster and I spent many
13 hours writing letters to one another in the six
14 or eight weeks after that event occurred. And I
15 can assure you I will go back to my file and see
16 what those letters said. But if, in fact, that
17 that's the case, somebody has to be held
18 responsible to that threat for public safety.
19 And if, in fact, it was a licensed engineer, he
20 said, yeah, it was close enough. We're going to
21 put the tractor with the jackhammer on this roof,
22 their license should be suspended. And I don't
23 even mean - I mean like the day.

24 I'm a due process guy. Trust me. Joe
25 Lentol is looking at me. I'm a due process guy.

2 All due process must be given. But it seems to
3 me that in those circumstances, if the willful
4 ignoring of the permit is done by a licensed
5 professional and this sort of thing happens,
6 something has to be done right away. It's the
7 failure of the right-of-way part which has caused
8 the lack of confidence. I am not interest, nor
9 will I ever support any bill that will take away
10 SED's jurisdiction over these matters. But on
11 the other hand, it seems to me that you have to
12 be more on top of it than you have then because
13 nobody should have a 73 paragraph complaint in
14 OATH because that means the first time it
15 happened and the second time, and the tenth time,
16 and the fifteenth time, somebody was asleep at
17 the wheel.

18 There are obviously differences between
19 interpretation and grades. The example that Mr.
20 Brennan gave, you design a building and you self
21 certify it, it's supposed to have an elevator and
22 doesn't - news flash. You're coming in to
23 explain that. And if you're not going to do
24 that, then we have to find a way that that
25 happens.

2 MR. MUNOZ: Assemblyman, I wish I had
3 used a different word than redundant.

4 ASSEMBLYMAN O'DONNELL: I hear it all the
5 time. You should see what they say behind my
6 back.

7 MR. MUNOZ: What I meant to say is that
8 we have a process that's been in place for over
9 100 years. We have a process - and I commit to
10 you that we will look at these cases and we will
11 review these cases again to see whether they fit
12 what we call our summary suspension process. The
13 summary suspension process is a process whereby a
14 complaint that comes to us and involves the
15 immediate, the potential, immediate public harm
16 that we can move to summarily suspend the license
17 of that individual licensee until the entire
18 matter is adjudicated. There is due process for
19 the summary suspension process. But we can
20 certainly use that summary suspension process.

21 However, when we said that the - the bill
22 language as we read it says that these matters
23 can be forwarded to the Education Department and
24 that the Education Department can revoke. In
25 point of fact, if a matter is referred to the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 192
2 Education Department we have a statutory
3 obligation to look at the facts and determine
4 whether those facts violate Section 6509 of the
5 Education Law, which defines what professional
6 misconduct for a licensee is. One of the
7 sections in 6509(A) is a section that says that a
8 definition of professional misconduct for a
9 licensee for which they can lose their license, a
10 definition of professional misconduct is
11 committing unprofessional conduct as defined by
12 the Board of Regents.

13 Part 29 of the Regents Rule says that it
14 is unprofessional conduct for a licensee to
15 knowingly violate the laws and rules of another
16 governmental agency. So we have a process in
17 place that if we get a referral from the New York
18 City Department of Buildings and it involves the
19 self certification process and violating either
20 the Administrative Code or the specific rules of
21 the Department of Buildings, we investigate that.

22 If there is a determination for and application
23 then there's a hearing process and they go
24 through a hearing before three members of State
25 Board for engineering and architecture, and then

1 Standing Committees on Cities, Codes & Housing - 9-7-06 193
2 it goes to the Regents. And at the end of that
3 process the potential penalties are - they can be
4 found not guilty, of course. But if found guilty
5 it can range from censure and reprimand to
6 revocation. In those onerous situations, we
7 commit to you that we have strengthened the
8 interaction and information sharing with the New
9 York City Department of Buildings and that will
10 be ongoing. We commit to you, we will go back
11 and look at whether any of these cases are cases
12 that we should look at as a summary suspension
13 case.

14 ASSEMBLYMAN O'DONNELL: Right. But see I
15 think that the one thing that I want to just
16 clarify with you is that I would never
17 intentionally write a bill that was redundant.
18 But I wrote the bill because I, at the time,
19 didn't think either you could or you would
20 because you weren't. And I don't want to be the
21 architect and engineer police for the 69th
22 Assembly District. So every time that something
23 goes wrong I don't want to say who was the
24 engineer in this project and let me call them up
25 and do that. I don't think I should have to do

1 Standing Committees on Cities, Codes & Housing - 9-7-06 194
2 that. But if what Ms. Lancaster said is true,
3 that they put the wrong tractor with the wrong
4 jackhammer on a building that didn't support it,
5 I don't know why or how that wouldn't already be
6 there.

7 Chances are the demolition company didn't
8 have a licensed engineer and there's no - I mean,
9 I can give you all the hypotheticals. But if the
10 end there was someone there, it shouldn't take
11 the building collapsing and a kid being in a
12 stroller to get people to pay attention. And it
13 should not take you or the Buildings Department,
14 an architect having 73 separate instances where
15 they were oops, mistaken about what the zoning
16 rule says. That is way, way too far down the
17 line for there to be immediate action because
18 there is very little remedy for a community that
19 is negatively impacted. If you're evicted from
20 your home because the building next door is now
21 unsafe based on this false self certification,
22 you have no power. And the only thing that my
23 constituents are demanding is that I make sure
24 that the rules are as strict as they can be and
25 that the rules are complied with so that they're

1 Standing Committees on Cities, Codes & Housing - 9-7-06 195
2 not at that risk. So I can assure you that
3 you'll be getting a letter from me some time
4 later this week.

5 MR. MUNOZ: Absolutely. Assemblyman, we
6 do not disagree. As I said, there were
7 revocations of three licenses of architects or
8 engineers. And if we get the referral - and
9 Assemblyman Brennan asked whether it was a
10 statutory obligation to submit that referral.
11 Now you may want to look at other agencies that
12 also impose a time limit on the referrals. Now
13 there's a question, if you're looking at drafting
14 legislation, of whether an agency would be
15 obligated to submit a referral when a complaint
16 comes in as opposed to at the end of a complaint.
17 There are a number of issues.

18 My answer to you is that if we got the
19 referral - and I can't say for sure that we did -
20 typically the way that the penalty works for
21 licensees is the first time out of the box - you
22 have a nurse that's been working for ten years
23 and they make a medical administration error and
24 there's no patient harm and it's minor and
25 technical -

2 ASSEMBLYMAN O'DONNELL: That's
3 negligence. We're not talking about negligence.
4 That's not what we're talking about here. We're
5 talking about somebody who is allegedly a
6 professional who is given a license who says they
7 didn't know a six story building requires an
8 elevator. That's not negligence; that's
9 intentional conduct. There's a huge difference
10 between those two things. If there is an
11 engineer who put the wrong machine on the rooftop
12 that is an intentional act. If I as an attorney
13 did an intentional act and submitted an affidavit
14 in the courtroom that was false under oath,
15 they'd haul my butt down there in a New York
16 minute.

17 So the question is - I don't want to
18 fight with you about what the differences are,
19 and I understand people make mistakes all the
20 time accidentally. I'm not talking about
21 negligence. Seventy-three causes of action in an
22 OATH report is not negligence; it's an
23 intentional misrepresentation. And in that
24 particular case 73 is too many cases before you
25 folks stepped up to the plate.

2 MR. MUNOZ: I totally agree. And the
3 point that I was making, Assemblyman, is that
4 typically when a professional discipline case
5 comes to us at the penalty phase, the Regents and
6 everybody else that looks at the penalty looks at
7 the nature of the offense, the nature of the
8 result. There are licensees whose first
9 negligence resulted in a patient death who gets
10 their license revoked.

11 If every one of those cases had been
12 referred to us and we had open investigations, I
13 guarantee you that the second or third time, even
14 if there had been no patient harm, there would
15 have been very, very strong penalties. But what
16 we're discussing is process.

17 Did we get those at one time? Did we get
18 those separately? Did we get those? Those are
19 all issues that I think need to be looked at.

20 ASSEMBLYMAN O'DONNELL: Thank you very
21 much.

22 CHAIRMAN BRENNAN: Okay. Thank you.
23 Appreciate your testimony a great deal.

24 The stenographer has requested a short
25 break. And we want to thank the stenographer for

2 his hard work. Let me make a couple of
3 announcements.

4 First, many of you heard me on several
5 occasions indicate that the hearing will be
6 continued on November 15th. I see that the room
7 has cleared out a lot and that may be related to
8 it or it maybe just people losing patience. And
9 I want to thank everyone for their patience.

10 I am going to continue to take testimony
11 until at least five o'clock today. So you should
12 take a look at your presence on the list and if
13 you want to stay and try to see how things go
14 that's great. Let me tell my colleagues that
15 your sandwiches are here, and treats of
16 Assemblyman Brennan, and we will take our break
17 now. Thank you.

18 (Whereupon, The Effectiveness of the
19 Regulation and Construction and Development in
20 New York City and the Enforcement of the Building
21 Code and Compliance with the Zoning Regulation
22 recessed at 2:05 p.m.)

23 (Whereupon, the Effectiveness of the
24 Regulation and Construction and Development in
25 New York City and the Enforcement of the Building

1 Standing Committees on Cities, Codes & Housing - 9-7-06 199
2 Code and Compliance with the Zoning Regulation
3 reconvened at 2:17 p.m.)

4 CHAIRMAN BRENNAN: Our next witness is
5 Tony Straka, President of New York Committee on
6 Occupational Safety and Health.

7 Ladies and gentlemen, we are reconvening
8 so please take your seats and try to reduce the
9 noise level. Thank you.

10 TONY STRAKA, having first been duly sworn
11 by a Notary Public of the State of New York,
12 testified as follows:

13 CHAIRMAN BRENNAN: Welcome, Mr. Straka.

14 MR. STRAKA: Assemblyman Brennan, first
15 of all, I'd like to thank you for the promotion.

16 I don't know if my bosses would appreciate it.

17 CHAIRMAN BRENNAN: Oh, you're not the
18 president?

19 MR. STRAKA: No. I'm actually the Union
20 Rep for NYCOSH, so he probably really wouldn't
21 appreciate it. In any event, I am a safety and
22 health specialist and the individual available to
23 come here and do this today.

24 In any event, we appreciate the
25 opportunity to be here. There's a lot that I

1 Standing Committees on Cities, Codes & Housing - 9-7-06 200
2 took in this morning, a lot that I learned about
3 New York City Buildings Department that I had no
4 clue about, quite honestly. We're a little
5 different. NYCOSH is not part of government. We
6 don't make any laws or enforce any laws or any
7 regulations. What we are is a union-based, non-
8 governmental organization, a non-profit.
9 Primarily we do safety and health training and
10 some advocacy. And it's in that context that I'm
11 here today.

12 NYCOSH is here today because we have seen
13 unacceptable levels of death and injury in the
14 construction industry as a whole and particularly
15 in small New York City construction sites
16 specifically. We are hopeful that members of
17 this Committee will be able to take some of the
18 steps we are recommending to improve these
19 deplorable conditions.

20 Statistically, the construction industry
21 is the most dangerous in terms of what can happen
22 to the construction workforce. It may not be the
23 most dangerous in terms of fatality rates, but in
24 terms of sheer numbers, the construction heads
25 the list of the occupations where people get

1 Standing Committees on Cities, Codes & Housing - 9-7-06 201
2 killed on a job.

3 Construction workers only comprise about
4 five percent of the total workforce, but they are
5 killed on the job at rates far in excess of their
6 proportion in the workforce. Typically, if you
7 were to look at every 100 cases of somebody being
8 killed on the job in the United States,
9 approximately 21 of those cases would be
10 construction workers. That's quite a fact given
11 it's one out of every 20 workers, in general.

12 To compound this, the fatality rates for
13 minority workers and immigrants, including both
14 Black and Hispanic workers, have actually been
15 much higher for all workers combined, and that
16 trend has continued.

17 By way of statistics, in 2005, in the
18 private construction industry, there were 1,186
19 fatal work injuries reported. In about one out
20 of every five of those, as I said, they represent
21 about one out of five -

22 CHAIRMAN BRENNAN: Nationwide?

23 MR. STRAKA: Nationwide. Now, the
24 government does quite a job at breaking these
25 things down in a lot of different ways. And if

2 we take a look at the fatal work injuries for a
3 specific group such as Hispanic or Latino
4 workers, we find that that reached what they
5 cause a series high, since they started keeping
6 their records in 1992. So 917 of those 1,186
7 were reported. That's a tremendous, tremendous
8 number. Also, there has been an increase in
9 fatalities among Black or African American
10 workers, from 546 in 2004 to 577 in 2005.

11 Now, in New York City, this pattern of
12 higher and disproportionate fatality rates really
13 comes to the floor. It turns out that somebody
14 did look at this. The Construction Industry
15 Partnership put out something called *Construction*
16 *Safety: A Tale of Two Cities*, and they found
17 that from October 2001 through September 2003,
18 Latinos accounted for about 62 percent of the
19 worksite fatalities in New York City.

20 BLS says that - excuse me. In 2004, the
21 construction sector in New York City experienced
22 28 fatalities, one-fourth of all work related
23 deaths of any major group. In New York City,
24 Latinos accounted for 31 percent of the
25 fatalities, black non-Hispanics, 21 percent, and

2 Asians 10 percent.

3 We have some specific examples of things
4 that have happened to Latino construction
5 workers, which kind of illustrate the hazards for
6 everybody. So the examples are in October 2001
7 we had a major scaffold collapse at 215 Park
8 Avenue South in which five undocumented Latino
9 immigrants, being paid \$7 an hour, were killed
10 when the scaffold collapsed and 14 others were
11 injured.

12 We had a Mexican day laborer killed and
13 six others injured in a scaffold collapse in an
14 Upper East Side brownstone.

15 In November 2003, Manuel Falcon, an 18
16 year old day laborer died after falling from a
17 roof in Queens.

18 In May 2004, Angel Segovia was killed
19 when a balcony roof that was being illegally
20 constructed in Brooklyn suddenly collapsed.

21 Now the issue of worker safety at
22 construction sites has become a serious concern
23 during the last decade as we've seen many new
24 contractors, newer and smaller contractors, a lot
25 of whom are also non-union contractors have

1 Standing Committees on Cities, Codes & Housing - 9-7-06 204
2 entered the industry, quite honestly, to try to
3 keep up with the demand. We think it's no
4 surprise that safety in the workplace often takes
5 a back seat to profits and deadlines.

6 Further, there's the issue of many
7 workers being afraid to contact OSHA about
8 unsafe working conditions. Workers, in general,
9 are often fearful of losing their jobs or
10 disciplinary action. And if you have a case
11 where that worker also happens to be
12 undocumented, they have a greater fear of
13 contacting OSHA and perhaps a greater fear of
14 losing their job.

15 Now, as you know, we live in a time of
16 smaller governments. You can look at this as
17 kind of a political statement, if you will. But
18 at least in terms of resources for domestic
19 problems, and we just don't have it. The
20 staffing of the Occupational Safety and Health
21 Administration continues to be well below what it
22 should be. There is a surprisingly number of
23 OSHA inspectors, federal OSHA inspectors in the
24 United States, and the number has gotten
25 progressively smaller in recent years. The

1 Standing Committees on Cities, Codes & Housing - 9-7-06 205
2 number of inspectors decreased by nearly 15
3 percent from 1990 to 2003, from 1,271 to 1,082
4 inspectors, at a time when the U.S. workforce
5 grew 16.2 percent. That decline continued, and
6 last year there were only 827 federal inspectors
7 nationwide. Now, certainly large urban areas
8 like New York City are going to get more
9 inspectors than a lot of other places. But when
10 you've only got 827 to begin with, and in New
11 York State the private sector is under federal
12 jurisdiction, you're not going to get a lot of
13 inspectors given the scope of the problem.

14 Now construction employment, on the other
15 hand, has gone way up. It did from 1990 to 2000,
16 it increased almost 31 percent. To give OSHA its
17 due, they devote a substantial amount of their
18 efforts to enforcement in construction. But if
19 we take a look at the statistics, in fiscal year
20 2005, OSHA conducted a total of 38,783
21 inspections nationwide - 22,181 involved the
22 construction industry, which is a little over 57
23 percent. But certainly OSHA's ability to enforce
24 their regulations is limited by the size of their
25 staff. There is a related issue that also plays

1 Standing Committees on Cities, Codes & Housing - 9-7-06 206
2 into this, and that's whether OSHA has devoted
3 enough of the resources they have to their
4 traditional enforcement roll, versus more recent
5 efforts to set up cooperative compliance efforts
6 with employers. But any way you look at it,
7 whether you look at the number of inspectors or
8 you look at how they're using the inspection
9 workforce, they don't have the resources to do
10 the job to the extent that a lot of us would like
11 to see.

12 So we see, in NYCOSH, we see a bigger
13 picture here. In addition to the worker deaths,
14 which is the thing that we concentrate on the
15 most, we also see a public safety issue here.
16 And certainly construction hazards very easily,
17 as some of the earlier testimony got to, can lead
18 to public safety disasters.

19 New York City has recognized the
20 importance of some local control in a couple of
21 related areas. A couple of examples are New York
22 City regulations on asbestos abatement and some
23 regulations on scaffold safety. The asbestos
24 regs show how the work is to be performed and by
25 whom. The scaffold safety regs determine when

1 Standing Committees on Cities, Codes & Housing - 9-7-06 207
2 you need a licensed engineer to design a
3 scaffold. Now both of these go beyond what OSHA
4 requires, but neither of them is preempted by
5 OSHA. And I believe they're not preempted
6 because of the fact that all of this stuff does
7 overlap with public safety. You can't really
8 just isolate it and say it's worker safety, it's
9 not the public.

10 So, again, New York DEP administers the
11 asbestos control program and they have required
12 training for all workers. They require the use
13 of special procedures, inspection reports and so
14 on. So the asbestos law requires training,
15 examination and a certificate from the City. And
16 again, we feel that what this does goes beyond
17 what OSHA does for worker protection.

18 In the area of scaffolding, we've heard a
19 lot about scaffolds today, the New York City
20 scaffold regulations also go beyond OSHA in the
21 sense that the scaffolds in New York City are at
22 least required to be designed by a professional
23 engineer at a much lower height than what OSHA
24 would require. I can't keep track of all of
25 these regulations, quite honestly. But with New

2 York City it's perhaps 60 or 75 feet above the
3 ground where you need a licensed engineer. With
4 OSHA it's somewhere around 120, 125 feet above
5 the ground.

6 Against this backdrop of local
7 regulations, it's the view of NYCOSH that a
8 larger role for the New York City Buildings
9 Department in insuring construction safety is
10 appropriate, consistent and it's important. We
11 don't know offhand whether OSHA and New York City
12 have any kind of an agreement, but certainly
13 there is a possibility of entering into a
14 memorandum of agreement or some kind of a similar
15 arrangement between federal OSHA and New York
16 City Department of Buildings. This type of thing
17 has been done before and could address the ways
18 in which these agencies can work together, to a
19 certain extent, to avoid duplication of very
20 limited resources. So one approach would be to
21 use the Department of Buildings inspectors as
22 kind of the eyes and ears of OSHA and provide a
23 mechanism where they could get some qualified
24 referrals to OSHA for inspections.

25 Now, we've also thought about another

1 Standing Committees on Cities, Codes & Housing - 9-7-06 209
2 direction which alternative, but we see it as
3 being complimentary. This would require some
4 building code based or licensing based
5 regulations at the state or the city level. We
6 haven't thought it out that far as to what level
7 would be appropriate. But what could be done
8 would be to target the greatest hazards facing
9 construction workers. Now it turns out that OSHA
10 has looked into this stuff a lot over the years,
11 and they have discovered that 90 percent of the
12 people who die in construction work die from just
13 four causes, which I've outlined in the testimony
14 - falls from elevations, being struck by
15 something, being caught in between something or
16 electrical shock. One way to look at it is every
17 other way you get killed in construction is ten
18 percent. So if you could concentrate on
19 addressing these four areas or some of these four
20 areas, it could have a major impact in reducing
21 the amount of death.

22 We have thought this out a little bit and
23 we would suggest that perhaps you go in the
24 direction of three specific areas. One would be
25 protective measures for fall protection.

2 Protective measures for the workers. And you
3 could certainly, with all we know and hear about
4 scaffolds, certainly it would be an appropriate
5 area to focus upon. From our perspective we'd
6 like to see people that put up scaffolds be
7 licensed by somebody, if they're not already,
8 before they can erect the scaffolds. As part of
9 an inspection process by the Department of
10 Buildings, we think the Department of Buildings
11 inspectors ought to be looking at fall
12 protection. There are three major things that
13 OSHA uses in that regard - guard rails, safety
14 nets, or what they call a personal fall arrest
15 system. And certainly if the Buildings
16 Department were able to look for these things, in
17 addition to their other concerns, that would have
18 a major impact in keeping a lot of people from
19 getting killed.

20 The second area that we believe you
21 should look into is trenching and excavation. I
22 was heartened to hear the testimony this morning
23 that apparently the Department of Buildings is
24 going to be coming up with some new excavation
25 rules and they had mentioned the use of stop work

1 Standing Committees on Cities, Codes & Housing - 9-7-06 211
2 orders in these instances. We would like to see
3 something along the lines of if you want to do an
4 excavation and you go deeper than five feet into
5 the ground, that you would need to be licensed by
6 the City or licensed by somebody. Five feet
7 happens to be the threshold. All these things
8 are somewhat arbitrary. But five feet deep is
9 the threshold at which OSHA requires you to
10 protect an excavation. There are three major
11 ways you can do it - either by shoring, which has
12 been mentioned earlier today; sloping, which is
13 probably impractical in an urban area like this;
14 or the use of a trench box or a shield. But
15 again, if we could see some emphasis by the
16 Building Department on some efforts that would
17 parallel what OSHA is going to be looking for, we
18 could not only keep the site safer for the people
19 doing the excavation, but also obviously for
20 anybody that's nearby in the event that there's a
21 collapse.

22 Excavation workers, as it turns out
23 statistically, get killed at a much higher rate
24 than other people in construction. Their
25 fatality rate -

2 CHAIRMAN BRENNAN: Let me ask you a
3 quick question.

4 MR. STRAKA: Yeah.

5 CHAIRMAN BRENNAN: The 90 percent of
6 deaths in construction industry, you identified
7 four areas. Which is the area that relates to
8 deaths in excavation activity?

9 MR. STRAKA: Well excavations, I would
10 say you could look at it as being struck by.
11 Okay. Struck by dirt, rocks and debris. You
12 could also look at it as being caught in between,
13 but probably struck by is a little closer to it.

14 CHAIRMAN BRENNAN: Alright.

15 MR. STRAKA: In any event, it's a
16 particularly dangerous line of work to be in, and
17 the statistics show that people doing excavation
18 rate die at a rate 112 percent higher than
19 construction workers not doing excavations. Now
20 what's that mean in English? It means if you
21 have eight people who die in construction who
22 aren't doing excavation work, you're going to
23 have 17, if I'm doing the math correctly, 17 of
24 them die doing construction work. It's very
25 dangerous work. Collapsing excavations are very

2 unforgiving.

3 The third area that we feel pretty
4 strongly about involves temporary wiring. Right
5 now OSHA requires people putting up temporary
6 wiring on construction sites to use either ground
7 fault circuit interrupters to protect employees
8 or something this call an a surety equipment
9 ground and protector program. That's the
10 reality. Our sense of reality is that you need
11 both because they both do different things. We
12 would like to see some kind of a system whereby
13 city building inspectors would verify, as part of
14 their inspections, compliance with those
15 requirements, both the ground fault circuit
16 interrupter and also proper electrical grounding.

17 And again, if you refer back to statistics,
18 about one out of six construction workers is
19 killed from electrical shock, either from the
20 shock itself and electrocution, from burns, or
21 from a fall occurring after a shock.

22 Now we happen to believe that New York
23 City DOB inspectors are already uniquely
24 qualified to get into these areas because they've
25 got to have substantial existing knowledge of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 214
2 construction techniques and practices. So we
3 think that expansion of either licensing
4 requirements and/or formalizing inspection
5 referrals to OSHA could go a long way to
6 preventing a lot of deaths and doing so on a much
7 larger scale than OSHA would be able to do by
8 themselves with their own resources. So,
9 clearly, we see benefits to both the workers
10 involved and also to the public. Certainly in
11 terms of a scaffold coming down on your streets,
12 that's going to be as big of a concern for you,
13 as a member of the public, as the person who is
14 working on the scaffold.

15 In any event, NYCOSH stands ready to
16 assist in the process of developing some new code
17 based requirements, if there's a decision to go
18 that way. And we're also in a position to
19 provide some safety and health training. It
20 turns out that NYCOSH already receives a fair
21 amount of our funding from both New York State
22 and also New York City in the form of grants.
23 Certainly working with the Department of
24 Buildings, to the extent that that might be a
25 good idea, would be something that we could do,

1 Standing Committees on Cities, Codes & Housing - 9-7-06 215
2 in one sense we're already being paid to do by
3 the state or by the city and would kind of go
4 along with our mission of trying to protect
5 people.

6 So to sum up, certainly the construction
7 industry is one of the most dangerous industries.

8 And in terms of number of deaths, it's number
9 one. It's right up there in terms of all major
10 industry sectors.

11 In recent years the fatality and injury
12 rates have been going up and up for immigrants
13 and minorities. They have skyrocketed over the
14 last couple of years.

15 Our organization believes that there is
16 substantial overlap between worker safety and
17 public safety in terms of construction work. We
18 recognize that OSHA places tremendous emphasis on
19 construction worker safety and health, but they
20 have extremely limited resources.

21 They have identified four major killers
22 of construction workers that kill 90 percent of
23 the people who die in construction.

24 We believe that targeted code-based or
25 inspection-based initiatives involving the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 216
2 Buildings Department could give us some
3 substantial improvement in worker safety and
4 public safety. We believe there could be a
5 synergistic effect, as I like to think of it,
6 between the work of the vastly outnumbered OSHA
7 compliance officers, at the federal level, and in
8 the city building inspectors at the local level.

9 It's probably not a bad thing to have government
10 at different levels working together whenever
11 possible to get more done.

12 Now there is something that New York
13 State could do and something that I believe the
14 State could do with greater results than the
15 city, perhaps, would be to try to get OSHA to
16 establish what they call a special emphasis
17 program for construction safety and health
18 enforcement in New York City. Now OSHA does have
19 these types of programs in specific areas
20 involving particular hazards and/or geographic
21 areas. It's certainly something that could be
22 done here. I don't see it as something that
23 would be done here, in the absence of significant
24 pressure. My best estimation is that pressure
25 should come from the state level to make that

2 happen.

3 You do have dual jurisdiction in New York
4 State in terms of construction, safety and
5 health. You've got the federal people doing
6 everything in the private sectors and the New
7 York State Department of Labor doing everything
8 in the public sector. It's already somewhat
9 bifurcated, I guess is the word I heard earlier
10 today, and that certainly is true.

11 Another thing that could happen - we've
12 been pretty impressed by seeing one of the things
13 the Department of Buildings has done and that's
14 putting a 311 number in a notice on DOB signs at
15 a bunch of sites and schools telling people if
16 you see unsafe conditions, call 311 and report it
17 to the Department of Buildings. So you've
18 already got sort of a mechanism that's already
19 there. We'd like to see that expanded. And
20 maybe expand the role of the average every day
21 New Yorker in being able to get this to
22 somebody's attention.

23 And, again, just in terms of sheer
24 numbers and the availability to respond, you're
25 going to get somebody's attention a lot sooner

1 Standing Committees on Cities, Codes & Housing - 9-7-06 218
2 with the New York City Department of Buildings
3 with whatever number of employees they mentioned
4 they have, over 1,000 I believe, certainly than
5 you are with OSHA and try to figure out how many
6 inspectors they have in New York State, much less
7 New York City. The same with PESH. It's a very
8 limited pool of federal and state inspectors.

9 Now, we as an organization stand ready to
10 assist the state or the city to the extent that
11 we've got some expertise in the safety and health
12 areas. We'd be happy to work with the state or
13 the city in developing what might be appropriate
14 in terms of code or licensing requirements. And
15 certainly we're in a position to provide health
16 and safety training.

17 On a personal note, I spent most of the
18 last couple of years doing construction safety
19 training, largely with high school aged kids, as
20 it turns out, in various text schools and
21 building trade apprenticeship programs. And
22 NYCOSH has been doing that for about four years.

23 With the bulk of these people being kids that
24 are of high school age going into the trades, in
25 that approximately age range, and we've trained a

2 few employers as well.

3 We did a course for the public last April
4 and we did have one individual who was a former
5 New York City Building inspector who took our ten
6 hour construction safety course and said that he
7 learned a lot. Quite honestly, I learned a lot
8 from him in terms of what's involved in a lot of
9 this stuff.

10 I think the need is there and we're
11 probably in a position to help meet the need if
12 the desire is there to use our services. And to
13 the extent that we're already getting funding,
14 grant funding from the state and from the City
15 Council, for example, it certainly makes for a
16 strong argument of coming to us to help you out,
17 if you choose to do so.

18 Now one final thing that we would like to
19 see on our wish list of how we would do this if
20 we could would be a special task force to be
21 convened to address the issue of construction
22 safety in our City. We happen to think that when
23 efforts of that level are undertaken, and we have
24 things like increased enforcement, greater public
25 education and a concerted effort of everybody

1 Standing Committees on Cities, Codes & Housing - 9-7-06 220
2 who's a part of this, are we going to see any
3 changes in this. So those would be our
4 recommendations. That's the paraphrased version.

5 I'd like to thank you for the opportunity
6 for being here. And certainly I'm available to
7 answer any of your questions on my testimony.
8 Thank you.

9 CHAIRMAN BRENNAN: Thank you, Mr.
10 Straka, for your testimony. It's greatly
11 appreciated. Your organization, NYCOSH, is well
12 respected and appreciated.

13 I want to ask you some very brief
14 questions.

15 New York City has a law right now that
16 requires a site safety coordinator on all
17 buildings under construction of 15 stories or
18 more. A licensed site safety coordinator. I
19 know that the construction trades and the
20 Building Employers Trade Council have, from time
21 to time, suggested that that law be amended to
22 have site safety coordinators for any buildings
23 built six stories or more. So I want to know do
24 you have any experience in the capacities or
25 competencies of the current group of sites safety

1 Standing Committees on Cities, Codes & Housing - 9-7-06 221
2 coordinators, their performance, their duties,
3 and whether or not that is an effective way to
4 regulate construction.

5 MR. STRAKA: We don't have any direct
6 experience with anybody that's doing that
7 currently. I'm encouraged to know that there is
8 a requirement for buildings 15 stories and up. I
9 am, and I'm sure the organization would support
10 anything that would expand that, as you had
11 mentioned, perhaps to six story buildings.

12 The other thing is there's a lot of
13 residential construction going on, as well.
14 Certainly you can't license the entire world or
15 regulate the entire world in that respect. We
16 would think that cutting the threshold from 15
17 stories and up down to six would make a lot of
18 sense.

19 In terms of the competencies, I guess was
20 the other area that you had mentioned. We are in
21 a position as an organization to deliver training
22 that - we're authorized to deliver training by
23 OSHA in both construction industry safety and
24 general industry safety and health. There's only
25 a couple of us that do it in construction, and

1 Standing Committees on Cities, Codes & Housing - 9-7-06 222
2 I've been doing it mostly myself. But certainly
3 the more that people know about what the laws are
4 and what the underlying principles are, I guess
5 you could say. In terms of what the hazards are,
6 let's say, with electricity, with falls and so on
7 and so forth. The more people that know, the
8 better position they're going to be in to protect
9 themselves.

10 To kind of carry that a step further,
11 anything that could be done to promote safety and
12 health committees, either within companies or in
13 the workplace, is also a very positive thing to
14 do. So certainly training would be a major
15 component, and that could go a long way, whether
16 or not you had more regulation in terms of
17 requiring the licensed professional. We see them
18 as being complimentary. They're not exactly
19 exclusive. You could do both and be very
20 effective. So the more people that know,
21 theoretically the fewer chances they're going to
22 take and the greater recourse to what they need
23 to protect themselves.

24 CHAIRMAN BRENNAN: Okay. Any questions?

25 (No verbal response.)

2 Thank you very much. Your testimony is
3 greatly appreciated.

4 MR. STRAKA: Thank you.

5 CHAIRMAN BRENNAN: Adele Bartlett, MFY
6 Legal Services.

7 ADELE BARTLETT, having first been duly
8 sworn by a Notary Public of the State of New
9 York, testified as follows:

10 CHAIRMAN BRENNAN: Before you begin, let
11 me just thank Assembly Member Rosenthal and
12 Assembly Member O'Donnell for being here and
13 participating. I'm sorry they're leaving.
14 They're leaving me all alone up here, with the
15 staff of course. But thank you for being here.

16 Thank you for being here. Appreciate
17 your testimony. Go ahead.

18 MS. BARTLETT: Thank you. My name is
19 Adele Bartlett. I'm a supervising attorney at
20 MFY Legal Services. MFY is a not-for-profit
21 legal services organization. We have been in
22 existence more than 40 years, and over these
23 years have provided crucial representation,
24 advice and education to many thousands of low
25 income, disabled and elderly New Yorkers.

2 CHAIRMAN BRENNAN: Your organization is
3 well known and well respected.

4 MS. BARTLETT: Thank you.

5 I would like to express my gratitude and
6 that of MFY to this Committee and to Assembly
7 Member Brennan -

8 CHAIRMAN BRENNAN: And all the other
9 members who are here on the panel.

10 MS. BARTLETT: for holding this hearing,
11 and for it demonstrated concern and commitment to
12 ensuring proper enforcement of the City's
13 Building Code, and improvement and reform of the
14 practices of our Department of Buildings.

15 I supervise a staff of attorneys who
16 defend disabled, elderly, low income tenants
17 throughout the City who face legal and illegal
18 evictions. We also assist tenants who are in
19 danger of being forced from their homes as a
20 result of lack of repairs, or where their homes
21 have been rendered unsafe, unhealthy and nearly
22 uninhabitable because of demolition and gut
23 renovation of vacant apartments in their
24 buildings. And this latter situation is
25 something we are beginning to see more, and more,

2 and more.

3 In fact, it has become clear to us,
4 especially in this past year, that the
5 performance of the Department of Buildings is in
6 fact critical to the protection of tenants in New
7 York City. While advocates traditionally look to
8 HPD for enforcement of basic housing standards
9 and to the DHCR for protection of the rights of
10 regulated tenants, the direct role that DOB plays
11 in the lives of low and moderate income tenants
12 is not as obvious. But with landlords constantly
13 trying new, clever ways to empty their buildings
14 and to eliminate rent regulated apartments, it is
15 clear that the Department of Buildings is crucial
16 to protecting tenants.

17 Today in New York City tenants in
18 affordable regulated housing face intense
19 pressure, and the rate at which tenants are being
20 displaced and we are losing affordable housing is
21 frightening. The dwindling supply of safe,
22 affordable housing for low-income people is
23 driving this City toward disaster. With the
24 eviction of a regulated tenant, with every
25 renovated apartment and every building emptied

1 Standing Committees on Cities, Codes & Housing - 9-7-06 226
2 for conversion to luxury, high rent housing, this
3 represents a permanent loss of homes for the
4 working people of New York, and represents
5 inevitable change in the character of our
6 neighborhoods and the diversity and vitality of
7 our City.

8 The crisis faced by tenants is the result
9 of various factors working simultaneously. The
10 current real estate market provides an enormous
11 financial windfall to any landlord who can evict
12 a rent stabilized tenant and an even greater
13 financial award for vacating an entire building.

14 Second, the state agency charged with
15 enforcement of rent regulation does not even
16 handedly do its job. Third. Legal and
17 regulatory protection for the right of stabilized
18 tenants has been eroded, unfortunately by state
19 legislation. And, fourth. There continues to be
20 shameful lack of state funding for the provision
21 of legal services for the poor and working poor.

22 We are concerned that without reform and
23 oversight the Department of Buildings and its
24 failure to properly scrutinize permit
25 applications and the work done under its permits

1 Standing Committees on Cities, Codes & Housing - 9-7-06 227
2 may, in fact, become another factor endangering
3 our clients' homes. The Department of Buildings
4 must begin to function with an awareness that
5 there is a real danger that unscrupulous
6 landlords will use the weapon of destruction of
7 existing apartments and whole areas of a building
8 around remaining tenants, with the resulting
9 debris, obstructions, lack of services and lack
10 of security in order to frighten holdout tenants
11 into fleeing their apartments or accepting meager
12 to give up their affordable homes. While in the
13 past we would see this occasionally in serious
14 situation, it now seems to be a popular ploy of a
15 number of landlords.

16 DOB practices must be adopted to ensure
17 that alteration permits cannot be used as one of
18 the tools of landlords to vacate buildings and to
19 destroy affordable housing. It must examine all
20 plans that would permit major alterations and
21 gutting of apartments to make sure that the plans
22 contain provisions to protect the health and
23 safety of the tenants who remain in occupancy.
24 And where these tenants complained to the
25 Department of Buildings through the course of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 228
2 construction work that conditions in the building
3 have fallen below the required level, such as
4 lack of heat, debris, obstruction or unsecured
5 doors, or work that is going on after permitted
6 hours, the agency must respond as quickly as
7 possible and with serious enforcement measures.

8 While these kinds of problems might be
9 minor violations in an empty building or in new
10 construction, the Department of Buildings we hope
11 would realize that these kinds of situations may,
12 in fact, be part of a landlord's tactics to force
13 tenants out of a building.

14 Not only should the Department of
15 Buildings examine the submitted plans to make
16 sure that they comply with relevant law and
17 regulations, but it must, during the course of
18 the demolition and construction, visit the
19 building and inspect what work is being done.
20 Only by onsite inspection will improper
21 conditions, illegal work, and prior
22 misrepresentations by the building owners and
23 architects become apparent.

24 As an advocate for individual tenants who
25 are often unsophisticated and vulnerable, I

1 Standing Committees on Cities, Codes & Housing - 9-7-06 229
2 believe that the Department of Buildings and the
3 application and enforcement process must become
4 more open and understandable. Its records and
5 its filed documents must become more easily
6 available to tenants. Right now the average
7 tenant without an advocate has little chance of
8 seeing the actual plans for which her landlord
9 was granted a permit. And there is little, if
10 any, information or help available at the
11 Department of Buildings office. Better public
12 information should be available, especially to
13 those who are not computer literate. Tenants
14 also should be given assistance in obtaining the
15 information and be given help to enable a better
16 understanding of the process, what the Department
17 of Buildings filing means and what the tenants'
18 rights are. Right now, the opacity of the
19 process renders the agency effectively closed to
20 the public. The difficulty in obtaining
21 information about what a landlord plans to do,
22 what he has been given permission to do, and
23 whether the permission was granted based on
24 inadequate plans or incorrect representations
25 adds to the fear and uncertainty of tenants

1 Standing Committees on Cities, Codes & Housing - 9-7-06 230
2 living in buildings that are undergoing
3 substantial demolition. The landlords seeking to
4 vacate these buildings benefit from this
5 increased fear and lack of information. The
6 Department of Buildings must open its functions,
7 processes and records to the tenants affected by
8 its actions and it must, in fact, help
9 unrepresented tenants understand the systems.

10 I just want to point out, not only is the
11 website not fully - does it not fully contain
12 information about what the plans are, what the
13 permit allow the landlord to do, but if a tenant
14 physically goes to the Department of Buildings
15 Offices, it's absolutely not set up for a
16 private, unsophisticated or even ordinary member
17 of the public to negotiate the system and obtain
18 any information.

19 Today tenants in New York face serious
20 threats to their homes. And at MFY we continue
21 to see new and bolder strategies employed by
22 unscrupulous landlords who have huge financial
23 incentives to force our clients from their homes.

24 Most of our clients in these situations are
25 disabled, elderly or both, and many have aged in

1 Standing Committees on Cities, Codes & Housing - 9-7-06 231
2 place in their apartments; they remain there,
3 despite serious threats and financial offers
4 because they have no alternative housing. These
5 tenants need and deserve the protections of
6 existing laws and regulations. And only the
7 agencies that are charged with the enforcement of
8 those laws can provide that protection. We look
9 forward to seeing the Department of Buildings
10 become that kind of agency.

11 Thank you.

12 CHAIRMAN BRENNAN: Thank you very much.

13 In many of the issues you raised are seen
14 by myself and you heard other colleagues mention
15 the same problems. This is an intense and
16 ongoing problem of the vacate orders, unsafe
17 building orders, or authorizations for demolition
18 which end up as pretext for landlord efforts to
19 displace people. And you're right; the
20 Department of Buildings is not set up to be a
21 tenant protection agency. That's not its
22 traditional function. But nonetheless, if work
23 by a developer or accidents caused by a developer
24 or damage to property or other unsafe condition
25 caused by one person which results in the vacate

2 order and then the displacement involves people
3 living at a city shelter because they've been
4 forced out and it costs the city \$2 million to
5 allow somebody three months at the shelter and,
6 in fact, the original driving force was a
7 developer's activities - and right now the City
8 doesn't have a mechanism in place to compel the
9 person who was the wrongdoer to pay for their
10 injury to others. How many people in your
11 situation end up suing some developer who was the
12 cause of the vacate order in the first place.

13 MS. BARTLETT: I'd like to say we see two
14 situations; one that you're alluding to, and in
15 one case that was kind of - we got a little
16 attention for it. We had been working to get
17 repairs in an SRO, two SROs in Far Rockaway. The
18 landlord would not make repairs and, in fact,
19 made it clear he wanted all the tenants out.
20 When it became clear he was not going to be able
21 to do that easily, he called in the Department of
22 Buildings and pointed out all of the conditions
23 and they issued a vacate order.

24 Those are more - we can look at those.
25 What we are afraid of and we see happening is

1 Standing Committees on Cities, Codes & Housing - 9-7-06 233
2 where there are one, two or five tenants left in
3 a building, where the landlord has otherwise
4 bought or chased tenants out, they are being
5 further chased and harassed through the mechanism
6 of what happens, the activity of a gut
7 renovation, and that is usually cloaked in a
8 Department of Buildings permit. And that may be
9 invisible. That happens as, some members of the
10 Committee pointed out, very quickly. And once a
11 building is gutted it is unlikely that anybody is
12 going to order the individual apartments put
13 back. Our clients may be chased out or
14 frightened out without anybody ever knowing it.

15 CHAIRMAN BRENNAN: Understood. What we
16 need from you is some drafted proposal for
17 legislation that imposes a set of duties on the
18 Department of Buildings in relation to granting
19 demolition, alteration permits where there are
20 tenants in place to safeguard the situation or
21 deny the permit or otherwise put in place a set
22 of protections, plus some sort of ongoing duty to
23 reinspect when you have people in place so that
24 we can try to safeguard tenants in those
25 situations.

2 MS. BARTLETT: You've got it.

3 CHAIRMAN BRENNAN: Thank you. Thanks
4 for your testimony.

5 Randy Peers, Community Board 7. I don't
6 see him here.

7 Susan Stetzer. You're Susan Stetzer,
8 District Manager of Manhattan Community Board 3.
9 I've seen you nodding for hours at various
10 things.

11 MS. STETZER: Not nodding off.

12 CHAIRMAN BRENNAN: No, not nodding off.

13 MS. STETZER: Nodding in agreement.

14 CHAIRMAN BRENNAN: Not asleep. Thank
15 you for your patience.

16 SUSAN STETZER, having first been duly
17 sworn by a Notary Public of the State of New
18 York, testified as follows:

19 MS. STETZER: you for this much needed
20 opportunity to testify.

21 CHAIRMAN BRENNAN: Hold on, I'm looking
22 for your testimony here. Go ahead.

23 MS. STETZER: My name is Susan Stetzer,
24 and I am district manager of Community Board 3
25 Manhattan. This district runs from 14th Street to

1 Standing Committees on Cities, Codes & Housing - 9-7-06 235
2 the Brooklyn Bridge and from the East River to 4th
3 Avenue, Bowery and much of historic Chinatown.
4 It is an area of intense development and
5 construction; most of us consider it over
6 development.

7 CHAIRMAN BRENNAN: The Lower East Side.

8 MS. STETZER: Pardon?

9 CHAIRMAN BRENNAN: The Lower East Side.

10 MS. STETZER: Yes.

11 Community Board 3 is currently working
12 with the City on a contextual zoning plan for
13 much of the northern part of the district and
14 also beginning to consider zoning plans for other
15 parts of the district. This has further
16 intensified the development as there is the land
17 rush that you are all familiar with that is
18 created by the rush to demolish and develop
19 before new zoning regulations go into effect.

20 The Department of Buildings is a very
21 important agency to our Board. Since I became
22 district manager in July 04, I have worked very
23 closely with the agency, and out of necessity had
24 to become educated in many technical aspects. To
25 put the relationship between the agency and my

1 Standing Committees on Cities, Codes & Housing - 9-7-06 236
2 board into context, I will speak about the last
3 two years, which is the period I am familiar
4 with. This is also the period when our Board
5 began getting many calls for help from the
6 community regarding construction and plans
7 inappropriate, and sometimes dangerous, for the
8 community. My concern has been focused on
9 working with the agency so that existing
10 regulations would be enforced to protect the
11 community.

12 Until April 06, when the current
13 Manhattan Borough Commissioner became Acting
14 Borough Commissioner, the Department of Buildings
15 was basically an obstacle to our Community Board
16 and the community. Questions were answered with
17 we checked the plans or inspected, or whatever
18 was appropriate, and they are approved and in
19 compliance. There were times when major mistakes
20 were made, such as the self-certified plans that
21 were approved at 81 East 3rd for a dormitory,
22 although there was no lease in place with an
23 educational institution as required. When the
24 mistake was finally exposed and admitted, the
25 resolution was to allow the developer to cure.

2 This resulted in a 13-story dormitory that even
3 the developer did not envision because he was not
4 find a leasee for just half the building as
5 originally planned. Our community will suffer
6 for years from the impact of lack of concern
7 regarding protection of the community by
8 enforcing existing laws until the recent change
9 in the agency in Manhattan.

10 Community Board 3 is now coordinating
11 with our City Council member, and we have
12 established a working relationship with DOB and
13 now find the agency to be very responsive to
14 priority issues. We can get an audit of self
15 certified plans, we can get an emergency
16 inspections, we have objections checked very
17 carefully, and DOB has been in agreement with
18 some of the objections. However, there are major
19 policy problems that need to be fixed in the
20 agency. These are not under the control of the
21 Manhattan Borough Commissioner, and must be fixed
22 citywide.

23 One policy that has had disastrous impact
24 on my community is self certification. The
25 Community Board voted in January 2005 that self

1 Standing Committees on Cities, Codes & Housing - 9-7-06 238
2 certification is ineffective and detrimental to
3 Community Board 3. There are several developers
4 and architects that misrepresent facts and/or
5 submit self certification plans that would never
6 pass an audit. There is no motivation for
7 applicants to submit plans that are in
8 compliance. Twenty percent of self certified
9 plans are audited. The worst that can happen is
10 that noncompliance will be caught and the
11 applicant will be asked to meet with DOB staff to
12 cure objections. However, you don't see floors
13 being removed in the Lower East Side to cure
14 objections. There are no tools to take away self
15 certification privileges from architects or
16 developers who self certify plans that would not
17 pass audits. There is also no penalty that would
18 stop this from being worthwhile. The fact that
19 disciplinary action is virtually existent is a
20 huge problem that invites repeat offenders who
21 are willing to take chances. Since the
22 possibility of the DOB actually ordering
23 corrective remedial measures is so remote, there
24 are no meaningful disincentives to discourage the
25 unscrupulous. It is up to community boards,

1 Standing Committees on Cities, Codes & Housing - 9-7-06 239
2 council members, and a few residents with
3 expertise to catch suspect plans and ask for an
4 audit. Since these buildings are as of right and
5 don't come before the community board, this is
6 very difficult because we do not have the
7 expertise or resources to protect our community.

8 Another problem in our community is the
9 interpretation of the Multiple Dwelling Law, a
10 state law that strictly limits the extent to
11 which a tenement building can be enlarged. It
12 was enacted in 1929 when it was necessary for the
13 state to become involved in development and
14 construction issues in New York City. This law
15 limits non-fireproof buildings to six stories or
16 less -

17 CHAIRMAN BRENNAN: Actually it's the
18 reconification of the Tenement House Law of the
19 1890's.

20 MS. STETZER: A lot to learn. It is
21 extremely important to Community Board 3 because
22 so much of our housing stock is comprised of five
23 and six story tenements. The DOB does not
24 interpret a penthouse as an additional story
25 because of the limited size of the footprint.

2 This not only creates buildings out of character
3 with the community, it creates serious structural
4 problems to the building and adjacent buildings.

5 The upgrade of these buildings, with community
6 facility bonuses, are used as means of harassing
7 resident or buying out residents resulting in
8 loss of affordable housing. Limitations imposed
9 by the Multiple Dwelling Law have both protected
10 the architectural integrity of buildings by
11 precluding enlargements, but also have assured
12 minimum fire and life safety standards. We
13 regret that the DOB hasn't been enforcing these
14 limitations as zealously as we think necessary.

15 The footprint of a penthouse is also used
16 to interpret the Sliver Law, which limits the
17 height of new or enlarged narrow buildings in
18 certain districts. Again, DOB does not consider
19 a penthouse of less than 33½ of the floor as a
20 story. This perverse interpretation allows
21 buildings that would be denied by the intent of
22 the law.

23 Community facilities create a serious
24 problem for Community Board 3. First, community
25 facilities are not necessarily a real community

1 Standing Committees on Cities, Codes & Housing - 9-7-06 241
2 facility that benefits the community. It can be
3 a very expensive private school or a doctor's
4 office or dormitory. It does not need to be a
5 facility that is needed in the community or that
6 will benefit the people who live there. Except
7 for a dormitory, the type of community facility
8 does not need to be identified in the plans, so
9 there is no real way to audit these plans.

10 Inspection needs to be possible for
11 compliance to be monitored. Presently, DOB
12 cannot mandate access to a private building that
13 may be in noncompliance. If there are two visits
14 with access unavailable, the case is closed.
15 There is no protection for the community, no way
16 to monitor and enforce compliance of rules.
17 Again, there is no motivation for compliance. It
18 is very possible that violations will not be
19 inspected or enforced. Along with a method for
20 inspection, DOB desperately needs more inspectors
21 and qualified planners. Last year Community
22 Board 3 listed increased funding for DOB
23 inspectors and plan examiners as the number two
24 district expense priority.

25 Access to documents is another area of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 242
2 concern to the Community Boar. First, there
3 needs to be a system that safeguards these
4 documents. More than once the Board has
5 requested plans for self certified buildings only
6 to be told that plans are missing. The agency
7 needs a system that will prevent this. Also,
8 plans are not available if they are being
9 audited. The public being impacted should have
10 the right to view plans, even if they are not
11 final plans. Plans are currently available that
12 will be changed by the developer or by a future
13 audit. There is no reason why the public,
14 elected officials, or the community board cannot
15 check plans before an audit is finished to
16 identify possible areas of concern. Records of
17 meetings between the agency and applicants would
18 provide needed transparency and confidence.

19 The community board, often working with
20 others in the community, can submit objections to
21 plans that will be audited by DOB. The agency
22 then works with the developer/architect to cure
23 these objections. The board and the public have
24 no knowledge of how the objections will be cured
25 until the revocation or objection is cured. This

1 Standing Committees on Cities, Codes & Housing - 9-7-06 243
2 is inefficient because continuing objections will
3 start the whole cycle over with a new letter of
4 intent to revoke. This is not hypothetical; we
5 are dealing with this right now in our district.

6 This allows continued construction on buildings
7 that are possibly not in compliance, and it
8 unnecessarily makes the whole process longer with
9 resulting impact on the community, as well as
10 increased costs for the developer.

11 The Department of Buildings is an agency
12 of great importance to Community Board 3,
13 particularly because of the onslaught of
14 construction. We see the nature of our community
15 changing. We believe that interpretation of laws
16 and zoning resolutions must protect the community
17 as well as allowing for development. We also
18 believe that the DOB must develop tools that will
19 give them the ability to enforce existing
20 regulations.

21 I would like to add that our intent is
22 not to beat up on DOB. We found recently our
23 ability to work together has been very
24 productive, but we think that tools are
25 absolutely needed for monitoring and enforcement

1 Standing Committees on Cities, Codes & Housing - 9-7-06 244
2 and there needs to be revisting of
3 interpretations of the zoning laws.

4 CHAIRMAN BRENNAN: Okay. Thank you.
5 Appreciate your testimony a great deal. I want
6 to let you know that my office, in relation to
7 developing a legislative agenda for this issue,
8 is looking at ways in which community boards and
9 borough president offices can initiate or trigger
10 compulsory actions by the Department of Buildings
11 in response to community concerns - safety,
12 zoning, et cetera, et cetera - with deadlines and
13 things of that nature.

14 In your testimony you have a variety of
15 desires for various types of community board
16 input, notification, et cetera. We'd like to
17 work with you to develop a list, sort of a
18 community board wish list of what exactly you are
19 interested in being able to get action on with
20 DOB and things of that nature.

21 I'm sure you heard my interaction with
22 the AIA President -

23 MS. STETZER: Yes.

24 CHAIRMAN BRENNAN: about the necessity
25 of objections being public.

2 MS. STETZER: Actually I was really
3 surprised to hear that testimony. I would think
4 transparency - there's never a downside to
5 transparency. And our board and members of the
6 public with expertise that works with us, we have
7 actually brought continuing objections to DOB.
8 And I must say they really have been extremely
9 responsive. I think there are tools. I think
10 they need a lot more staff and I think they need
11 a lot more tools to come up with results we would
12 like to see.

13 CHAIRMAN BRENNAN: I don't disagree with
14 you.

15 MS. STETZER: We definitely think the
16 objections - the board can request and get
17 objections when they say the public. I'm not
18 quite sure that they're including boards. But
19 one of the things that happens is because a
20 community board can get this, the public then
21 comes to the community board and this is in one
22 sense a really good thing and another sense, we
23 don't have the resources to do what we have to
24 do.

25 CHAIRMAN BRENNAN: Understood. Well

2 thank you very much for your testimony.

3 Greenwich Village Society for Historic
4 Preservation. They had to go. Okay.

5 Teresa Scavo. Another person who has
6 been nodding in the audience. Chair of Brooklyn
7 Community Board 15. Thanks very much for being
8 here.

9 TERESA SCAVO, having first been duly
10 sworn by a Notary Public of the State of New
11 York, testified as follows:

12 CHAIRMAN BRENNAN: Thanks for your
13 patience.

14 MS. SCAVO: Good afternoon. I will be
15 brief. I am Teresa Scavo, Chairperson of
16 Community Board 15 in Brooklyn. In recent years
17 Brooklyn has experience a renaissance. Whether
18 we look at Greenpoint, Williamsburg or Sheepshead
19 Bay, each is facing a construction boom as many
20 other metropolitan cities are today. In my
21 community of southern Brooklyn, small one and two
22 family homes are reminiscent of the suburbs.
23 With its proximity to waterways and mass transit
24 and low crime rate, our community is an extremely
25 desirable place to live. Unfortunately, we have

1 Standing Committees on Cities, Codes & Housing - 9-7-06 247
2 become inundated with newly constructed buildings
3 and renovation of existing properties which, in
4 many cases, changes the character of the
5 neighborhood and affects the quality of life.
6 The Manhattan Beach area of our community, with
7 its tree lined streets and sprawling gardens, is
8 one of the prime areas where new construction is
9 prevalent on every block. No one is questioning
10 the as-of-right construction that is permitted
11 under the present zoning and building laws.

12 However, many of the present
13 constructions are built without permits, and
14 those with permits for limited construction
15 proceed to build beyond zoning limitations. Most
16 of the illegal construction gets completed unless
17 some neighbor alerts the Department of Buildings
18 and a stop work order is issued. In Manhattan
19 Beach there are 20 stop work orders on work under
20 construction. These issues were ordered only
21 after the Manhattan Beach community people
22 canvassed the area and pestered the Department of
23 Buildings until they responded and issued the
24 stop work orders. The community is also
25 monitoring 30 other sites in the area. We are

1 Standing Committees on Cities, Codes & Housing - 9-7-06 248
2 going to urge all neighborhoods in our area to do
3 the same. There is a process in place for those
4 who want to exceed zoning regulations.

5 Community Board 15 has special permit
6 provisions, as well as variance provisions.
7 These applications are first heard by the
8 community board and then sent to the Board of
9 Standards and Appeals for final education. This
10 is the legal method used to exceed zoning
11 requirements. And yet in Manhattan Beach and
12 other areas residents decided to take a chance
13 and build the illegal construction, and then,
14 after completion, apply for legalization on the
15 assumption that everyone would forgive their
16 transgressions and approve same.

17 In June of this year, three Manhattan
18 Beach property owners were arrested for paying
19 bribes to city building inspectors. In all three
20 cases, the property owners wanted the Department
21 of Buildings inspectors to ignore violations of
22 the City's building code concerning construction
23 work performed contrary to approved Department of
24 Building's plans. Each sought a certificate of
25 occupancy. Department of Buildings must have

1 Standing Committees on Cities, Codes & Housing - 9-7-06 249
2 sufficient personnel to check all permitted and
3 non-permitted jobs to see if they have permits
4 and are conforming to the plans filed and issue a
5 stop work order if they are not.

6 In recent years, Community Board 15 has
7 heard a number of legalization cases. Applicants
8 claim zoning regulations were ignored by the
9 architect or contractor, yet each applicant has
10 no evidence to support his claim.

11 CHAIRMAN BRENNAN: You're referring to
12 the property owner in that predicament?

13 MS. SCAVO: Property owners, architects,
14 engineers, somebody did it but nobody knows who.

15 This willful disregard of existing zoning
16 regulations does not result in any form of severe
17 penalties. The fines imposed, if any, are
18 laughable. If I could afford to build a million
19 dollar home, a \$250 penalty would be a drop in
20 the bucket.

21 As an example, there was a current case
22 of an architect, who we've been talking about all
23 morning but nobody says his name, who designed
24 his building, definitely in conflict with zoning
25 laws. These buildings received certificates of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 250
2 occupancy, and some were occupied, when the
3 inconsistencies with the zoning regulations came
4 to light. When the Department of Buildings
5 decision was that the architect would promise not
6 to self certify any future buildings and no other
7 action was taken.

8 It is obvious that as long as the
9 penalties are minimal or non-existent, this
10 willful disregard of zoning laws will continue
11 unabated. If an owner is forced to cut down his
12 over building and if an architect or contractor
13 can lose their license and face severe monetary
14 penalties, I feel that the vast majority of law
15 breaking would cease after several examples of
16 penalties occur.

17 On a personal note, Department of
18 Buildings in Brooklyn is fantastic. They are
19 going above and beyond trying. Personally, I
20 don't think they have the manpower. They need
21 help.

22 CHAIRMAN BRENNAN: Understood. Thank
23 you very much for your testimony. I agree with
24 everything you say.

25 You've heard much of the testimony today

1 Standing Committees on Cities, Codes & Housing - 9-7-06 251
2 that the problem of the inadequate fines is a
3 severe one and that enforcement powers, far
4 beyond minimal fines, licensing, revocation of
5 licenses, prohibitions on continuing to do
6 business, and other things of this nature are
7 really -

8 MS. SCAVO: Assemblyman Brennan, if I
9 could afford to go to Manhattan Beach and buy a
10 piece of property - because I'm not buying the
11 house, I'm going to knock it down anyway - I
12 could afford to go there for a million and then
13 put up between a million and a \$2 million home,
14 and you're going to come hand me a \$250 fine, I'm
15 going to go oh, really, like what are you going
16 to do to me. This is the attitude we're seeing.

17 Like, oh, big deal. That's horrible. You have
18 to really punish.

19 These people have to realize that they
20 are laws for a reason and you just can't say I'm
21 special, I don't have the listen to those laws.
22 And that's what's happening now, people just feel
23 as though I could get away with it.

24 So please, whatever, try and help.

25 CHAIRMAN BRENNAN: We're trying.

2 Appreciate your testimony a great deal.

3 MS. SCAVO: Thank you.

4 CHAIRMAN BRENNAN: Dmitriy Shenker.

5 There you are. President, AIA, Brooklyn Chapter.

6 Nice to see you.

7 MR. SHENKER: Nice to see you too.

8 DMITRIY SHENKER, having first been duly
9 sworn by a Notary Public of the State of New
10 York, testified as follows:

11 CHAIRMAN BRENNAN: Welcome. Good to see
12 you again.

13 MR. SHENKER: Good afternoon. My name
14 is Dmitriy Shenker. I am President of Brooklyn
15 Chapter of the American Institute of Architects,
16 and I am here representing AIA Brooklyn.

17 I would like to start from saying that
18 the operations of the New York City Department of
19 Buildings were improved in the last several
20 years, and made more responsive to the needs of
21 the public. Noticeable changes occurred in
22 service, technology and professionalism.

23 CHAIRMAN BRENNAN: Mr. Shenker, did you
24 give us copies of your testimony?

25 MR. SHENKER: Yes I did.

2 CHAIRMAN BRENNAN: Okay. Go on.

3 MR. SHENKER: This is very importance
4 for architectural community and we are willing to
5 support work in this direction.

6 As it relates to the proposed questions,
7 we will respond to those where we hope to
8 compliment other testimonies.

9 Question number two was contained - how
10 often and in what circumstances does New York
11 City enforce the building code and the zoning
12 resolution through more aggressive tools?

13 I want to note that since the building
14 code is open to interpretations and changes, we
15 would like to stat that poor systematization and
16 inconsistencies are very damaging to the
17 professional and to the public. In this area we
18 need a lot of improvement.

19 Question number four said is there a
20 central reporting and investigations system? We
21 want to recommend in addition to the successful
22 311 service, a similar system for written
23 complaints, which are not currently tracked in
24 the same manner, and which are necessary for more
25 complicated cases. For example, if a

2 professional wants to explain something.

3 Question number five said should review
4 and approval powers of entities outside of the
5 Department be changed or expanded? We believe
6 that construction activity is public records and
7 enforcement should be further concentrated in the
8 Department of Buildings.

9 Question number seven said what is the
10 current law and practice regarding the
11 availability of construction plans to the public?

12 I would support what my colleagues said about -
13 I'm sorry. I want to mention that paperless
14 technology is nearest and very important reserve,
15 and we hope to see more documents in electronic
16 format. It will be available to the public and
17 to professionals to practice.

18 How does the current DOB system ensure
19 document integrity? Existing document filing and
20 retention system needs significant improvement,
21 mostly in area of recording technology and
22 routine handling. It should be much easier to
23 file documents and virtually impossible to
24 misplace or lose them, unlike it is now.

25 CHAIRMAN BRENNAN: You're saying that

2 it's continuing to be a problem in terms of
3 misplaced documents?

4 MR. SHENKER: Unfortunately, folders
5 lost, documents from the folders lost. Next file
6 and set maybe not in folder. So I see just the
7 first set and not the second amended. Also, on
8 the other side it was the same. Sometimes I want
9 to say something very simple to the Department of
10 Buildings. For example, I am moving drain or a
11 sink, something very simple. In order to do so I
12 need long procedures and I believe it should be
13 somehow changed to shorter procedures because
14 nobody is in danger here. This is a common
15 procedure. It's very simple. It creates more
16 problem for expeditors, which I will say
17 something about them.

18 Question number nine. Are DOB policy and
19 procedure notices applied consistently? Policy
20 and procedure notices have serious impact on
21 construction industry, yet their use varies in
22 time and changes sporadically. Also, there is no
23 professional review prior to implementation, nor
24 is there a complete listing of documents and
25 source where these can be researched. As a

1 Standing Committees on Cities, Codes & Housing - 9-7-06 256
2 result, official editions of zoning and code,
3 while presented as complete documents, to the
4 contrary, unnoticeably amended. All and every
5 active policy and procedure notice should be put
6 into clear and easily accessible system.

7 Question ten. When are Department of
8 Buildings objections and audits available to the
9 public? I would support the position of my
10 colleague about before permit, when I am
11 exchanging opinions with the Department of
12 Buildings about my design it should be my and
13 Department of Buildings matter. I agree with you
14 that after I receive permit and this is an
15 official document in public records and something
16 arise, new audit or any public concern about
17 approved document which was already approved,
18 that means I believe and the Department of
19 Buildings believes that this is buildable and we
20 have concern about if it is, then it may become
21 necessary to keep it open to the public.

22 But before my discussion with the
23 Buildings Department, just not complete project.

24 I don't think it has sense to open to public to
25 discuss something not finished.

2 CHAIRMAN BRENNAN: So you agree that
3 once a permit is issued and that DOB audit
4 objection.

5 MR. SHENKER: Yes, if there are
6 objections raised, concerns which I am unable to
7 explain. People raise concern something which I
8 can easy explain, maybe it is a document not in
9 folder, either lost or just not included but they
10 need clarification. If I can so easy can clear
11 this issue, this is just, again, clarification.
12 But if somebody professionally certified job and
13 then it's audited and found serious concerns, I
14 agree with you that this may need to be open.

15 Question 12. How frequently are
16 completed buildings denied certificates of
17 occupancy? We all understood how serious this
18 problem is for owner, and nobody wants to have
19 denied certificate of occupancy. So we want to
20 stress that in order to improve this problem,
21 public needs more education about architecture
22 and building law, as well as industry needs
23 technical examination and licensing for
24 construction managers.

25 Question 13. Does professional

1 Standing Committees on Cities, Codes & Housing - 9-7-06 258
2 certification allow excessive noncompliance with
3 the building code and zoning resolution?

4 Zoning and code are intended for
5 professional interpretation. In its turn,
6 regular examination verifies interpretations.
7 Professional certification program originally was
8 initiated to expedite approvals without prior
9 examination, while audits were intended to timely
10 indicate areas for additional control and to
11 mitigate differences in interpretation. To the
12 best of our knowledge and belief, most failed
13 audits revealed either understandable deviation
14 in interpretation or minor project deficiencies.

15 AS to the noncompliance cases, we have to note
16 that some of them re misinterpretations due to
17 ambiguity of the law.

18 When there are repeated cases of
19 noncompliance that do not constitute either
20 professional misconduct or illegal practice as
21 legally defined, the Department of Buildings
22 should have the right to suspend the privileges
23 granted, consistent with its approved procedures
24 and clear guidelines. However, when there are
25 cases of proved abuse of the system, they should

2 be qualified by commissioner as professional
3 misconduct and then reported to the New York
4 State Education Department Office of Professional
5 Discipline. In relation to that, special
6 attention should be paid to unlicensed
7 practitioners, who are taking advantage of
8 complexity of the Department of Buildings
9 procedures.

10 Question 14. Should professional
11 certification be abolished or restricted?

12 The AIA Brooklyn position is that with
13 proper procedures and clear guidelines no other
14 restrictions are required. While Department of
15 Buildings should be able to suspend professional
16 certification privileges based on the guidelines,
17 Office of Professional Discipline has adequate
18 enforcement powers over professional misconduct
19 and illegal practice. To improve quality of plan
20 review, Department of Buildings needs more
21 professionals with practical experience. That
22 could be achieved by establishing peer review
23 panel.

24 The design professionals are licensed to
25 practice statewide and no special licensure

2 requirements should be for the City of New York.

3 To practice in New York City, you currently
4 require not a special knowledge, but better law
5 systemization and clear, user-friendly
6 procedures. These procedures shouldn't be knotty
7 to the level comparable with complexity of
8 building design.

9 However, we want to note that expeditors
10 should be under much stricter control. We need
11 to ensure that they represent professional, but
12 not act independently or even manipulate process.

13 Other necessity is to establish technical
14 examination and licensing of general construction
15 managers, who should bear more responsibility for
16 proper implementation of project.

17 This is complete.

18 CHAIRMAN BRENNAN: I appreciate your
19 testimony a great deal. You've sort of
20 elaborated a little bit further on some of the
21 previous testimony by AIA and I appreciate that.

22 Once again, we will continue to work with
23 the Architects Association and with you, and I
24 know the Brooklyn Chapter members, to try to get
25 the best outcome for this process.

2 MR. SHENKER: Thank you.

3 CHAIRMAN BRENNAN: Thank you.

4 Okay. Our next witness is Patricia
5 Dolan. Is she here? Patty Dolan? No. Okay.
6 We're going to allow Borough President
7 Markowitz's office to testify at this time.
8 Richard Bearak.

9 RICHARD BEARAK, having first been duly
10 sworn by a Notary Public of the State of New
11 York, testified as follows:

12 CHAIRMAN BRENNAN: You heard that he
13 wants you to tell the truth and you swore to do
14 it.

15 MR. BEARAK: And you know I will.

16 CHAIRMAN BRENNAN: I know you will.
17 Thanks for being here.

18 MR. BEARAK: Thank you, Chairperson
19 Brennan, and the members who were here before
20 from the various committees for allowing me to
21 read the remarks for Brooklyn Borough President
22 Marty Markowitz. My name is Richard Bearak. I
23 am Marty's Deputy Director for Planning and
24 Development. And I am here to present Marty's
25 recommendations as you explore the duties,

1 Standing Committees on Cities, Codes & Housing - 9-7-06 262
2 obligations and accountability of New York City's
3 regulatory system for construction, development
4 and zoning enforcement.

5 Marty, if he was here today, he'd say
6 that Brooklyn could not be better represented by
7 the outstanding Assembly members that head the
8 various committees, including Assemblyman
9 Brennan, and their districts are in very capable
10 hands.

11 CHAIRMAN BRENNAN: He's absolutely
12 right.

13 MR. BEARAK: Because I'm telling the
14 truth, as you said. So I'll go on with Marty's
15 remarks.

16 I suspect that all of you, like myself,
17 have been compelled to devote too many of your
18 office's resources to assisting residents
19 concerned about development issues. Residents
20 and neighborhoods are coming to us because, in
21 this climate of unprecedented development
22 activity in Brooklyn, which we all welcome and
23 encourage, there is a growing perception that the
24 Buildings Department isn't doing enough to
25 protect the rights and property of our residents

1 Standing Committees on Cities, Codes & Housing - 9-7-06 263
2 who already call Brooklyn home. Although we know
3 this is not the case, there are changes that must
4 be made as our population increases and the need
5 for new construction continues.

6 The way I see it, we have a real
7 opportunity here, an opportunity to restore the
8 Department of Buildings to its rightful place as
9 a tough player in the development process, and to
10 re-establish it in the hearts of New Yorkers as a
11 balanced, diligent advocate and protector. The
12 Department of Buildings can be a model agency, a
13 force in ensuring that New York City of tomorrow
14 is viewed by the future generations as fair and
15 equitable, and that we preserve the character of
16 our distinctive neighborhoods while accommodating
17 inevitable growth. We have a chance to get
18 things right and send this message to residents,
19 developers, and the rest of the world, which
20 looks to New York as a beacon, that this big City
21 knows how to grow intelligently and caringly. In
22 order to achieve this, the culture at the
23 Buildings Department must evolve to view
24 residents as their customers on an equal, if not
25 higher, level than the development community.

2 The Department of Buildings has already
3 made tremendous strides with regards to having
4 information online through its electronic
5 document initiative. Now, the way the Department
6 handles zoning compliance and enforcement must
7 also come in line with the 21st Century realities.

8 Residents also need to be able to more easily
9 obtain information regarding their rights, have
10 adequate means of monitoring projects. Most of
11 all, they must be able to have faith that the
12 City is being responsive to their interests and
13 ensuring that developers, architects and builders
14 are not flouting laws and regulations with
15 impunity.

16 Let's talk first about changes in
17 inspections and enforcement.

18 I do applaud the Buildings Department for
19 its new initiative in terms of notification, but
20 more needs to be done.

21 CHAIRMAN BRENNAN: What are you
22 referring to, Richard?

23 MR. BEARAK: In terms of -

24 CHAIRMAN BRENNAN: The new building self
25 cert?

2 MR. BEARAK: That, also, I will comment
3 on. But in terms of notification, in terms of
4 demolition, we were advised -

5 CHAIRMAN BRENNAN: Excavation and
6 demolition.

7 MR. BEARAK: Yes.

8 First and foremost, zoning enforcement
9 should never have to be the job of neighboring
10 residents or, frankly, the job of the Borough
11 President or members of the Assembly, barring
12 circumstances that require authority beyond that
13 of the Department of Buildings.

14 I'll give you an example of a situation
15 which should have been adequately addressed
16 within the Buildings Department. Last year, the
17 Marine Park community brought the case of 2232
18 Kimball Street to my attention. The neighbors
19 could not believe that a six story building might
20 be constructed on this block of three story
21 homes. Every inquiry with the Department of
22 Buildings showed the plans were valid.

23 When I directed a member of my staff to
24 intercede on behalf of the neighbors, he needed
25 only a few minutes to spot multiple errors in the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 266
2 zoning analysis that had been reviewed and
3 approved by the buildings plan examiner. I
4 requested a formal audit citing where the agency
5 should not have concurred with the architect's
6 submitted analysis and the Brooklyn Borough
7 Commission issued a stop work order. Relevant to
8 this situation, we strongly support the agency's
9 effort to upgrade the job training of plan
10 examiners to keep current with the latest
11 modifications to the zoning resolution. These
12 examiners must be experts in their field. The
13 public deserves no less.

14 In areas where developers are rushing to
15 get vested, communities must be certain that
16 plans are being checked. Regarding self
17 certified plans, though the vast majority of
18 architects are truthful, too many intentional
19 end-runs or honest mistakes have resulted in
20 approved plans not actually being compliant.

21 We applaud the agency's recent
22 announcement that zoning analyses will be
23 reviewed by agency staff. It is asking too much
24 of our extremely dedicated residents that they
25 become overnight zoning experts and take on

1 Standing Committees on Cities, Codes & Housing - 9-7-06 267
2 developers working on wrongfully approved
3 projects.

4 When it comes to enforcement of work-our
5 restrictions, the Buildings Department must
6 thwart the hide-and-seeK games of unscrupulous
7 developers, shutting down illegal activity more
8 quickly. The Department has announced plans for
9 a pilot after-work hour's enforcement initiative,
10 but it has been announced as a weekend-only
11 initiative. I have made it known to Buildings
12 that this measure should be broadened, that the
13 agency should provide week-long, after-hour
14 inspectors to neighborhoods, including those
15 areas where rezoning applications have been
16 certified by the Department of City Planning.

17 Recently, Buildings offered to pay
18 particular attention to sites that would benefit
19 from random inspections by the Building
20 inspection safety team, often know as the Best
21 Squad. That's good to hear, because random
22 inspections work. Let's face it. When
23 contractors know that the agency is watching over
24 them more closely, they think twice before
25 abusing the law. I support funding to hire a

1 Standing Committees on Cities, Codes & Housing - 9-7-06 268
2 sufficient number of inspectors to place fear in
3 developer and contractors and let them know that
4 business as usual means doing it by the rules.

5 I applaud the agency for its Brooklyn
6 pilot initiative of requiring initial zoning
7 review pre-screenings for self-certified
8 applications. This change, combined with
9 rigorous enforcement, would eliminate the
10 personal strife that residents endured during the
11 recent rezonings of Homecrest, Midwood, the South
12 Slope and Greenwood Heights, as Assemblyman
13 Brennan has also had to deal with.

14 Regarding constituent service. When
15 construction occurs in the immediate vicinity of
16 one's home, it can become an emotional issue.
17 Often, it is only when you learn that the
18 property next door is being demolished that you
19 find out the zoning allows for buildings that are
20 not in the same scale with buildings on your
21 street, compounding that is the fear that
22 construction could place your house at risk. Add
23 the noise, dust and idling trucks, and the often
24 frustrating labyrinth of 311 and you have a
25 situation that none of us wants to endure. For

1 Standing Committees on Cities, Codes & Housing - 9-7-06 269
2 residents in these situations, more resources
3 must be made available online. For example,
4 there should be online link to zoning compliance
5 analysis. Additionally, more and more architects
6 are preparing their plans electronically, and I
7 do not see why such plans could not be made
8 accessible online. In fact, self certified plans
9 should be submitted electronically so that the
10 community can look at them online. As plans are
11 reviewed and objections are noted, the plan
12 examiner's objection sheet should be another form
13 available for viewing as well.

14 With regard to excavations, adjacent
15 owners should be able to view online basic
16 information of what their rights are in terms of
17 contractor access to their property and what is
18 the obligation of the contractor to protect their
19 property. Having all of this and more available
20 online would serve the public interest and build
21 trust. And if there is a significant constituent
22 concern, a more direct number than 311 should be
23 provided. Once a constituent contacts the
24 Department, getting phone calls returned and
25 having meeting requests filled in a timely manner

1 Standing Committees on Cities, Codes & Housing - 9-7-06 270
2 should be given.

3 The Buildings Department is a venerable
4 part of the city government and its relevance to
5 the future of the City cannot be overstated. It
6 can and should take a stronger hand in the
7 development process and renew the public's faith
8 in its ability to protect New Yorkers as the City
9 grows.

10 Thank you for chairing this meeting and
11 for the opportunity to express my views.

12 Marty intends to submit more detailed
13 information. Thank you.

14 CHAIRMAN BRENNAN: Thank you, Richard.
15 Let me thank you for your tremendous
16 professionalism as a public servant working for
17 the Borough President.

18 You may have heard me mention that one
19 aspect of legislation that we are looking at is
20 to increase the powers of community boards and
21 borough presidents in relation to accountability
22 issues for the Department of Buildings -
23 deadlines, hearing, compulsory reviews, things of
24 that nature. And so I'm hoping that you will
25 think about that and kind of put together a wish

1 Standing Committees on Cities, Codes & Housing - 9-7-06 271
2 list, not necessarily that we're going to be able
3 to pass every one of them, of course.

4 MR. BEARAK: Appreciate the offer and we
5 will do so.

6 CHAIRMAN BRENNAN: Thank you very much.
7 Appreciate your testimony.

8 Okay. Bob Furman. He said he was coming
9 back. Okay. He'll be returning.

10 Mark Kriss. Thank you for your patience.

11 I've seen you here in the audience all day long,
12 and I commend you for your endurance
13 capabilities. I don't know if they're aerobic.

14 MR. KRISS: Mr. Chairman, I thank you for
15 your patience and your service to the community,
16 and the city, and the state at large. I'm -

17 CHAIRMAN BRENNAN: We need to swear you
18 in.

19 MR. KRISS: I'm sorry.

20 MARK C. KRISS, having first been duly
21 sworn by a Notary Public of the State of New
22 York, testified as follows:

23 MR. KRISS: My name is Mark Kriss. I am
24 an attorney. I am legislative counsel to the New
25 York State Society of Professional Engineers.

2 CHAIRMAN BRENNAN: Very good.

3 MR. KRISS: We have about 3,000 members,
4 licensed professional engineers. There are
5 approximately 25,000 licensed professional
6 engineers in New York State, and they practice
7 all disciplines - civil, mechanical, electrical,
8 you name it. And they also practice in all kinds
9 of practice settings. They're in government.
10 They're in industry. They're in education.
11 Predominantly they're in consulting. But they're
12 in the whole spectrum of practice settings.

13 I want to focus on two principle items.
14 You already have our testimony. And I want to be
15 as brief as possible -

16 CHAIRMAN BRENNAN: That would be
17 wonderful.

18 MR. KRISS: and as succinct as possible.
19 Self certification of professional
20 certification. Our membership feels very
21 strongly that the process is fundamentally sound,
22 that the current mechanisms, which today were
23 discussed in detail, including the potential for
24 some refinement work, they work, essentially.
25 Meaning that the city has the ability to police

2 instances where a design professional, be it an
3 engineer, professional engineer or an architect,
4 has abused the system to a degree where if you
5 make an error - everybody is human. And those
6 types of errors can't be the subject of a heavy
7 hand. But if somebody has abused the system and
8 intentional conduct, it's fairly - and you can
9 discern what it is, then that person should
10 rightfully be precluded from using that process.

11 We have no problem with that. And appropriate
12 cases should, and are, referred to the State
13 Education Department Office of Professional
14 Discipline.

15 As Frank Munoz advised the panel, they
16 prosecute those cases. They prosecute the 40
17 plus some odd other professions, 800,000 people.

18 It's a big responsibility and they take it very
19 seriously, and the penalties are very much
20 appropriate, given whatever the particular charge
21 that's proven. By the way, he didn't mention,
22 but I think this is fairly accurate. Their
23 success rate in prosecutions approaches something
24 in the order of 98 percent. So when they
25 determine that a case is meritorious, they really

2 go after it and they've been able to be
3 extraordinary successful in prosecution.

4 I said I wanted to make two fundamental
5 points; the first being that we believe that self
6 certification is sound. We don't know the
7 particulars of the statement by the Commissioner
8 with respect to this Rule 21 and the particulars
9 that are going to come forward with that. I
10 don't personally have knowledge of it. But if
11 it's going to really get at the right cases, we
12 have no problem with egregious being more
13 particularly defined.

14 And the second issue is whether the City
15 should have the ability to impose, independently,
16 sanctions and fine violations against
17 professionals. We wholeheartedly concur with the
18 State Education Department Office of the
19 Professions that that's the correct policing
20 agency. That the license is statewide. That if
21 we wound up allowing various municipalities to
22 police, it could just become unmanageable,
23 fundamentally unmanageable. We vehemently oppose
24 any kind of approach in that direction.

25 If OPD isn't do their job, fix OPD.

2 That's essentially how we view it.

3 And with that, I will ask if you have any
4 questions.

5 CHAIRMAN BRENNAN: Yes, I do. You heard
6 some discussion about the fact that certain types
7 of - like the City Department of Health under
8 certain circumstances involving -

9 MR. KRISS: Article 28.

10 CHAIRMAN BRENNAN: Yes, Article 28 -
11 that they have a duty to report this to the
12 Office of Professional Licensing. What is your
13 view as to DOB having some kind of duty to report
14 some threshold of submissions that are
15 continuously inaccurate, something of that
16 nature?

17 MR. KRISS: The question hasn't been
18 presented to our executive committee or
19 leadership of the Society. My own personal view
20 of it would be, if that threshold were defined in
21 a fashion that was egregious, because there's
22 really not much sense to require referrals. I
23 think there were 142 some odd referrals and 40
24 some odd actions that were noted over the ten
25 year period in the testimony that the OPD

1 Standing Committees on Cities, Codes & Housing - 9-7-06 276
2 representatives gave. Somewhere around those
3 numbers. And I think it would be a question of
4 defining that threshold in a fashion that would
5 make some sense, otherwise you're just going to
6 create a process that doesn't lead to very much
7 of anything.

8 CHAIRMAN BRENNAN: Just to follow up for
9 one sec. The Comptroller's office did an audit
10 of the self certification program and determined
11 - these are DOB figures - that 59 percent of the
12 audits of self certified plans revealed errors.
13 And so obviously 59 percent of 40,000 submissions
14 or 30,000 self certified submissions would means
15 thousands of errors, many of them are clearly
16 unintentional. They are technical
17 interpretations and so on and so forth. So we're
18 not talking about a duty to report a mere error
19 in somebody's submission. But a pattern of it.

20 MR. KRISS: I think that would, in my own
21 personal judgment, probably be a sound direction
22 to look at going. I understood that the zoning
23 resolution, as it's called, is described as
24 Talmudic by - I'm Jewish by faith, but what do I
25 know.

2 CHAIRMAN BRENNAN: It's a Gaelic term.

3 MR. KRISS: But in any event, I

4 understand that it has a lot of complexities.

5 The overwhelming percentage of engineers
6 and architects, to my experience and I've been
7 working with them for about 18 years, are truly,
8 as a group, one of the more admirable subsectors
9 of our society. They are people who are
10 upstanding citizens who care, who participate in
11 civic duty and take it very seriously and take
12 their patriotic duty very serious, for the most
13 part. I think they're, as a whole, very well
14 meaning people. Those statistics surprise me
15 that they'd even make that level of inadvertent
16 errors. So I think perhaps some consideration
17 about this zoning resolution, and perhaps making
18 it more user friendly, would probably be a very
19 good idea, and the same thing true for the zoning
20 provisions. Perhaps if they're more intelligible
21 then there would be less errors.

22 CHAIRMAN BRENNAN: Much appreciated. I
23 hope to be able to call on you -

24 MR. KRISS: Please.

25 CHAIRMAN BRENNAN: and your organization

1 Standing Committees on Cities, Codes & Housing - 9-7-06 278
2 as we look at issues related to excavation and
3 suring where the technical expertise of the
4 engineering system is more involved.

5 MR. KRISS: We would be happy to deal
6 with those issues and also correct some degree of
7 erroneous assumptions that might exist, in terms
8 of the mind of people. For example, the
9 placement of equipment on a building, whether
10 it's stationery cranes or whatever, there may be
11 plans that call for one thing and if a contractor
12 does something else it clearly isn't the
13 engineer's fault. It may have been designed
14 properly, but if they use the wrong equipment you
15 can't turn around and say the engineer is at
16 fault. So I think there's a lot of need for
17 understanding about whose responsibility is
18 where.

19 CHAIRMAN BRENNAN: I just wanted to let
20 you know, until I got intimately involved with
21 this issue of self certification it came as a
22 surprise to me that there any dishonest
23 architects or engineers. What I mean is it's not
24 something that's common.

25 MR. KRISS: That's correct.

2 CHAIRMAN BRENNAN: These professionals
3 are, generally speaking, highly reputable.

4 MR. KRISS: Thank you. And I concur.

5 CHAIRMAN BRENNAN: Thank you.

6 MR. KRISS: Thank you.

7 CHAIRMAN BRENNAN: Okay. Susan Siegel
8 or Richard Silverman. The two of you are
9 together. Okay. Welcome. Good to see you.

10 MR. SIEGEL: Nice to see you, Assembly
11 Member. And thank you very much for chairing
12 this meeting. It's very important to us as
13 Victorian Flatbush.

14 CHAIRMAN BRENNAN: We need to have you
15 sworn in.

16 SUSAN SIEGEL, having first been duly
17 sworn by a Notary Public of the State of New
18 York, testified as follows:

19 MS. SIEGEL: I brought with my our
20 resident expert on zoning, as Richard Bearak from
21 the Borough President's office stated earlier, to
22 speak on behalf of a zoning committee that
23 Flatbush Development Corporation has put together
24 to address the issues of, I would say, demolition
25 of many of the beautiful Victorian homes in our

1 Standing Committees on Cities, Codes & Housing - 9-7-06 280
2 area, in the R6 zoning areas, as well as other
3 zoning issues regarding illegal conversions and
4 so forth. And I just want to thank you
5 personally for coming to those meetings, as well
6 as representatives from Assembly Member Rhoda
7 Jacobs' office. We also have the support of
8 Yvette Clark. And we're working very hard on the
9 ground to do what we can as residents.

10 Now I'd like to introduce Richard
11 Silverman, as I said, who has worked many, many
12 more years than I have, so I asked him to speak
13 on behalf of the zoning committee.

14 RICHARD SILVERMAN, having first been duly
15 sworn by a Notary Public of the State of New
16 York, testified as follows:

17 MR. SILVERMAN: Thank you for allowing me
18 to speak. I'm one of those homeowners that
19 Richard Bearak characterized as an overnight
20 zoning expert. It's a subject about which I knew
21 almost nothing until about two years ago when I
22 started seeing demolitions in adjoining
23 neighborhoods. And I'm going to address my
24 remarks mostly to Flatbush.

25 I'd like to thank you for helping our

1 Standing Committees on Cities, Codes & Housing - 9-7-06 281
2 Committee, and for the support you've given us
3 and for the support from the Borough President's
4 office as well.

5 Victorian Flatbush is the largest
6 community of late Victorian houses in the United
7 States. A variety of styles are represented,
8 including colonial revival, arts and crafts,
9 American four square, et cetera. We've submitted
10 maps and photographs.

11 Unlike many of New York City's
12 residential neighborhoods, Victorian Flatbush is
13 characterized by open space. Good frame houses
14 with open front porches, surrounding by grass and
15 towering trees. One might assume that the New
16 York City government would have taken effective
17 measures to protect this architectural
18 treasuring. In fact, only two of the Flatbush
19 developments are currently land marked. What
20 preserved this turn-of-the-century enclave is the
21 economic decline that set in during the Great
22 Depression. To the end of the 20th Century,
23 Flatbush never recovered the prestige it enjoyed
24 in the years prior to the 1929 crash.

25 In the last few years, Victorian

2 Flatbush, along with adjoining communities, have
3 seen a rapid rise in desirability and real estate
4 values. Flatbush homeowners suddenly noticed a
5 marked increase in demolitions in nearby
6 neighborhoods. When we began consulting zoning
7 maps to see if we were adequately produced, to
8 our dismay we found that several developments,
9 including Beverly Square West, Beverly Square
10 East, Ditmas Park West and South Midwood are not
11 zoned to reflect their actual housing stock.
12 Blocks of one-family houses, some on lots as
13 large as a quarter of an acre, are zoned for row
14 houses. Blocks of row houses are zoned for
15 parking buildings.

16 We regard the apartment house zoning, R6,
17 as especially dangerous. One has only to visit
18 numerous blocks around the City to see the result
19 of this zoning where houses once stood. One or
20 two houses are bought and demolished and replaced
21 by an apartment building. Then the next house in
22 the shadow is sold and within a year an entire
23 blocks of homes are gone. It's a true domino
24 effect.

25 We are in the process of photo

1 Standing Committees on Cities, Codes & Housing - 9-7-06 283
2 documenting all of the R6 blocks and inviting CPC
3 to visit Victorian Flatbush in order to see the
4 homes in danger of demolition. Working with the
5 Borough President's office and other elected
6 officials, we are trying to persuade CPC to do an
7 emergency partial down-zoning to deal with the R6
8 danger immediately. We've submitted maps of
9 those vulnerable blocks.

10 The more we studied the zoning issue, it
11 appeared to be a citywide problem. The current
12 zoning resolution is decades old and seemed to
13 reflect a pessimistic view of the City's future
14 in which middle class would continue its
15 migration from the outer boroughs. Their
16 depleted neighborhoods would demolished and
17 replaced with higher density housing. This
18 depressing future did not materialize.

19 CPC now has many requests for down-
20 zoning. I have spoken to CPC staff and attended
21 community board meetings at which they have
22 testified. I am impressed with the knowledge and
23 professionalism of the CPC staff. However, CPC
24 may not be a large enough agency to study all of
25 the communities that are now demanding down

1 Standing Committees on Cities, Codes & Housing - 9-7-06 284
2 zoning in order to save themselves before
3 developer exploit the current inaccurate zoning.

4 We have a number of suggestions and
5 questions.

6 Can the CPC receive more funding in order
7 to increase staffing levels?

8 Can the down zoning process be speeded
9 up?

10 Can CPC be given the legal authority to
11 place a building moratorium in place while it
12 considers requests for down zoning? This would
13 prevent many precipitous demolitions that got in
14 under the wire.

15 The outer boroughs are once again very
16 desirable places in which to live. They won't be
17 for long if established communities are buried in
18 the sea of concrete and asphalt and local streets
19 clogged with traffic.

20 Thank you for allowing us to speak.

21 CHAIRMAN BRENNAN: Thank you for your
22 clear and succinct testimony.

23 You heard the buildings commissioner, I
24 hope, if you were here, mention that the City is
25 zoned for 11 million people, notwithstanding the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 285
2 fact that it has eight million people in it,
3 roughly speaking. And what I think she meant by
4 that is R6 types of designations throughout in
5 which low and median density communities. That
6 is the actual scale. But the zoning does not
7 correlate with the existing scale. And so in
8 theory the City could be built out right now to
9 11 million people rather than eight and it would
10 be legal.

11 MR. SILVERMAN: My impression is that
12 that conflicts with the current CPC philosophy to
13 try to zone according to current housing stock.

14 CHAIRMAN BRENNAN: Understood. And your
15 questions and suggestions are extremely
16 pertinent. I want to let you know that my office
17 will work with you and certainly Marty and all
18 the other elected officials that are particularly
19 concerned about Victorian Flatbush and want CPC
20 to be extremely responsive to you and we will
21 work with you.

22 MR. SILVERMAN: Thank you very much. We
23 really appreciate it. Thank you.

24 CHAIRMAN BRENNAN: Thank you.
25 Appreciate your testimony a great deal, as well

2 as your work in the community.

3 CHAIRMAN BRENNAN: Aaron and Mic, are
4 you ready? Aaron Brashear and Mic Holwin,
5 Concerned Citizens of Greenwood Heights.

6 AARON BRASHEAR, having first been duly
7 sworn by a Notary Public of the State of New
8 York, testified as follows:

9 CHAIRMAN BRENNAN: Welcome.

10 MR. BRASHEAR: Thank you. Assemblyman
11 Brennan, thanks very much for the opportunity to
12 speak. It's been nice to hang out here all day.

13 CHAIRMAN BRENNAN: Thanks for your
14 patience.

15 MR. BRASHEAR: I wanted to say first of
16 all thanks to you and your staff that have
17 continually worked night and day on the rezoning
18 of South Park Slope and Greenwood Heights and
19 also continuing through to the BSA, especially on
20 properties that aren't even in your district,
21 which to me is most proud to work with you. So
22 thank you very much on that. Hopefully this
23 coming Tuesday will be the last time we will have
24 to be in front of the BSA for a while.

25 CHAIRMAN BRENNAN: I don't think so.

2 MR. BRASHEAR: One comment before I
3 start. Commissioner Lancaster had made a
4 statement and there was some agreement, from a
5 personal perspective. She had said that there
6 were only a small number of people who do a large
7 number of bad things when it comes to building in
8 the City or the Borough. And I would disagree
9 with her in our particular area. I think of the
10 50 plus sites that we've witnessed, there's maybe
11 been one or two developers, their construction
12 companies and their architects who have actually
13 done things 100 percent legal, or at least they
14 look 100 percent legal. The majority of the
15 people have not been the most trustworthy folks
16 that I've met in my life. But that that's
17 particular viewpoint.

18 As a cofounder of Concerned Citizens of
19 Greenwood Heights, I'd like to thank you for the
20 opportunity to speak at today's public hearing.
21 My community group, fellow community
22 organizations and our community board have had
23 firsthand experience of the effectiveness of the
24 current response and enforcement from the New
25 York City Department of Buildings. After two

1 Standing Committees on Cities, Codes & Housing - 9-7-06 288
2 plus years of rampant overdevelopment in our soon
3 to be one year old neighborhood of South Park
4 Slope in Greenwood Heights, it would be very easy
5 for me and my fellow neighbors to come before
6 this Committee with a litany of complaints
7 against the DOB and issue them a bad report card.

8 I feel enough people have done that today, so I
9 will try to be a little more constructive.

10 While I hope to cover three basic points
11 that are subjects on our report card, my hope is
12 to make this hearing a productive forum with
13 constructive criticism of the current systems in
14 place at the DOB and not a mere indictment of
15 DOB's current practices. I will focus my
16 testimony today on three topics - response,
17 enforcement and repeat offenses. And if I had a
18 fourth it would probably be, of course, self
19 certification, but that has been covered quite
20 heavily today to great satisfaction.

21 The first one in response. Members of my
22 community are community board and officers of our
23 elected officials, including yours, have lodged
24 thousands of complaints against development
25 sites, big and small, in our area over the past

1 Standing Committees on Cities, Codes & Housing - 9-7-06 289
2 two years. While some have been made directly to
3 the DOB, via our community board and local
4 elected officials, the majority of complaints
5 were logged by NYC's 311 complaint system. On a
6 whole, I believe the 311 complaint system's
7 interface with the DOB and the DOB's BIS system
8 is an effective way to inquire and report about
9 suspicious, potentially illegal or illegal
10 activity. It is an important way and, in some
11 cases, the only way for the public to interact
12 directly with the Department of Buildings.
13 However, in some areas I feel that this system is
14 flawed.

15 A complaint call, after an initial query
16 by 311 operator and then further discussion with
17 a 311 DOB specialist takes on average of about
18 five minutes. This is a fairly quick and
19 effective way to lodge a concern or complaint.
20 The follow up complaint, via 311 from the DOB's
21 BIS system to an actual DOB inspector is a
22 different story, as we all know. While we have
23 seen occasional quick responses via the 311 call
24 in and filing a complaint, the majority of the
25 calls made via the 311 DOB system result in

1 Standing Committees on Cities, Codes & Housing - 9-7-06 290
2 extended delays in responses by DOB inspectors,
3 often happening days after the situation, maybe
4 one that's life threatening since its been
5 reported. Often this complaint, especially when
6 dealing with quality of life issues such as
7 after-hours work, no permits posted, air quality
8 concerns, et cetera, is never actually reserved
9 on-site. From what we have been able to
10 ascertain, many result clerically without an
11 actual inspection. I've actually witnessed this
12 firsthand in our neighborhood. This is obviously
13 a problem.

14 DOB has, at its disposal, a grass roots
15 citizens reporting system, via 311. Whether it's
16 an actual infringement of DOB bylaws or zoning
17 laws or possible illegal or dangerous activity,
18 the calling reporting system allows the DOB a
19 much broader and potentially effective system of
20 reporting issues that cannot be witnessed
21 firsthand by DOB inspectors.

22 We joke in our community that 311 has
23 become the cheapest therapist and the quickest
24 fix to soothe citizen's concerns about ear
25 splitting Saturday demolition, clouds of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 291
2 construction dust covering their homes or their
3 backyards, which may be seeping into the building
4 site adjoining their property. Now if we could
5 only find a real solution to this system.

6 We do not assert that the 311 calling
7 system is a replacement for DOB inspectors.
8 While a few of our particular community's
9 residents are professionals in the construction
10 field - architects, engineers and tradesmen - the
11 average person can tell from the layman's
12 viewpoint if something doesn't look kosher,
13 especially if that person is being directly
14 affected by work being done on a jobsite.

15 On many occasions many neighbors witness
16 the same occurrence and call into 311 at the same
17 time to file similar complaints, and this adds
18 more reason for a timely response. We have been
19 told on many occasions that the City's Department
20 of Buildings is understaffed, underpaid and
21 overworked. While I may have some sympathy for
22 the Department's situation, one that I will ask
23 the Mayor's office and City Council to better
24 investigate, it cannot account for the hundreds
25 of complaints that were not addressed in a timely

2 fashion.

3 Better effort on response time is needed.

4 While we realize that DOB cannot rely on public
5 observation alone, perhaps the following examples
6 can be tried.

7 When an inspector responds to a complaint
8 and "cannot gain access to a jobsite" which is a
9 frequent reason listed on the BIS system for the
10 resolution of a complaint, call the person who
11 filed the complaint, assuming that they have left
12 their contact info and not remained anonymous,
13 who is usually an adjacent property owner. Use
14 access to their yard or building to observe the
15 issue. If we can clearly see a situation from
16 our windows or our yard, so can an inspector.

17 If a complaint is lodged about excess
18 vibrations due to excavation, follow up with the
19 adjacent homeowner who filed the complaint. When
20 responding to ongoing complaints such as work
21 after hours, show up the follow day at the same
22 time or the following weekend at the same time.
23 Don't show up on the following Sunday after a
24 Saturday work after hours complaint. Again, call
25 on the person who filed the complaint because

2 they may be able to give an inspector a better
3 understanding of the situation. Work with the
4 community that is being affected, and not
5 necessarily against it.

6 I will not discuss 311 complaints that
7 were never investigated, having lodged and seen
8 hundreds. That is a situation that is
9 unacceptable to myself and my community and must
10 be addressed by the DOB and not discussed here in
11 this form.

12 The second topic is enforcement.
13 Assuming the DOB inspector responds in a timely
14 fashion to a complaint and there is actual
15 illegal or potentially dangerous activity
16 occurring on the jobsite, what is done. It is my
17 layman's understanding that either a ticket or a
18 fine is levied or in cases where this is proven
19 illegal activity, a stop-work order is issued.
20 In my layman's opinion I have concluded, through
21 research via the DOB's BIS system, that these DOB
22 or ECB violations are far from stringent enough
23 to encourage proper building practices. A
24 several hundred dollar fine or even one or \$2,000
25 for illegal activity is a slap on the wrist for

2 most developers and their contractors. In the
3 most repugnant of examples, I find DOB's fine of
4 \$2,500 for building code violations that resulted
5 in a worker's death at 182 20th Street in Brooklyn
6 completely outrageous.

7 Enforcement should be more than writing
8 tickets and collecting paltry fines. It should
9 be about separating legitimate and legal
10 developers and construction companies from
11 illegitimate and dangerous ones. Up the stakes
12 to impose real world fines for illegal activity,
13 possibly a percentage of the total building's
14 cost or at least update the current fines to
15 create a potential financial hardship for an
16 unscrupulous developer. That alone would address
17 some of the DOB's fiscal issues. Fines must be
18 paid and enforced on a timelier basis, weeks not
19 months or even years after infringement. If
20 these are not paid, the issuance of a stop work
21 order should be mandatory.

22 The threat of criminal prosecution,
23 whether it through the New York City District
24 Attorney's Office, the Department of
25 Investigations or the Office of Administrative

1 Standing Committees on Cities, Codes & Housing - 9-7-06 295
2 Trials and Hearings, OATH, which was brought up
3 today, would make it clear that certain illegal
4 building practices would be actionable on legal
5 grounds, not just financial. This alone may curb
6 the rash of abuses that we have witnessed.

7 Clearly we can all agree that a developer
8 or contractor who is working on a multi-million
9 dollar project will be little concerned about the
10 cost of doing business, fines that are in place,
11 but if there is potential criminal culpability
12 involved, I would bet the citizens of this City
13 and DOB would see a drastic decline of illegal
14 activity by dubious developers and their
15 contractors who cut corners to speed up projects
16 or yield a higher profit margin.

17 Third topic is repeat offenders. And a
18 follow-up to my statement on enforcement, I ask
19 is there not something that can be done with
20 repeat offenders. In our area, in Brooklyn
21 alone, we have seen the same demolition
22 companies, contractors, architects and developers
23 who hire them continue to work on multiple
24 jobsites while violations levied against them on
25 one site or multiple sites still exist. How can

2 the DOB willingly issue permits to developers and
3 their contractors who time and time again have
4 proven to be irresponsible, and in some cases
5 illegal abuses of the DOB bylaws. How is the
6 system supposed to be effective in enforcing
7 punishment of bad behavior when the same
8 contractor or developer is issued work permits
9 after repeat offenses? What is needed is a much
10 closer review of the track record of a repeat
11 offender who breaks the law. DOB must be able to
12 cross reference past and current offenses.
13 Perhaps new work permits should not be issued to
14 a contractor or developer who has outstanding
15 violations. The DOB could even create a three
16 strikes you're out policy to suspend contractors
17 and developers from future projects. This is
18 understably difficult with the prevalence of LLCs
19 doing business in this community right now.

20 Or there could even be a ban on the worst
21 of the repeat offenders from doing business in
22 this fine City of ours. Again, this is an issue
23 that will require more effort on the part of the
24 DOB. More effort will require more funding and
25 more manpower.

2 This is why, in closing, I will not only
3 hold the DOB accountable for improving the three
4 topics I have discussed, as well as the myriad of
5 others that have come before you today, but our
6 elected officials, from Councilmembers to Mayor
7 to Governor. Our City and State have the ability
8 to help the DOB to improve itself through better
9 funding and training, culminating a more
10 effective administrative office and stronger
11 enforcement in the field. We, as citizens, must
12 encourage and perhaps even demand that our
13 elected officials in both the city and state
14 levels do everything in their power to help the
15 DOB evolve the city agency that it needs to be;
16 one that works for the betterment of the City
17 through ongoing development and construction, not
18 one that is mired down in its own lack of ability
19 to take administrative or enforceable actions
20 against those who ignore or abuse building code
21 and don't build by law.

22 Thank you.

23 CHAIRMAN BRENNAN: Thank you very much,
24 Aaron. Your testimony is appreciated. Of course
25 your work in Park Slope and Greenwood Heights is

1 Standing Committees on Cities, Codes & Housing - 9-7-06 298
2 greatly appreciated as well. Let me just let you
3 know that although I agree with you respect to
4 many of the problems about DOB, one of their
5 complaints is that their current power to reject
6 or deny permits or renewal of permits or
7 certificate of occupancy is very limited. They
8 want the State Legislature and the City Council
9 to give them some of those kinds of powers that
10 you referred to. And the issue of setting up a
11 system for scoff laws, three strikes and you're
12 out. You're not longer able to do business in
13 the City of New York if you have such a track
14 record of misconduct that you should not be in
15 business. These are all complex legal issues
16 that do not yet exist in law today that give the
17 Department of Buildings that power. So that's
18 one of the purposes of this, and I think one of
19 the things we have been struggling with. Since
20 most legislators are lay people, we're not
21 architects, engineers, planners and other
22 professionals in this very arcane world and so we
23 have to get up to speed in order to bring this
24 matter to a proper outcome.

25 MR. BRASHEAR: Absolutely. The future

1 Standing Committees on Cities, Codes & Housing - 9-7-06 299
2 will be bright when it comes to passing some
3 legislation that will help define those areas and
4 define an actual response system for the DOB or
5 other city agency, if it needs to be.

6 CHAIRMAN BRENNAN: Once again thank you.

7 MR. BRASHEAR: Thank you very much.

8 CHAIRMAN BRENNAN: Okay. Adam Friedman,
9 New York Industrial Retention Network. I think
10 he departed.

11 Bob Furman, Four Borough Neighborhood
12 Preservation Alliance. Bob, thank you for your
13 patience. I appreciate your returning to
14 testify. We're going to swear you in.

15 ROBERT FURMAN, having first been duly
16 sworn by a Notary Public of the State of New
17 York, testified as follows:

18 MR. FURMAN: Thank you very much Chairman
19 Brennan. I am sure that you will be able to
20 adequately represent the members who are not here
21 with us this afternoon.

22 CHAIRMAN BRENNAN: I'm glad they were
23 here and listening. Chairman Lentol, Joe Lentol
24 is Chair of Assembly Codes Committee. He has a
25 special interest because his district is an area

1 Standing Committees on Cities, Codes & Housing - 9-7-06 300
2 where overdevelopment is a major problem. And so
3 I think everybody's concern is here.

4 MR. FURMAN: My name is Robert Furman. I
5 am Chairman of Four Borough Neighborhood
6 Preservation Alliance Corporation, which was
7 established to oppose overdevelopment of the
8 forgotten boroughs of New York City.

9 The Board of Standards and Appeals
10 embodies the worst features of a court and a
11 legislature. Like a court, it makes its
12 decisions on narrow legal grounds. Like a
13 legislature, it is a bastion of cronyism since
14 the lawyers, engineers and architects who
15 practice before it know its procedures and
16 orientation better than anyone else because most
17 of them have been appearing before it for years.

18 It is virtually free to ignore the public
19 interest, policy consideration or community input
20 as expressed by community boards and
21 organizations. It has few guidelines for its
22 decisions since it often avoids writing
23 accountability regulations to avoid binding rules
24 and precedents.

25 The BSA is a quasi-judicial body

1 Standing Committees on Cities, Codes & Housing - 9-7-06 301
2 accountable only to the Mayor who appoints all of
3 its members. Communities provide only non-
4 binding input into its decisions through
5 community boards, but if the local board is
6 dominated by Council members and borough
7 presidents who are unsympathetic to a particular
8 community's concerns, or in thrall to developers,
9 they may be ignored. The communities that have
10 been successful in opposition applications are
11 generally wealthier ones, such as Greenwood
12 Heights, who can afford to retain their own land
13 use attorneys and who have sympathetic public
14 officials, like yourself, and community boards.
15 And even they have had limited success, and feel
16 obligated to spend as much as \$80,0000 on these
17 attorneys, something they should not have to do
18 to obtain some accountability and responsibility
19 from government bodies.

20 For example, the experience of the
21 Madison-Marine Association in attempting to limit
22 the application special permit rules for home
23 expansion in southern Brooklyn is instructive.
24 The permits are required to "not alter the
25 character of the community", and the Board is

1 Standing Committees on Cities, Codes & Housing - 9-7-06 302
2 entitled, under the enabling legislation, to
3 write rules defining the term which it has
4 declined to do in order to preserve its ability
5 to ignore the clause and guarantee maximum
6 flexibility in approving questionable
7 applications. The Department of City Planning
8 similarly declines to write appropriate rules
9 because of developer opposition expressed through
10 the local council members. The result, as with
11 many other BSA procedures, is that these special
12 permits result in a cumulative change in zoning
13 on a case-by-case basis. The character of the
14 community, which means how big the houses appear
15 from the street is, in fact, irretrievably
16 altered in spite of the text of the law.

17 Numerous good government groups have
18 looked at BSA and concluded that it, in fact,
19 engages in creeping rezoning by granting
20 variances and special permits for inadequate
21 reasons, that it allows developers to claim a
22 hardship in self created situations and is too
23 easily cowed by developers' arguments. Too
24 often, BSA commissioners look at the job as a
25 preface to a career as an attorney representing

1 Standing Committees on Cities, Codes & Housing - 9-7-06 303
2 clients before the body that they have been
3 members of, a situation allowed by the law after
4 an allegedly decent interval.

5 Most observers are of the opinion that
6 the board has improved over the last year under
7 the chairmanship of Meenakshi Srinivasan and the
8 Executive Directorship of Jeffrey Mulligan. But
9 they will not be there forever, and the longevity
10 of the problem suggests that permanent and
11 structural solutions are called for.

12 My organization supports the following
13 changes to attempt to permanently ameliorate this
14 condition.

15 First, the State Legislature, while
16 continuing to allow BSA to hear legitimate
17 appeals from city agencies decisions, should
18 severely restrict its jurisdiction over granting
19 variances. New York City's zoning is the product
20 of a process involving both professional
21 expertise and public input since it is carried
22 out by the Department of City Planning, community
23 boards, the City Planning Commission and the City
24 Council, and no quasi-judicial board should be
25 entitled to override it for reasons of

2 favoritism.

3 Second. Council Intro 261 sponsored by
4 Council Zoning and Franchises Subcommittee Chair
5 Tony Avella provides for review of land use
6 decision, as was the case with the old Board of
7 Estimate. We support this but would like some
8 understanding or insertion into the law that the
9 zoning law has to be followed in this so that
10 past problems, which have involved decisions of
11 the Board of Estimate being reversed on appeal,
12 do not arise again.

13 Mr. Avella's Intro 262 requires that land
14 use decisions made by a two-thirds majority of
15 BSA members to better provide for compliance with
16 the law.

17 Fourth. Mr. Avella's Intro 263 to return
18 the Board to its pre-character revision
19 composition. Before 1991, the members were
20 appointed by the borough presidents and the
21 mayor. The bill calls for this and the addition
22 of appointments by the other two citywide
23 officials and the council speaker. This would
24 provide for more accountability and diversity of
25 opinion.

2 The Board of Standards and Appeals has
3 been out of control for too long, and it needs to
4 be limited and reformed before it unilaterally
5 irretrievably alters the character of our beloved
6 neighborhoods.

7 If the Chair would permit, I would like
8 to review a few other matters that we have taken
9 positions on because they've been discussed here
10 and they are significant.

11 Generally we would hope that the City
12 Council and the State Legislature will find it
13 able to work together to deal with the problems
14 that have been raised today. And we'd like to
15 cite first some City Council bills that we
16 believe will be helpful in perhaps doing this.

17 There are several bills that are about
18 reforming self certification, most notably are
19 Intro 308 and 309 sponsored by Assemblyman Back
20 of the Bronx to require revocation of the self
21 certification privilege for architects and
22 engineers who have presented three false
23 applications in a year and also would create a
24 publicly accessible database of submissions by
25 professionals placed on probation by the State

2 Board of Regents.

3 Another set of bills deal with the issue
4 of illegal demolitions. Intro 3 and Intro 132
5 and Intro 43 are notable here. The fines would
6 be raised to five or \$10,000 per offense by
7 Intros 3 and 132, and Intro 43 requires the
8 police to enforce Buildings Department stop-work
9 orders. Intro 216, sponsored by Councilman
10 Gentilly (phonetic), would seek to raise fines
11 for violating stop work orders to \$2,000 a day.
12 Intro 38, sponsored by Councilman McMahon of
13 Staten Island, requires that community boards and
14 council members be given notice of new demolition
15 and building permit applications for buildings
16 over 75 years old. We would like to require that
17 that bill be amended to involve that the
18 applicants supply age information about the
19 buildings, which is derived from the City
20 register.

21 Another issue we would like to see
22 addressed is the enforcement of deed
23 restrictions. Most notably in Carroll Gardens,
24 the front yards on the houses are City property,
25 and this is an example of where the Buildings

1 Standing Committees on Cities, Codes & Housing - 9-7-06 307
2 Department claims it has no jurisdiction; neither
3 does the Transportation Department. Allowing
4 communities to register deed restrictions would
5 allow the Buildings Department to enforce these
6 and prevent people from parking their cars in
7 places that are supposed to be courtyards, which
8 is more like gardens which is how they're mostly
9 used, rather than parking lots.

10 A few bills that are pending in the State
11 and I'd like to talk about a little bit are most
12 notably Joe Lentol's developer escrow fund bill.

13 I attended the press conference where he
14 announced that bill, and I was utterly shocked.
15 This press conference took place at a building
16 that was essentially an abandoned construction
17 site. The contractor had started construction,
18 had apparently intentionally damaged the houses
19 next to him. We were told, which I found most
20 shocking, that he actually broke through a wall
21 to steal electricity from a neighbor.

22 We heard earlier about someone's house
23 that was damaged - I mean, Joe was talking about
24 someone whose house was damaged and she called
25 him to get a lawyer. This case was worse. These

1 Standing Committees on Cities, Codes & Housing - 9-7-06 308
2 two people were ordered to leave their own houses
3 by the Buildings Department because this guy
4 damaged them. And where were they then? They
5 had to file insurance claims, sue the developer,
6 and the developer disappeared. He abandoned the
7 site. They are probably left high and dry by
8 this. So Joe's idea of having an escrow fund or
9 a bond posted to indemnify against these is, I
10 would say, a no brainer.

11 Now on my previous point about the City
12 and State working together. My understanding
13 from both the Senate and the Assembly is that
14 this bill could have been enacted this year but
15 it was not because it required a home rule
16 message and the City Council did not manage to
17 provide one even though it had been requested by
18 Mr. Lentol. I think that that sort of lack of
19 communication is very unfortunate.

20 We, as a community organization which has
21 some involvement over the City, worked hard to
22 try to get the chair of that City Council
23 committee to act on this. We were not able to
24 reach her. Mr. McCalla (phonetic), who is in the
25 back of the room, tried for weeks to reach the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 309
2 chair of that committee without success. No
3 action was taken. By the time I was able to
4 reach a senior executive on the council structure
5 it was too late. The legislature had adjourned.

6 There should be some system by which high
7 priority bills that are of concern can be flagged
8 and brought to the attention of the Council so
9 that appropriate and necessary home rule messages
10 are provided.

11 The other thing that I'd like to discuss
12 briefly is that some of the abuse in new
13 construction in the City is taking place because
14 luxury housing is tax abated by the City of New
15 York. And this is almost unrestricted outside of
16 core Manhattan. And this is outrageous. Because
17 what it amounts to is that the Mayor says we want
18 to build new housing. This is a way of improving
19 our tax base. Well it would be if the houses and
20 the apartments which are worth hundreds of
21 thousands of dollars were not tax abated under
22 Section 421(a). That is outrageous because it
23 amounts to requiring the owners of other
24 apartments and other buildings to pay the tax
25 burden, to pay for the services provided to these

2 houses. That should not be the case. We
3 understand that 421(a) and (b) are going to
4 sunset at the end of the year. We personally
5 would like to see it replaced by a program to
6 support only affordable housing, such as the old
7 Mitchell-Lama program that the older members will
8 remember from the old days. But certainly it
9 should come along with requirements that
10 substantial amounts of affordable housing be
11 provided if a tax abatement is to be received.
12 Subsidizing luxury condo owners is not something
13 that most of would agree in the public interest.

14 So I'd like to thank you very much for
15 listening to our testimony and holding this
16 hearing. I think it's a great step forward. And
17 if you have any questions, I'll be glad to answer
18 them.

19 CHAIRMAN BRENNAN: Mr. Furman, Bob,
20 first let me say thanks to you for your testimony
21 and for the work of you and this new organization
22 that has come forward in the City of New York as
23 an advocate for all these issues that are the
24 subject of this hearing. Many of the points you
25 make are quite insightful, and I agree with many

1 Standing Committees on Cities, Codes & Housing - 9-7-06 311
2 of them. Just as a point of information, 421(b)
3 is expiring this year. 421(a) expires next year.

4 MR. FURMAN: At the end of 2007?

5 CHAIRMAN BRENNAN: Yes.

6 MR. FURMAN: Okay.

7 CHAIRMAN BRENNAN: And the Mayor, the
8 Mayor's office and HPD have indicated they do not
9 support a complete renewal of 421(a) as is, that
10 they acknowledge that most of it is unnecessary
11 because it relates to luxury housing, which
12 should pay taxes.

13 MR. FURMAN: They have introduced bills
14 into the Council, through Councilman Dilan
15 (phonetic), to require 20 percent affordable
16 housing in any.

17 CHAIRMAN BRENNAN: All I'm saying is
18 that the Legislature will take up 421(a) next
19 year. Once again, thank you and your testimony
20 is greatly appreciated, as well as your work.

21 MR. FURMAN: Thank you very much.

22 Timothy Boyland, David Businelli, are
23 they here?

24 (No verbal response.)

25 Harvey Epstein, Housing Conservation

2 Coordinators? Is he here?

3 (No verbal response.)

4 Let me just say that our intention, once
5 again, is to adjourn at five o'clock and to
6 continue the hearing on November 15th.

7 Joe Levine? Not here.

8 Susan Wolfe, is she here? Boerum Hill
9 Association. I saw her. She was actually the
10 first person to arrive here this morning other
11 than myself. I think I'll see her again later.

12 William Gati and Martin Safren. Okay.
13 Very good. Thank you for holding on and enduring
14 and your patience. Appreciate your coming in and
15 the stenographer will swear you in in a moment.

16 WILLIAM GATI, having first been duly
17 sworn by a Notary Public of the State of New
18 York, testified as follows:

19 MARTIN SAFREN, having first been duly
20 sworn by a Notary Public of the State of New
21 York, testified as follows:

22 CHAIRMAN BRENNAN: Hold on a second.
23 You're Queens, right?

24 MR. GATI: Queens, American Institute of
25 Architects.

2 CHAIRMAN BRENNAN: A tremendous staff.

3 MR. GATI: Thank you. The American
4 Institute of Architects, Queens Chapter, New York
5 Chapter, New York State Association represents
6 probably approximately 5,000 architects, I would
7 think maybe 4,200 is more accurate, and affiliate
8 members, associates and such. I want to
9 reiterate that we support the statement made
10 earlier by AIA New York State. In fact, we were
11 part of the committee that drafted that
12 statement. Also, we support the statement made
13 by AIA New York and the paper that's submitted to
14 you, as well.

15 We went through all the different points
16 that you had asked us to address and as a result
17 of that we put together a position statement, and
18 I entitled it *A Different Perspective for New*
19 *York City DOB*. Before I read this, I just want
20 to make some ad lib comments.

21 Architects and engineers are in a very
22 good position to help the Buildings Department
23 because we work with the Building Department day
24 in and day out. The AIA, the Queens Chapter and
25 the New York Chapter, would like to offer our

1 Standing Committees on Cities, Codes & Housing - 9-7-06 314
2 services in whatever way we can to tie up some
3 loose ends.

4 For the most part, the Building
5 Department is a force that we have to deal with
6 on a day in to day out basis. Once you know the
7 ropes, as I heard somebody say earlier, you can
8 get through this system pretty well. But in
9 order to learn the ropes, it is very daunting,
10 for some people it could take years, five, ten
11 years. I've been doing this for approximately 25
12 years.

13 The problem is that the regulations
14 change almost on a daily basis, and to keep up
15 with all the regulation changes and all the new
16 laws is a daunting task, to say the least.

17 One recommendation that would really help
18 is - and before I start the recommendation I
19 would also like to say that we support the effort
20 of Patricia Lancaster and the Building
21 Department, and see a vast improvement over the
22 last four or five years since she has been
23 heading the Building Department. In fact, our
24 Chapter serves on advisory committees to the
25 Buildings Department to assist in improving the

2 Building Department.

3 One other thing I just really need to
4 mention before I get started is just fairly
5 recently, I think last week, the Queens borough
6 Office became the first borough to issue a pilot
7 program that reviews - this is this paper that I
8 gave you. I don't know if you're familiar with
9 it. I just want to address that for a minute.

10 We've been addressing the problem of
11 professional certification used in a way that -

12 CHAIRMAN BRENNAN: Quick question here.

13 MR. GATI: Yes.

14 CHAIRMAN BRENNAN: This is something
15 different than what they announced for the other
16 boroughs?

17 MR. GATI: I'm familiar with this being a
18 pilot program in Queens.

19 CHAIRMAN BRENNAN: I think this includes
20 - Brooklyn and the Bronx have just gotten this
21 too.

22 MR. GATI: It's possible. It's possible.

23 The gist of this - in a way I really think this
24 would alleviate a lot of concerns of the
25 community because it requires any application

1 Standing Committees on Cities, Codes & Housing - 9-7-06 316
2 that's sizeable, an alteration Type 1, which is a
3 sizeable addition, or a new building to be
4 reviewed prior to filing zoning compliances.
5 There's a five day period for review. And the
6 application could be rejected if it doesn't meet
7 the zoning requirements.

8 So a lot of the issues that were
9 addressed earlier with people with certain
10 criticisms of the Building Department is actually
11 addressed in this one pilot program.

12 CHAIRMAN BRENNAN: Good thing we did the
13 hearing.

14 MR. GATI: I think maybe you egged them
15 on to do this, right before the hearing. They
16 did it right in the nick of time. We've been
17 asking them to do this for years. The AIA is an
18 organization, our goal is to uphold the quality
19 of the profession; that's one of our main goals.

20 We have a policy of self disciplining and self
21 policing other architects to the point in which
22 we could ask people to leave our organization if
23 they violate laws, and we're very strict about
24 that. We have our own corp counsel that does
25 that. But anyway. This is something I thought

1 Standing Committees on Cities, Codes & Housing - 9-7-06 317
2 was every important to mention. I'm really
3 curious to see what happens as a result of that
4 and to get the statistics. How many applications
5 are rejected.

6 I know we're short on time so let me just
7 read through this, please, if I may.

8 CHAIRMAN BRENNAN: Go ahead.

9 MR. GATI: A different perspective for
10 the New York City COB. I have been reflecting on
11 the issues to be raised at this important hearing
12 and how they are connected to essential beliefs
13 about our profession. Our day-to-day dealings
14 with the Department of Buildings do more than
15 make individual projects possible. They express
16 a philosophy about how professional work should
17 be conducted and how policies can foster
18 constructive, accountable relationships between
19 all the public and private players whose work
20 brings new buildings to our City. In other
21 words, the Building Department and the profession
22 is the symbiosis of how construction happens in
23 the City. And if it's allowed to operate more
24 effectively and more streamlined, it would make
25 the whole construction process a little bit more

2 transparent and easier for people to understand.

3 You don't have to be a Building Department
4 consultant to really understand that.

5 I believe that the Department has made
6 impressive improvements over the four years that
7 Patricia Lancaster has served as Commissioner.
8 But, on the other hand, there is still a long way
9 to go in some areas, and we have some important
10 loose end issues to address. But her strategic
11 plan has real merit, and I'm convinced it's
12 taking our city and our borough in the right
13 direction. Let me just mention that her
14 strategic master plan was unveiled to our Chapter
15 in a meeting that we had maybe three or four
16 months ago. She came down. I was very, very
17 impressed by it. Of course it's a long term
18 plan. I would encourage your Committee to review
19 that and maybe incorporate some of those ideas
20 into your findings. Under her leadership, DOB is
21 listening to us, as it always should have done.
22 And, it has to be said, sometimes didn't in the
23 past, depending on who the Commissioners were.
24 This particular commissioner is a fellow AIA, and
25 she is every open to listening to us. It is

1 Standing Committees on Cities, Codes & Housing - 9-7-06 319
2 prepared to resolve these issues. It's
3 imperative for us in the AIA to express our
4 perspective clearly, both at the Assembly hearing
5 and at our own chapter meeting. Basically,
6 another thing is we want to be good advocates for
7 positive change.

8 The thing that distinguishes our borough
9 from any other borough is that the Building
10 Department is a lot more important for our
11 practice than in Manhattan. For instance, in
12 Manhattan there's a lot interior renovations that
13 do not require permits. But in Queens, almost
14 every application requires a permit.

15 One of the biggest problems we face is
16 that general contractors, especially those who
17 work outside the realm of the single, two or
18 three family house, do not have to be licensed.
19 Without such a licensing requirement to uphold
20 proper qualifications, there is no system of
21 checks and balances to protect clients and
22 communities. Licensing on a local level, even if
23 it amounts to only a test and a fee, would be a
24 big step forward. What I mean by that is quite
25 often it's not the architects, the engineers, or

1 Standing Committees on Cities, Codes & Housing - 9-7-06 320
2 even the Building Department that violate the
3 law, it's the contractors. And since you don't
4 have to be licensed, if there's a building, you
5 know, anything bigger than a three family house,
6 there are no checks and balances. Literally
7 anyone in this room can build a skyscraper if
8 they wanted to. The problem with that is that
9 the impact on society is so great, building
10 anything, that allowing someone that doesn't have
11 qualifications to take on that important role
12 short changes and actually jeopardizes public
13 safety and welfare of the society.

14 When you explore accidents in
15 construction sites, they're usually done by
16 people that - the general contractors themselves.

17 The underpinning, for instance, is not done
18 properly and the building collapses. It's very
19 often not the problem with the architect or
20 engineer because the plans are prepared properly.

21 The contractor either doesn't refer to the plans
22 or they don't know how to do it properly. So by
23 licensing contractors on a local level, maybe
24 even on a state level, you at least put a system
25 of checks and balances to create a qualification

1 Standing Committees on Cities, Codes & Housing - 9-7-06 321
2 for these people to operate their business. You
3 license massage therapists, you license
4 veterinarians. Contractors have infinitely more
5 of an impact on society's health, safety and
6 welfare than a veterinarian or a massage
7 therapist ever can. It seems counterintuitive
8 not to license them.

9 The other concern that we have is the
10 unlicensed practice of architecture, and it
11 overlaps with a topic that's never pleasant to
12 consider, professional misconduct. We all know
13 what goes on in that gray area. How many
14 practitioners who rubberstamp projects are
15 actually located in the New York City area, or
16 in the state, or, for that matter, are even still
17 living? There are instances of people that have
18 deceased years ago and their seals are still
19 being used. Like the legendary Chicago voter
20 casting ballots from beyond the grave, deceased
21 professionals have had their credentials used in
22 blatantly fraudulent approvals. Such cases have
23 obvious comic value, but they're a serious
24 concern. Given some simple and widespread
25 technologies, the kinds of checks and balances

1 Standing Committees on Cities, Codes & Housing - 9-7-06 322
2 that are routinely used for credit card
3 transactions, it wouldn't be hard for DOB to
4 ensure that with every application filed, every
5 person who seals plans is alive, to say the
6 least, professionally active, and authorized to
7 use that seal.

8 One suggestion that I had, New York State
9 maintains a list of licensed professionals in a
10 database with their current addresses, and the
11 addresses have to be current because they have
12 their renewal application sent to that address.
13 So if DOB would simply send a letter to the
14 applicant, the professional that files the job
15 alerting them that a job has been filed in their
16 behalf, it would be a big step. And the reason
17 for that, there have been several cases recently
18 of people having their seals stolen, and by the
19 time they found that their seal was stolen the
20 perpetrator had filed hundreds of applications.
21 It seems like a very, very small step, but I
22 think it would make a lot of sense.

23 I know I was a victim of credit card
24 fraud at one point. Credit card fraud and
25 professional seal fraud is very similar. The way

2 I found out was the credit card company sent me a
3 letter saying that you changed your address. I
4 called them up and said no I haven't. I still
5 have the same address. Just a simple like that
6 can go a long way.

7 CHAIRMAN BRENNAN: If I might. That's
8 actually an extremely useful suggestion. But let
9 me point out to you that you're still on page one
10 of your testimony.

11 MR. GATI: No, I'm done with page one.

12 CHAIRMAN BRENNAN: Okay.

13 MR. GATI: I'm just going to go right
14 through it.

15 Buildings have been designed and
16 constructed on a scale too big for their zoning.

17 There's the issue with zoning compliance and
18 self certification that's addressed with this.
19 I'll skip right through that.

20 Also the issue of rubberstamping and
21 licensed practice of architecture. One other
22 suggestion in line with my previous statement
23 would be to require people that professionally
24 certify to maintain professional liability
25 insurance. That could be a very useful thing in

1 Standing Committees on Cities, Codes & Housing - 9-7-06 324
2 the case of rebuilding and building because most
3 of these architects - I wouldn't say most of
4 them, I would say some of them don't carry
5 liability insurance and when the Building
6 Department tells them that they have to rebuild
7 their buildings they can't afford to do it and it
8 creates a tremendous hardship on the owner. It's
9 a very simple thing to maintain.

10 CHAIRMAN BRENNAN: Do you think that
11 expeditors should become licensed?

12 MR. GATI: I wasn't really prepared to
13 answer that officially. But unofficially, I
14 think they already have licenses in the sense
15 that they have their ID cards. They don't have a
16 license per say.

17 I think the position of the AIA is - I
18 don't really know so I can't comment on that.
19 But I will tell you my personal opinion as a
20 practicing architect. I think it's an atrocity
21 that the Building Department is considering
22 giving an expeditor a license, classifying one as
23 a Class A expeditor, Class B expeditor. A Class
24 B expeditor has zoning experience, therefore he
25 can be a zoning expert.

2 I'm a registered architect. I have a
3 master's degree in urban planning. I taught
4 urban planning. And I'm not a zoning expert.
5 And I want to be on record. Because the zoning
6 changes every day - they just initiated a broad
7 change in zoning in New York City. There is a
8 zone that's R7A. I had to read through that
9 zoning text over and over to really understand
10 it, and I had to go down to get an
11 interpretation. I'm very good friends with John
12 Young, who is the head of City Planning.

13 In answer to your question, anything that
14 infringes upon the licensure of architecture, in
15 other words chips away at our responsibility and
16 our qualifications, should not be condoned by New
17 York State or local government. The licensure of
18 architecture is designed to protect public
19 health, safety and welfare. The tests and the
20 education just to get that license is so much
21 more stringent than an expediter who just goes in
22 and fills out an application form.

23 And another comment about expediters.
24 The Building Department has become such a myriad
25 of regulations and red tape that it became a

1 Standing Committees on Cities, Codes & Housing - 9-7-06 326
2 necessity to use expeditors. I think if the
3 Building Department becomes a much more simpler
4 and streamlined operation, such as online filing
5 so you can just file your applications online and
6 email your drawings to them and let them review
7 it without a paper pusher, I think, in essence,
8 you could eliminate the whole expeditor business
9 completely. I would advocate for that as much as
10 possible. The whole layer of expediting creates
11 a tremendous expense for clients.

12 In closing, I would like to encourage all
13 members - you, as the Board, to keep an open mind
14 about the changes. I don't really anticipate
15 that you're going to have to do away with the
16 Building Department. One extreme, just do away
17 with the Building Department and make it a state
18 run organization; the other extreme is not to do
19 anything completely.

20 I would just say in closing the main
21 point is just to streamline the Building
22 Department to make it more transparent, to make
23 them more accountable, to make the applicants,
24 the architects, and engineers that work with the
25 Buildings Department more qualified by teaching

1 Standing Committees on Cities, Codes & Housing - 9-7-06 327
2 them to change regulations. One big thing that I
3 would advocate also is that the Building
4 Department informs everybody whenever there's a
5 change. And one of the problems that I've
6 noticed with - another architect that had a
7 problem with the zoning issues, which I'm not
8 going to mention any names, was that the zoning
9 changed in the midst of him self certifying
10 application and he wasn't even aware of it. So
11 as it changed, the Building Department should
12 make everybody aware of it. Not only zoning, but
13 Building Department regulations, so that we can
14 keep the tabs on what the changes are so that we
15 can be better at maintaining the law, because
16 sometimes we just don't know what the law is.

17 Finally, last but not least, thank you
18 very much for this great opportunity to testify.

19 I applaud your efforts. I know it's a very,
20 very difficult thing to do, to make any change.
21 I hope that you succeed. We, again, offer our
22 assistance in any way that we can, both as a
23 local chapter and as a state association. Thank
24 you.

25 CHAIRMAN BRENNAN: Thank you. Let me

2 thank the Queens Chapter for testifying, as well
3 as all the other chapters and the state
4 association. Your input, of course, is very
5 important in this particular hearing.

6 MR. GATI: Thank you. If we have time
7 for Martin Safren, he has a few words. I don't
8 know if you do.

9 CHAIRMAN BRENNAN: Well, if he could
10 just be extremely brief.

11 MR. GATI: Let me introduce him. He is
12 the Secretary of our Chapter.

13 MR. SAFREN: But I'm here to speak as an
14 individual practitioner, not necessarily on
15 behalf of the Queens Chapter. I just want to
16 share some insights based on my experience as a
17 professional with over 25 years experience. Most
18 of my projects are relatively small, and they're
19 not going to make the headlines. I'm one of
20 those many architects and engineers who rely on
21 professional certification for a substantial
22 number of job approvals. I understand that about
23 40 percent of the applications submitted to the
24 Buildings Department are filed that way. And
25 without those efficiencies, I think the Building

1 Standing Committees on Cities, Codes & Housing - 9-7-06 329
2 Department would be unable to handle, review the
3 large and increasing volume of applications.

4 Responsible professionals who file
5 professional certifications in my opinion have to
6 exercise even a greater standard of care than
7 they would apply to a regular filing. They have
8 to anticipate, and this is what I do. They have
9 to anticipate every single issue that might
10 arise. You do not want an audit in the middle of
11 construction where the job can come to a complete
12 halt. We want the job to proceed smoothly, so we
13 have to think in advance and anticipate all the
14 issues that a plan examiner might raise in an
15 audit, and that's what I do when I file. And I
16 think this applies to a lot of other
17 professionals.

18 I'm very careful with the type of jobs
19 that I professional certify. I generally choose
20 the smaller alterations, so-called Type 2 or Type
21 3. New buildings, most new buildings or
22 alternations, I'll submit for full plan
23 examination so that other issues are raised. If
24 I want to professionally certify, and I believe
25 that there are some potentially controversial or

1 Standing Committees on Cities, Codes & Housing - 9-7-06 330
2 complicated issues, then I'm going to submit that
3 for what they can pre-consideration. I'll
4 discuss the issue with the Chief Engineer of the
5 borough or the borough commissioner. And that's
6 the way that I can insure that integrity of the
7 project. I certainly can't speak for the other
8 people who have abused it, but I suspect it
9 relates to their lack of experience. And
10 possibly if they are going to tighten up the
11 requirements for professional certification, one
12 of the things should be the level of experience
13 in filing.

14 That pretty much summarizes my opinion
15 and maybe that of many other of my colleagues.
16 And I thank you very much for this opportunity to
17 speak.

18 MR. GATI: And I just want to make
19 mention that I gave this to you, and it does have
20 some more information on there, basically a
21 transcript of my testimony.

22 CHAIRMAN BRENNAN: Very good.

23 MR. GATI: Thank you.

24 CHAIRMAN BRENNAN: Thank you very much.

25 And your testimony, both of you are much

2 appreciated.

3 MR. GATI: Thank you very much.

4 MR. SAFREN: Thank you.

5 CHAIRMAN BRENNAN: It is one minute
6 before five. I will read off the next set of
7 witnesses and if there is one more person who is
8 available, we'll take one more.

9 Paul Kerzner.

10 (No verbal response.)

11 Madeleine Polayes, Coalition for a
12 Livable West Side.

13 (No verbal response.)

14 Bill Harris, I know he's not here.

15 Ian Kelly, Atlantic Avenue LDC.

16 (No verbal response.)

17 Robert Kersten, Queens Colony Civic
18 Association.

19 (No verbal response.)

20 Monty Schapiro, 515 East 5th Street
21 Tenants' Association.

22 (No verbal response.)

23 Vincent MacDermot, MacDermot Studio.

24 (No verbal response.)

25 Ray Mellon, he's actually another person

1 Standing Committees on Cities, Codes & Housing - 9-7-06 332
2 associated with the architects.

3 Sayar Lonial, Land Use Policy Director,
4 Councilmember Gerson.

5 (No verbal response.)

6 Barry Nissen.

7 (No verbal response.)

8 Kathy Jaworski, Ed Jaworski, Madison
9 Marine Civic Association.

10 Hold on a minute. This gentleman who is
11 standing up. What's your name? Alvin Toy.
12 You're next. We're going to cut it off with you.

13 KATHY JAWORSKI, having first been duly
14 sworn by a Notary Public of the State of New
15 York, testified as follows:

16 ED JAWORSKI, having first been duly sworn
17 by a Notary Public of the State of New York,
18 testified as follows:

19 MR. JAWORSKI: My name is Ed Jaworski. I
20 am the Executive Vice President of Madison Marine
21 Homecrest Civic Association. Madison Marine
22 Civic is 22 years old and represents a
23 neighborhood in southern Brooklyn, next to Marine
24 Park, with Madison High School in the area, a
25 little less than two miles south of Brooklyn

1 Standing Committees on Cities, Codes & Housing - 9-7-06 333
2 College and north of Sheepshead Bay. We are in
3 Community Board 15 -

4 CHAIRMAN BRENNAN: Ed, let me just
5 interrupt you for one second. People who are
6 here, the hearing will be continued on November
7 15. In addition, we are open to receiving any
8 written testimony. Anybody who is so anxious
9 that they would like to be heard, you're welcome
10 to contact my office and myself and my staff
11 would be happy to meet with you in lieu of your
12 having to wait until November 15. But everybody
13 who wishes to be heard will be heard and/or read.

14 MR. JAWORSKI: Recently, because it had
15 no civic groups, we offered affiliation to
16 adjacent Homecrest neighbors, who are under siege
17 by developers, especially on Ocean Avenue between
18 Avenues R and U. I am a lifelong Brooklyn
19 resident, and have owned a home and been active
20 in the Madison-Marine neighborhood for over 30
21 years.

22 From my perspective, New York City's
23 regulatory system for accountability and
24 enforcement of zoning, construction and
25 development must start at the local level - the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 334
2 community board. If the community board's zoning
3 committee thinks it is really responsible and
4 accountable to community residents, then such a
5 situation sets up an atmosphere conducive to the
6 kinds of abuses, issues and questions posed in
7 the notice of today's hearing.

8 Representatives of my civic association
9 met with representatives of Community Board 15,
10 including the Zoning Committee co-chairs, in May.

11 Let mention some of the statements made by them.

12 Regarding Special Permit 73-622, "it is
13 not even our job to try to imagine what the
14 drafters of the regulation were thinking
15 regarding their intent."

16 Regarding basic Department of Building
17 definitions, "knowledge of definitions like what
18 is a demolition, what isn't a demolition, is not
19 within our purview." "Enforcement is not within
20 the purview of the board. Yet for some reason
21 your groups seems to want to hold the board
22 accountable." "We are not to be held
23 accountable."

24 Regarding the larger number of demolition
25 jobs in CB 15 and compared to some other

1 Standing Committees on Cities, Codes & Housing - 9-7-06 335
2 community boards, in fact, several hundreds more
3 than other community boards - "demolition is a
4 good thing." They said it's a sign of activity
5 and growth. There was a demo virtually every
6 other day in Community Board 15 last year. That
7 sounds a little bit like Mr. Lentol's comment,
8 Rome is burning, and it's happening in CB 15,
9 too.

10 Regarding committee meetings, "we don't
11 have many zoning and variance committee meetings.

12 We very rarely have meetings."

13 Assemblyman Brennan, earlier you referred
14 to scoff laws. Don't some of these statements
15 sound like they're encouraging scoff laws?

16 Now, if DOB is aware of this attitude in
17 Community Board 15, then I submit that it is
18 little wonder if our queries to DOB go
19 unanswered. Since DOB has a community liaison at
20 Community Board 15 meetings, they certainly are
21 aware of this attitude that dismisses public
22 opinion and opposition.

23 Let me tell you that I sent an email to
24 DOB Commissioner Lancaster, with copies to
25 others, early in June regarding a request for

1 Standing Committees on Cities, Codes & Housing - 9-7-06 336
2 status report on several complaints in the
3 neighborhood. There was not reply. I resent the
4 email in August, without adding more questionable
5 sites; there still has been no reply. A copy of
6 the correspondence accompanies my testimony.

7 I go into the DOB's BIS website to try to
8 get complaint information and wind up without
9 current, complete information. I also wind up
10 wondering if the BIS system is an outlet for
11 inspectors who are oblivious, reporting things
12 like "no evidence of demolition" when a bulldozer
13 is parked on a pile of rubble, with a piece of
14 one wall standing to the side. Now, of course
15 DOB might use the retort of CB 15's zoning co-
16 chair who said, "You are saying if something is
17 demolished it isn't existing. The definition of
18 existing might mean one wall." And I say, during
19 a rain or snow storm, have a dinner party and put
20 your children to sleep in a house with one wall.

21 Architects, engineers, attorneys and contractors
22 are playing games with definitions and permit
23 classifications and we are suffering. The
24 semantic games have to stop.

25 Navigate the BIS system trying to compile

1 Standing Committees on Cities, Codes & Housing - 9-7-06 337
2 a report and you'd clearly see that it is quite a
3 drawn out, time consuming, difficult affair. It
4 was very difficult putting together the
5 statistics I put together accompanying this
6 presentation.

7 One final point regarding intent of
8 Zoning Resolution 73-622. There clearly is a
9 need for articulation among DOB, BSA and City
10 Planning. Also accompanying this presentation is
11 a letter from former City Planning Commissioner
12 Rose to former BSA Chair Chin emphatically
13 stating that 73-622 special permits are not to
14 involve demolitions of existing houses. Yet, I
15 have found DOB issuing demo permits in many such
16 cases, at least 14 in CB15, at least a dozen in
17 CB14. By the way, in many cases even the
18 Sanitation Department does not enforce the rule
19 to cover dumpsters at construction sites.

20 It's time for all of these agencies,
21 beginning with community boards, to make
22 substantial efforts to communicate with and
23 educate each other, as well as the public. They
24 really prefer the public to remain in a cave,
25 kind of similar to Plato's allegory. Anyway.

2 They have to get their acts together and put all
3 residents and the quality of life in this City
4 first, not just those with deep pockets or
5 special interests.

6 Thank you very much.

7 CHAIRMAN BRENNAN: Thank you.

8 MS. JAWORSKI: Okay. I would like to
9 thank you for and validate what you said at the
10 beginning of this hearing regarding the elderly
11 woman. I can cite five, and there are more
12 examples, in the Madison Marine Homecrest area
13 which reflect what you have said.

14 CHAIRMAN BRENNAN: You're talking about
15 Mr. Lentol.

16 MS. JAWORSKI: Yes, Mr. Lentol. My
17 sidewalk was cracked by construction next door.
18 DOB sent an inspector who stated no damage. Why?
19 The crack was deemed a DOT issue, and DOT told
20 me I would have to sue the owner. Thank you.

21 A special permit 73-622, across from my
22 house, was made larger than the permit permitted.

23 Engineer's response - the contractor misread the
24 plans. This engineer sits on CB 15. When we
25 complained to CB 15, our organization was told it

2 was irresponsible.

3 I'd like to make a suggestion for the
4 protection of senior citizens. There are many
5 stories notably about seniors experiencing
6 various pressure tactics. Some if it is surely
7 planned and insidious blockbusting to force them
8 into selling their homes and moving. Some
9 legislation is needed to protect them from such
10 tactics. Since the statistics indicate that the
11 people who are just now turning age 60 are the
12 largest segment of the U.S. population, many of
13 them in our boroughs want to remain in their
14 homes but are facing harassment.

15 On my block, 15 of my neighbors testified
16 at a BSA hearing last year. At the conclusion,
17 the new incoming owner, who is now erecting a
18 McMansion, shouted, you're all on your way out.
19 A proposed second McMansion for the block came
20 before our CB 15 in June that would place an
21 elderly widow in a canyon between the two. We
22 don't look forward to this kind of
23 unneighborliness and maybe a law is needed to
24 help.

25 Thank you so much for your attention.

2 CHAIRMAN BRENNAN: Thank you very much
3 for your testimony. I know you came to visit me
4 a couple months back. I know both of you are
5 heavily involved in your community association's
6 efforts to protect the quality of life in that
7 area. Your testimony and your involvement is
8 greatly appreciated.

9 MS. JAWORSKI: Thank you for your help.

10 MR. JAWORSKI: Thank you.

11 CHAIRMAN BRENNAN: Okay. Alvin Toy,
12 Elmhurst, New York. Thank you, Mr. Toy, for
13 waiting. Before you begin, I want to just say to
14 everybody who is still here, thank you for your
15 patience. It is must appreciated. What I just
16 said about having opportunities to come and speak
17 with my office and/or testify at the latter
18 hearing are available and we will continue at
19 that time. Okay. Go ahead.

20 ALVIN TOY, having first been duly sworn
21 by a Notary Public of the State of New York,
22 testified as follows:

23 MR. TOY: Hi. My name is Alvin Toy.
24 This is my father Jack Toy. We're just property
25 owners in Elmhurst, Queens, and we're victims of

1 Standing Committees on Cities, Codes & Housing - 9-7-06 341
2 development.

3 There's been an adjacent development next
4 to my property where my father resides. About
5 three years ago they started excavation and they
6 illegally underpinned my property. As a result,
7 the Building Department rightfully issued a stop
8 work order and the project was stopped.

9 Subsequent to that, the developer sued me for a
10 license to get an underpinning permit without my
11 permission. He commenced underpinning without my
12 permission, and I didn't want to sign it until I
13 understood what was going on at the project and
14 that was my right as a property owner. So he
15 sued me. I won a decision at the Queens Supreme
16 Court. Subsequent to that, because this
17 developer has deep pockets, he appealed the
18 decision and it went to the Second Appellate
19 Division in Brooklyn and, again, I won another
20 decision. Through this whole process this cost
21 my family, my dad's retirement money, \$120,000.

22 My dad is a working-class person. He
23 worked in a restaurant for 50 years. And here's
24 this developer with deep pockets who is able to
25 do this to us. This developer also falsified -

2 CHAIRMAN BRENNAN: Did he go to the
3 Court of Appeals or did they give up after the
4 Appellate Division?

5 MR. TOY: They did not give up. What's
6 happened is that they somehow falsified City
7 documents, and I have copies of the falsified
8 documents, where he alleged that there was no
9 underpinning required. And then he went ahead
10 and secured permits, falsely secured permits
11 through self certification. I did not complain
12 because he send a representative over to my house
13 suggesting that they wanted to settle. I said
14 I'm willing to settle, just give me my legal
15 fees. I want to get rid of this. My dad is 80
16 years old. My parents are both in their 80's.
17 So I didn't complain.

18 Then I wrote a letter to the general
19 counsel's office, and they rightfully revoked
20 all the permits. And then after that -

21 CHAIRMAN BRENNAN: Who was this
22 developer?

23 MR. TOY: Thomas Wang. Tommy Wang in
24 Queens. He has affected - I have like six other
25 property owners. I did a presentation at the

1 Standing Committees on Cities, Codes & Housing - 9-7-06 343
2 Civic Association for a new town civic
3 association. I highlighted all the issues in the
4 community that he has perpetrated. No one is
5 able to do anything. Not everyone has the
6 resources to fight against this person all the
7 time. I have a full-time job. I have a life.
8 What this guy is doing, this is his life, this is
9 his job, to take advantage of the community. I'm
10 just a property owner, a simple working-class
11 person. We were completely victimized.

12 Right now my attorney called me
13 yesterday. He calls me like he's my friend. He
14 has another motion to suggest that there were no
15 - because the underpinning was already commenced,
16 he doesn't need the Building Department to issue
17 any kind of approval and he wants us a
18 certificate of occupancy right now. What that
19 means to me financially is that my lawyer is
20 going to have to be re-engaged for another rehash
21 of the same information. In the long run it's
22 going to cost me over 20, \$30,000 with this new
23 motion that he's made. I want to appeal to the
24 State Assembly to do an investigation.

25 I have written emails to the Attorney

1 Standing Committees on Cities, Codes & Housing - 9-7-06 344
2 General's office. I went to the general City
3 Council's office. I met with City Council
4 representatives. Jeff Albria (phonetic) at the
5 State Assembly.

6 CHAIRMAN BRENNAN: He's your
7 Assemblyman?

8 MR. TOY: He is my Assemblyman. Nothing
9 can be done. These developers are too powerful.

10 We're at wits end right now with this
11 whole situation. I'm not the only one. He's
12 also defrauding other buyers where there's an
13 adjacent development for these properties. It's
14 a 44 by 100 lot. He subdivided it into five
15 buildable lots on a 44 by 100. He calls this a
16 community facility, and that's how he's able to
17 secure 100 percent land use, the 100 percent lot
18 coverage. And because it's a lot line building,
19 he bought the property behind it and what he is
20 doing right now is that he is blocking off the
21 rear windows of these buildings with a brick
22 wall. These rear windows are bedrooms for these
23 units. I think he is creating a fire hazard with
24 the situation. There is no egress for a person
25 living there. And the Building Department allows

2 him to do it. It's all done through self
3 certification. Even if it's done through the
4 plan examiner, the plan examiner would never
5 build to the jobsite to make an assessment
6 because he is just looking at papers. He would
7 not be able to visualize what's going on with a
8 brick building against a lot line building there.

9 CHAIRMAN BRENNAN: Let me say I'm very
10 sympathetic to you, and your father, and your
11 family for what you've had to go through. I'm
12 certainly willing to meet with you, your family,
13 your attorney, maybe Assembly Albri (phonetic),
14 he's a good man, and we can review the
15 circumstances and go to the Buildings Department,
16 the Attorneys General's office or other law
17 enforcement to take a look at the circumstances
18 and see if you can get some kind of justice.

19 MR. TOY: Okay.

20 CHAIRMAN BRENNAN: What I'd like you to
21 do, you may have seen my telephone number or you
22 can leave your telephone number.

23 MR. TOY: I have a presentation here that
24 I gave at the Civic Association meeting.

25 CHAIRMAN BRENNAN: That's fine.

2 MR. TOY: You can take a look at that.

3 CHAIRMAN BRENNAN: Give that to us and
4 if you'd like to give us a call and set up an
5 appointment, I'd be happy to continue to follow
6 up and see if there's something my office can do
7 in cooperation with other public officials to
8 assist you in getting justice.

9 MR. TOY: Okay.

10 MR. A. TOY: My I say a few words? My
11 English is very limited.

12 CHAIRMAN BRENNAN: That's okay.

13 MR. A. TOY: For three years my son took
14 me to Building Department in Queens. The
15 Building Department say this guy do this for 20
16 years. He still do these things. I say why does
17 the Department issue a license to him if he's
18 still causing a lot of problems in Queens.

19 CHAIRMAN BRENNAN: This is the Queens
20 Department of Buildings?

21 MR. JACK TOY: Yeah. Yeah. Yeah. I was
22 there.

23 MR. TOY: What my dad is saying is this
24 guy has a proven track record. He's in Flushing.
25 He's been banned from - he's been prosecuted by

2 the Attorney General's office. He changes -

3 MR. JACK TOY: He's a multi-millionaire.

4 MR. TOY: He changes his corporation to
5 development to development so it's always like in
6 the sky.

7 CHAIRMAN BRENNAN: The example that
8 you're giving, the victimization that you have
9 experiences is a reflection of the fact that New
10 York City and State government at this time does
11 not control the conduct of these people properly.

12 You're right. I'm glad that the Queens
13 Department of Buildings recognizes this
14 particular developer as a bad person, so that is
15 helpful, I think, in us trying to assist you in
16 pursuing this matter.

17 MR. TOY: I was the one who - the general
18 counsel's office and the Building Department,
19 they did rule in my favor that they would not
20 issue a CO until he secures permission for
21 underpinning from me. They are doing their job.

22 CHAIRMAN BRENNAN: I'm not saying
23 they're not.

24 MR. TOY: I just want to make that clear.

25 CHAIRMAN BRENNAN: I'm glad they're

1 Standing Committees on Cities, Codes & Housing - 9-7-06 348
2 agreeing with you. The question now is how does
3 government act to control this kind of conduct.

4 MR. TOY: Thank you.

5 CHAIRMAN BRENNAN: Thanks a lot for your
6 testimony. Appreciate it.

7 MR. JACK TROY: Thank you.

8 CHAIRMAN BRENNAN: Thanks for coming and
9 staying.

10 At this time this hearing is recessed
11 until November 15 of this year. Thank you.
12 Thank you all for staying.

13 (Whereupon, the Hearing on The
14 Effectiveness of the Regulation and Construction
15 and Development in New York City and the
16 Enforcement of the Building Code and Compliance
17 with the Zoning Regulation is recessed at 5:20
18 p.m.)

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C E R T I F I C A T E

I, FRANK GRAY, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby stated:

THAT I attended at the time and place above mentioned and took stenographic record of the proceedings in the above-entitled matter;

THAT the foregoing transcript is a true and accurate transcript of the same and the whole thereof, according to the best of my ability and belief.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2006.

FRANK GRAY