

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

SUBCOMMITTEE ON ZONING AND

FRANCHISES

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December 12, 2016  
Start: 10:14 a.m.  
Recess: 10:53 a.m.

HELD AT: 250 Broadway Committee Room, 16<sup>th</sup> Fl

B E F O R E: Donovan Richards  
Chairperson

COUNCIL MEMBERS: Daniel R. Garodnick  
Jumaane D. Williams  
Ritchie J. Torres  
Vincent J. Gentile  
Antonio Reynoso  
Ruben Wills  
Brad Lander

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

Adam Rothkrug  
Rothkrug, Rothkrug & Spector LLC

Robert Shapiro

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2 CHAIRPERSON RICHARDS: Okay. Good  
3 morning. I am Donovan Richards, Chair of the  
4 Subcommittee on Zoning and Franchises, and I want to  
5 welcome everyone to our hearing today. I'll start  
6 with our Council Members; Council Member Antonio  
7 Reynoso from Brooklyn, Council Member Vincent  
8 Gentile, Brooklyn, Council Member Brad Lander,  
9 Brooklyn. I don't know why I'm surrounded by all  
10 these Brooklyn people today. We have one item for  
11 consideration today. We will now have a hearing on  
12 Land Use item numbers 531 and 532, the Carroll Street  
13 Rezoning in Council Member Lander's district. This  
14 application seeks a rezoning from M1-1 to R6B in the  
15 designation of a mandatory inclusionary housing area  
16 on three lots owned by the applicant at 1418 Carroll  
17 Street in Brooklyn. The rezoning would facilitate  
18 the development of a 10-unit residential building and  
19 six accessory parking spaces. I will now open the  
20 hearing, and we will start with the applicants... or,  
21 or applicant Adam Rothburg [phonetic], I said  
22 Rothburg, Rothburg.

23 ADAM ROTHKRUG: [off mic] Rothkrug..  
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CHAIRPERSON RICHARDS: Rothkrug. I must know a Rothburg somewhere. Chair Greenfield has also joined us as well.

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ADAM ROTHKRUG: Good morning, Chair Richards, members of the council, and thank you for accommodating my schedule, I ran from the LIRR to my car and dumped it somewhere in Brooklyn..

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CHAIRPERSON RICHARDS: ...I took that LI double R this morning, too, so you are completely excused, I know about the delay. So you did not make it up.

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ADAM ROTHKRUG: I... hopefully I can... hope, hopefully I can remember where my car is before, but... so thank you all for accommodating me. My name is Adam Rothkrug. I'm here in connection with the proposed rezoning of 1418 Carroll Street in Brooklyn which seeks to change the zoning of the property from M1 to R6B, and the actions also include a MIH, mapping of an MIH district. Robert Shapiro principle, the owner is also here this morning. The subject property consists of three lots, irregularly shaped. The total of the property is 6,229 square feet. It's currently vacant. Historically, this property was developed with residential buildings,

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2 three stories in height similar to the rest of the  
3 block. This entire block, both sides, is primarily  
4 residential nature. There's no record of this  
5 property ever being used for manufacturing or  
6 commercial uses, and I would argue that whoever drew  
7 the maps in 1961 made a mistake. There was no reason  
8 that this property should ever have been zoned  
9 manufacturing. They're small lots, 25 foot lots.  
10 The smallest of this lot, this three lots, is only 70  
11 feet deep. So, as City Planning pointed out in their  
12 report, this property does not lend itself to  
13 commercial or manufacturing uses due to both the size  
14 and location. This rezoning application was started  
15 almost four years ago. It was delayed by City  
16 Planning, I would argue, for a variety of reasons,  
17 including a eight to nine-month delay due to Super  
18 Storm Sandy when City Planning wanted to wait to see  
19 whether this property would be in the new flood zone.  
20 As an aside, I actually extraordinarily got a call  
21 from Chairperson Weisbrod himself apologizing for the  
22 amount of time that this rezoning application took.  
23 At the time it was ready to be certified the MIH by  
24 that time had been filed and had caught up to this  
25 application. City Planning wavered as to whether this

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2 would be in a MIH district or not. I guess one,  
3 because of the size of it, which puts it below the  
4 threshold for development. This was not a... or below  
5 the threshold for participation or... mandatory  
6 participation in MIH. This was not a configuration  
7 of the lots to avoid this; this application never  
8 changed. The lots were always 6,229 square feet in  
9 area, which brings it in at a total developable under  
10 the R6B of 12,454 feet or just below the 12,500 foot  
11 maximum... or minimum. As noted, the property is on a  
12 residential block. It's always been residential. The  
13 entire block is residential and actually it... when we  
14 went to the Community Board meeting no one could  
15 figure out why this was not included in other  
16 residential rezonings that have been done in the area  
17 and why there are even three buildings left to the  
18 west of us which are residential buildings from the  
19 1800's that are still going to be in a manufacturing  
20 district. This property has been vacant for about 30  
21 years or 40 years since the prior existing buildings  
22 were demolished. So that, I would argue that with  
23 respect to the merits of the rezoning, there's no  
24 issue. The Community Board loved the building that  
25 we put before them. They actually requested that we

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2 try to build as close to those plans as is possible.  
3 So, the issue that is arisen with regard to this  
4 rezoning is the impact of the MIH program on this.  
5 As I said, from a legal perspective this property is  
6 exempt from mandatory participation in MIH. We're  
7 right on the cusp so that if we were to take  
8 advantage of the 2.2 floor area available, that puts  
9 us just above the 12,500 square foot threshold, but  
10 we've maintained one, that we are legally exempt;  
11 two, that we are certainly willing in view of what  
12 has gone on in the city and the need for affordable  
13 housing to participate with the local community in a  
14 meaningful fashion in order to support affordable  
15 housing in this area and this district. Of course,  
16 once you're below the MIH threshold, there's no legal  
17 mechanism to say that we're going to build more or to  
18 force us to again participate. The other huge  
19 problem that has been facing us for I would say about  
20 two years is a lack of specificity in the MIH program  
21 with regard to this type of project. So, there are  
22 three ways to participate in the MIH to involve  
23 onsite housing, and the third involves payment to a  
24 housing fund with HPD to set the figure and the  
25 formula for how that fund was going to be applied.

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2 Unfortunately, and although law has been passed and  
3 in place and although we've been trying to get a  
4 figure for as I said probably at least a year, as far  
5 as I know up until a Friday, HPD has not published  
6 this figure. So, we have no... we had no idea up until  
7 about two weeks ago about what type of participation  
8 this would require, and what we were eventually told  
9 is that the payment would be in excess of 2.2 million  
10 dollars required for this project. Of course, we  
11 felt like someone that maybe goes to a restaurant  
12 without the prices on the menu and expects a bill for  
13 100 or 200 dollars and all the sudden is told it's a  
14 3,000 or 5,000 dollar bill and you had no idea that  
15 anything like this was coming, and although you asked  
16 the waiter several times, no one told you what the  
17 price was going to be.

18 CHAIRPERSON RICHARDS: Were you eating at  
19 a Trump hotel?

20 ADAM ROTHKRUG: It's not a...

21 CHAIRPERSON RICHARDS: Three thousand,  
22 right... that was a joke.

23 ADAM ROTHKRUG: Not me. So, we were  
24 shocked, and of course, to put it in perspective as  
25 an exempt project, we're gaining about 1,200 square

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2 feet through this 10 percent. So, the 2.2 million  
3 dollars that we would be paying comes out to 1,800  
4 dollars a square foot for the additional floor area  
5 that we would be giving. And I likened it in zoning  
6 to projects that have what are called a parking  
7 waiver. So, the zoning law provides that for  
8 buildings up to a certain amount of area often you  
9 don't have to provide any parking, but if you go one  
10 square foot over you have to provide all the parking.  
11 So what this means is that, of course, you may tailor  
12 your project to be just below. It doesn't make sense  
13 to go over this threshold in order to gain a little  
14 bit, and we... so, this hits us about two weeks ago  
15 right before they originally scheduled a hearing on  
16 this and we... that's, that's a project killer. I  
17 would point out that in... throughout the course again,  
18 this was a well received project. The City Planning  
19 Commission had testimony from the Community Board and  
20 the Borough President and Councilman Lander, and in  
21 response in their report referencing the exemption,  
22 the City Planning Commission noted that in passing  
23 the law there were judgments about it's principle and  
24 consistent implementation around the city and on the  
25 legal foundations of the program as a Land Use

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2 regulation. Effort to negotiate on a case by case  
3 basis would undermine the variety... the validity of  
4 the parameters and expose the MHI program to legal  
5 risk. What's the point of having a program in place  
6 if no one's going to follow the regulations? So,  
7 what's the point of having a 25 or 30 percent  
8 standard if other people are going to say we actually  
9 want 40 or 50 percent? What's the point of having an  
10 exemption if it's not going to be followed? There  
11 are reasons this exemption was written into the law.  
12 There were legal reasons it was written into the law,  
13 and there are practical reasons that it was written  
14 into the law, because aside from, again, this  
15 tremendous expense that it ends up on a project like  
16 this which is on the cusp procedurally having to deal  
17 with HPD to do onsite housing would probably add  
18 another year or two to the project, and mechanically,  
19 there is no procedure in place to get... to say you  
20 need to do something. You need to participate in the  
21 MIH program even though you're an exempt project.  
22 That said, we've spoken to Councilman Lander. He has  
23 been consistent throughout the course of the process,  
24 that he believes that there should be participation.  
25 Again, until HPD published what that figure was, we

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2 had no idea what kind of figure anyone was talking  
3 about. We have indicated our willingness to work  
4 with the Council to come up with something that we  
5 all think is fair and reasonable. We will not be...  
6 again, if you assume that we would not build under  
7 the program and give up the bonus of the 1,200 square  
8 feet, there's still a middle ground that can be  
9 reached that demonstrates a meaningful commitment to  
10 affordable housing while not killing this project and  
11 not killing a rezoning that is a 1,000 percent  
12 appropriate from a Zoning and Land Use point of view.  
13 Thank you very much.

14 CHAIRPERSON RICHARDS: Thank you so much.  
15 So let me just begin by... thank you. So, obviously,  
16 we cannot force you to, you know, and I'm using your  
17 terminology, to apply MIH here, right? But you... so,  
18 just to speak to the square footage again of the  
19 building. So you're under the 12,500...

20 ADAM ROTHKRUG: [interposing] Right...

21 CHAIRPERSON RICHARDS: ...threshold?

22 ADAM ROTHKRUG: So as I said, this  
23 project is originally filed, and the three lots is  
24 originally configured are... the lots were a total of

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2 6,229 square feet; results in a total 2.0 buildable.

3 The base R6...

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CHAIRPERSON RICHARDS: [interposing] And  
5 under an M1 it would be a one point...

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ADAM ROTHKRUG: [interposing] A one...

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CHAIRPERSON RICHARDS: ...cost...

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ADAM ROTHKRUG: ...point...

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CHAIRPERSON RICHARDS: ...of course.

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ADAM ROTHKRUG: A one point FAR,

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absolutely. So, that's 12,400... our final numbers...

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it's...

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CHAIRPERSON RICHARDS: [interposing] So,

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it's 12,000

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ADAM ROTHKRUG: ...12,450...

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CHAIRPERSON RICHARDS: ...400...

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ADAM ROTHKRUG: 12,459 is our... is our

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number.

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CHAIRPERSON RICHARDS: Alrighty, and.. so

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I would assume... I meant why... you're like right below

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the threshold, right?

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ADAM ROTHKRUG: Right.

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CHAIRPERSON RICHARDS: So, can you just

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speak to why?

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ADAM ROTHKRUG: Sure. So as I said, the cost if we... if we build... if we build to the 2.2, the extra floor area is costing us 1,800 dollars a square foot. We're picking up 1,200 square feet, but we're paying the MIH payment based on the entire project. So now, 98 percent of the project is exempt from MIH. By adding in this extra 10 percent, we're making the whole project subject to the MIH. So because of this, because of this disparity you end up with a project at this size which the law just doesn't make sense to apply. It's... you're... for the amount of square footage you're getting, you're paying on the entire project and...

CHAIRPERSON RICHARDS: [interposing] So I'm going to get to Council Member Lander in a second, but I think where we have questions at is what is the public benefit for this project, then? I mean, in a time where we need more affordable housing, and you're talking of not participating in the program and building under the threshold in a community that can surely use more affordable housing, as well? So, the big question is okay, we're going to move from an M1, which is manufacturing, in a time where we can use more

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2 manufacturing, honestly, to give you a bonus without  
3 any public benefits. So can you speak to...

4 ADAM ROTHKRUG: [interposing] Sure...

5 CHAIRPERSON RICHARDS: ...that?

6 ADAM ROTHKRUG: So first... so, first I'll  
7 say the MIH program is something new. Historically,  
8 as you know, zoning was reviewed on a basis of what  
9 was...

10 CHAIRPERSON RICHARDS: [interposing]

11 Right, but you...

12 ADAM ROTHKRUG: [interposing] No, no, no.

13 CHAIRPERSON RICHARDS: ...were aware.

14 ADAM ROTHKRUG: I'm absolutely...

15 CHAIRPERSON RICHARDS: [interposing]

16 Right? And you still...

17 ADAM ROTHKRUG: [interposing] I'm

18 absolutely...

19 CHAIRPERSON RICHARDS: ...proceeded.

20 ADAM ROTHKRUG: ...aware. We...

21 CHAIRPERSON RICHARDS: [interposing]

22 Right.

23 ADAM ROTHKRUG: We started well before.

24 We still proceeded. We were always hopeful.

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CHAIRPERSON RICHARDS: Why did you proceed? And especially since Council Member Lander, I'm sure, it was very clear from the beginning?

ADAM ROTHKRUG: The concept of a 2.2 million dollar was never anything anyone contemplated, never anything, never close to anything that anyone ever contemplated.

CHAIRPERSON RICHARDS: And you purchased the land for how much money?

ADAM ROTHKRUG: I...

CHAIRPERSON RICHARDS: I mean if you want to say you'll need to come up here and just...

ROBERT SHAPIRO: Good morning, my name is Robert Shapiro. I believe the figure was 1.5 plus. This was about four years ago.

CHAIRPERSON RICHARDS: Four years ago, and your units, I mean, can you give us a range of how much you... or these are rentals?

ROBERT SHAPIRO: At the moment the thought would be that they would be sold.

CHAIRPERSON RICHARDS: Okay.

ROBERT SHAPIRO: If we can build 12,000 feet that would be about 10,000 feet salable.

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CHAIRPERSON RICHARDS: Mics not on.

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Okay. I thought it was actually.

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ROBERT SHAPIRO: I'm not speaking loud enough.

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CHAIRPERSON RICHARDS: Oh okay, you were because I thought it was on, but go ahead. I'm sorry.

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ROBERT SHAPIRO: We had planned on building 12,000 feet. I don't even know if we can use the bonus architecturally. Twelve-thousand feet, which would be about 10,000 usable feet of a residential.

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CHAIRPERSON RICHARDS: And no other, no commercial, no...

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ROBERT SHAPIRO: No. It's, just the same as...

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ADAM ROTHKRUG: [interposing] The resident... the R6B...

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CHAIRPERSON RICHARDS: [interposing] So, just for resident...

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ADAM ROTHKRUG: ...zoning would not allow.

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CHAIRPERSON RICHARDS: Allow right, right. So there's no commercial overlay. Okay, I'm going to go to Council Member Lander for questions,

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2 but once again the big question is what is the public  
3 benefit if we're moving from M1 to a resident... to an  
4 R6 which is going to give you more; what is the  
5 public benefit?

6 ADAM ROTHKRUG: So...

7 CHAIRPERSON RICHARDS: ...Council Member  
8 Lander.

9 COUNCIL MEMBER LANDER: Thank you, Mr.  
10 Chair, and thank you for, for those questions and for  
11 chairing the hearing today and getting here on the  
12 LIRR. Thanks to my colleagues for being out here as  
13 well. So, I want to take one step back. I need to  
14 just characterize things. You know, just having  
15 spent a lot of time in this community, this is a set  
16 of mixed-use blocks. It's not the... there's nearby a  
17 great Gowanus nursery, a bakery, a bank, a car repair  
18 and tow lot, a doggie daycare. It's an area that's  
19 got a set of light manufacturing and commercial uses  
20 which are of course being pushed out of this area as  
21 a result of rising property values by people buying  
22 them with the anticipation of converting them into a  
23 residential development, paying 240 dollars a square  
24 foot for an M-zone piece of property that's what's  
25 displacing the nursery and the doggie daycare and the

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2 businesses in this little area which is steps from  
3 the port and long had a mixed-use character of both.  
4 So to me there... as you rightly say, Mr. Chair, there  
5 is a public value and a land use value in the M-zoned  
6 area here for helping achieve jobs and uses that are  
7 getting pushed out of our neighborhood as a result of  
8 gentrification, and I think you framed the question  
9 just right. If there's not a significant public  
10 benefit, we should leave the manufacturing zoning we  
11 have in place. We don't need a few new market rate  
12 condos. There's real value in the existing M-zoning,  
13 and if we're not getting the MIH level of  
14 affordability, I think we'd be better off with the  
15 zoning that we have today. And I guess I, I also...  
16 you know, I think... I appreciate your asking about the  
17 zoning calculation because I view it differently.  
18 What you're asking for is to re-zone from M1 to R6B  
19 with an MIH overlay, which has a 2.2 maximum FAR,  
20 which means according to my calculations the maximum  
21 square footage you could build is 13,703. Do I... I  
22 have that wrong? 6229 times...

23 ADAM ROTHKRUG: [interposing] that's  
24 correct...

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COUNCIL MEMBER LANDER: ...2.2 is 13,703.

So that's well in excess of the 12,500 square feet that would trigger an MIH obligation, and you could build on site or you could build with the in-lieu fee, and even though it hasn't been clear what the in-lieu fee has been, it's been clear that you could build on site or that you could build with the in-lieu fee for many months now, and yet despite that, you're proposing a building at 12,450 feet which, I mean, I don't disbelieve you that that's what you always planned, but it's awfully convenient that's 50 feet below the threshold that would trigger an MIH obligation.

ADAM ROTHKRUG: If I can interrupt? When this was filed before there was MIH, we were going for a 2.0 FAR, and that left us a 12,454 square feet. So, I don't know how you...

COUNCIL MEMBER LANDER: [interposing] I'm not doubting your motives, but it remains... you, you know...

ADAM ROTHKRUG: [interposing] It's not... there's... it's not a question of motives it... the facts are the facts. There were three lots here. The

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2 total is 6,229 square feet, and when you multiply  
3 that by two it comes just below this threshold.

4 COUNCIL MEMBER LANDER: So, then I'll  
5 notice, so you say you're willing to make some  
6 contribution, but here we are having gone through the  
7 Community Board which was clear they wanted an  
8 affordable housing commitment, through the Borough  
9 President, through the Planning Commission, and as  
10 best as I can understand it your proposal today is to  
11 do zero affordable housing. That's what's on the  
12 table before... well where is the proposal to any  
13 affordable housing? I'm missing it.

14 ADAM ROTHKRUG: Where, where's the  
15 mechanism to do... we've...

16 COUNCIL MEMBER LANDER: [interposing] I  
17 told you...

18 ADAM ROTHKRUG: [interposing] We...

19 COUNCIL MEMBER LANDER: ...at the Community  
20 Board. I told you at the Borough Presidents...

21 ADAM ROTHKRUG: [interposing] No.

22 COUNCIL MEMBER LANDER: I told you at the  
23 Planning Commission we would expect you to have a  
24 proposal. Do you have a proposal for including any  
25 affordable housing in this development, yes or no?

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ADAM ROTHKRUG: We do not plan on... well I, I have to answer that, we have not had an opportunity, because the MIH figures have not been finalized to assess whether or not it's possible to act under one, two or three of the programs. You've said...

COUNCIL MEMBER LANDER: [interposing] So perhaps...

ADAM ROTHKRUG: [interposing] You've said...

COUNCIL MEMBER LANDER: ...you should of waited...

ADAM ROTHKRUG: [interposing] You've said...

COUNCIL MEMBER LANDER: ...until it was clear.

ADAM ROTHKRUG: We waited four years to process this application. It's... that, that's cruel and unusual punishment to ask someone to wait longer. If you're...

COUNCIL MEMBER LANDER: [interposing] For what?

ADAM ROTHKRUG: [interposing] If you're...

COUNCIL MEMBER LANDER: [interposing] You think you have essentially a right to this rezoning and you're being punished...

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ADAM ROTHKRUG: [interposing] No.

COUNCIL MEMBER LANDER: ...by it not being..

ADAM ROTHKRUG: [interposing] No.

COUNCIL MEMBER LANDER: ...processed more..

ADAM ROTHKRUG: [interposing] No.

COUNCIL MEMBER LANDER: ...quickly, because that's what it sounds like.

ADAM ROTHKRUG: No. So, so again, I would say one, historically, again, rezonings were not dollars and cents projects. It wasn't, "pay us this money and you'll get your rezoning." Unfortunately, maybe that's where it's headed with the money going to a good cause.

COUNCIL MEMBER LANDER: So out of my..

ADAM ROTHKRUG: [interposing] So the answer is..

COUNCIL MEMBER LANDER: [interposing] If you want to continue this line of..

ADAM ROTHKRUG: [interposing] The..

COUNCIL MEMBER LANDER: ...questioning and explore whether we can get somewhere, I think you should step back that comment. No one here is trying to hold anyone up for money. We are looking and thinking about the public value of this land and of

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2 our zoning. So I'm going to be honest. If you don't  
3 take that statement back, I'm going to just leave the  
4 hearing and ask my colleagues to just you know... maybe  
5 they can stay or not stay, but that's your choice.

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ADAM ROTHKRUG: No, I'll retract that  
7 statement, but you're asking me what we are willing to  
8 do for affordable housing.

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COUNCIL MEMBER LANDER: I'm asking what  
10 you have proposed. You're here at the City Council  
11 at the end stage of a ULURP in which it's been clear  
12 at the community level, the Borough President level  
13 and from me from the very beginning that there would  
14 be an expectation, and as best I understand it, you  
15 are proposing to do zero affordable housing.

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ADAM ROTHKRUG: We have asked for more than  
17 a year for someone to tell us if we are legally an  
18 exempt product... project, if we are legally an exempt  
19 project... now if you don't think...

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COUNCIL MEMBER LANDER: [interposing] Well  
21 anyone...

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ADAM ROTHKRUG: [interposing] If you don't...

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COUNCIL MEMBER LANDER: ...is legally an  
24 exempt project. Anyone could ask for a rezoning above  
25 the square foot threshold and build below the square

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2 foot threshold. Anyone could do that. It doesn't  
3 matter whether you got...

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ADAM ROTHKRUG: [interposing] That's...

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6 COUNCIL MEMBER LANDER: ...200,000 square  
7 feet. You could build a 12,450 square foot project  
8 and have zero obligation for affordability, which is  
9 why I asked you from the start, come up with a  
10 mechanism, propose us a mechanism. I offered several  
11 for guaranteeing some affordability rather than  
12 rezoning this manufacturing...

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ADAM ROTHKRUG: [interposing] We...

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14 COUNCIL MEMBER LANDER: ...zoned piece of  
15 property and...

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ADAM ROTHKRUG: [interposing] So we...

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17 COUNCIL MEMBER LANDER: ...so far you've  
18 proposed nothing.

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19 ADAM ROTHKRUG: So we, we are here this  
20 morning. We are prepared to contribute in a  
21 meaningful fashion, meaning in a figure that is not  
22 2.2 million dollars to a payment to an HPD fund, but  
23 to a payment to a group charitable group or local  
24 organization that supports affordable housing in a  
25 figure that is in a mid to high six figures area.

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2 COUNCIL MEMBER LANDER: Let's talk about  
3 the onsite option for a minute, because you say you  
4 had no idea what participation would mean, but it's  
5 been very clear for many months what the onsite option  
6 is, and I think it's also been clear from HPD, from  
7 City Planning, from this council that the in-lieu fee  
8 would at least approximate the financial consequence  
9 of onsite affordability. That's been very much out  
10 there in the public that no one should think it's  
11 going to be a kind of safety valve that's a lot less  
12 than the onsite option, that it should be comparable  
13 to the onsite option. So that's been clear. Why are  
14 you not proposing onsite affordability as a way to  
15 satisfy? I'd love to get the units in this location.  
16 It's a dynamite location. We'd love to have, you  
17 know, three affordable units there as part of this 10-  
18 unit project.

19 ADAM ROTHKRUG: We are not proposing or not  
20 proposing anything at this point. We...

21 COUNCIL MEMBER LANDER: [interposing] Well,  
22 you're here at the last stage of the ULURP, so...

23 ADAM ROTHKRUG: [interposing] That's...

24 COUNCIL MEMBER LANDER: ...you ought to...be  
25 proposing it.

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ADAM ROTHKRUG: Well no, that's correct,  
but again the MIH...

COUNCIL MEMBER LANDER: [interposing] Most  
developers who have reached this phase that are  
proposing an MIH project are telling us where the  
affordable units are by this phase.

ADAM ROTHKRUG: [interposing] Yeah, well i...

COUNCIL MEMBER LANDER: Mr. Chari, has  
there ever been a MIH project that approached us with  
no proposal for affordable housing?

CHAIRPERSON RICHARDS: At this stage, no.

ADAM ROTHKRUG: Has...

CHAIRPERSON RICHARDS: [interposing] At  
least to my...

ADAM ROTHKRUG: [interposing] Has...

CHAIRPERSON RICHARDS: ...recollection...

ADAM ROTHKRUG: And has there been an  
exempt project yet, a project...

COUNCIL MEMBER LANDER: [interposing] They  
all...

ADAM ROTHKRUG: ...that falls...

COUNCIL MEMBER LANDER: ...could build below  
the 12,500 square foot threshold.

ADAM ROTHKRUG: Alright that...

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COUNCIL MEMBER LANDER: [interposing]

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Anyone could propose it.

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ADAM ROTHKRUG: You know, I don't...

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COUNCIL MEMBER LANDER: [interposing]

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You're not proposing...

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ADAM ROTHKRUG: [interposing] I, I don't...

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COUNCIL MEMBER LANDER: ...an FAR...

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ADAM ROTHKRUG: [interposing] I don't...

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COUNCIL MEMBER: ...with less than 12,500.

11

ADAM ROTHKRUG: I don't find on a site that

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might allow 50 or 60 or 100,000 square feet the

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argument that they can build 12,500 and stay below the

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exemption as a legitimate argument, Councilman, with

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all due respect.

16

COUNCIL MEMBER LANDER: I don't find an

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argument that you could build a 13,700 and you want to

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build a 12,450 a legitimate argument.

19

ADAM ROTHKRUG: You don't, in view of the

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economics as applied to this project, seriously?

21

COUNCIL MEMBER LANDER: It's... we've got to...

22

I don't, no.

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ADAM ROTHKRUG: You don't? So, if you had

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a project, you would pay... you would pay 2.2 million

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dollars to pick up 1,200 square feet?

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COUNCIL MEMBER LANDER: I don't see it that way. You've got a manufacturing zone piece of property. This is not about the bonus. This is not about the difference between 2.0 and 2.2. You're seeking to rezone a 1.0 FAR manufacturing zone piece of property to a 2.2 residential zone piece of property. That's a massive value increase...

ADAM ROTHKRUG: [interposing] Well, what was...

COUNCIL MEMBER LANDER: ...that you are seeking from this council for zero... you're taking away, in my opinion, something that's useful to the public in the M-zone land and adding nothing that is useful to the public.

ADAM ROTHKRUG: Right, so...

COUNCIL MEMBER LANDER: [interposing] I don't... I don't understand why we would even consider supporting it given the value proposition for the public that you are presenting.

ADAM ROTHKRUG: So let's just back up a second. This property has no value for manufacture or commercial uses, very limited...

COUNCIL MEMBER LANDER: [interposing] You're just wrong...

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ADAM ROTHKRUG: ...value.

COUNCIL MEMBER LANDER: ...about that.

CHAIRPERSON RICHARDS: That's your opinion.

COUNCIL MEMBER LANDER: Sorry...

ADAM ROTHKRUG: [interposing] No, no, no.

Well City Planning has recognized that.

COUNCIL MEMBER LANDER: [interposing] No

they... there's...

ADAM ROTHKRUG: ...so I don't want to...

COUNCIL MEMBER LANDER: ...plenty of

manufacturing and commercial...

ADAM ROTHKRUG: [interposing] City...

COUNCIL MEMBER LANDER: ...uses right...

ADAM ROTHKRUG: [interposing] City...

COUNCIL MEMBER LANDER: ...in this area that

we could absolutely benefit. Now, maybe they don't

merit having paid 240 dollars a square foot.

ADAM ROTHKRUG: No.

COUNCIL MEMBER LANDER: I'm not saying you

could come up with a manufacturing or commercial use

that can give a return on 240 dollars a square foot,

but there are many... this is a vibrant area. It's

unbelievable how many light manufacturing and

commercial uses have sprung up in the area around the

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2 port, around the Gowanus; there's all kinds of great  
3 uses that are popping up, office, light manufacturing,  
4 food manufacturing.

5

ADAM ROTHKRUG: Let me, let me say that my  
6 guess is that the neighbors on this block and across  
7 the street and the members of the backyard garden  
8 where this backs up to, that the last thing they would  
9 ever want to see on this block is a manufacturing or  
10 commercial building, and City Planning did not look at  
11 the... what the price paid for the property was. City  
12 Planning looked at the configuration and location of  
13 this property, and went out of their way to include a  
14 finding that is unlikely that there would be  
15 commercial or manufacturing developments of this  
16 property.

17

COUNCIL MEMBER LANDER: We... come do a walk  
18 around if you'd like to see...

19

ADAM ROTHKRUG: [interposing] Well...

20

COUNCIL MEMBER LANDER: ...plenty of viable  
21 light manufacturing and commercial use.

22

ADAM ROTHKRUG: [interposing] But in answer  
23 to your question...

24

COUNCIL MEMBER LANDER: ...[inaudible 28:39]...

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2 ADAM ROTHKRUG: ...I would say this, the city  
3 worked a long time on the current MIH program. You  
4 worked a long time on it. There's an exemption in the  
5 law. Why is that exemption there? Now, I wasn't  
6 involved in drafting the legislation or all the  
7 hearings that went into it, and I know that some  
8 people disagree with having the exemption in the law.  
9 City Planning Commission and other legal papers I've  
10 written have said that this exemption is required from  
11 legal perspective that counts to satisfy a  
12 constitutionality requirements so that the law is not  
13 a taking. So, there is an exemption in the law, and  
14 to pretend that it doesn't exist or just ignore it  
15 completely I think does a disservice to the fact that  
16 there was a recognition that there should be an  
17 exemption in the law. Now, if everyone thought there  
18 should be no exemption and every project should be  
19 subject to MIH that's fine, but that's not what the  
20 law says. So the answer as to why'd we proceed even  
21 though we started two years before and even though we  
22 knew the MIH was coming and even though we were  
23 supposed to be approved before the MIH and even though  
24 no one can give an idea as to what the MIH figure is,  
25 at the end of the day, there's an exemption in the law

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2 and we qualify for it. That said, we're still willing  
3 to recognize the importance of the city of providing  
4 affordable housing and doing it in this community in a  
5 meaningful, in a meaningful fashion. And we're ready  
6 to do that today.

7

COUNCIL MEMBER LANDER: Well, first of all,  
8 it's not a meaningful contribution if you haven't  
9 proposed it, you haven't offered it. We're here at  
10 the ULURP hearing. Anyway, I... I'm done with my  
11 questions, Mr. Chair, but I guess I'll just add a few  
12 final points. You know, if this rezoning were in fact  
13 seeking an FAR that was below the threshold I might  
14 feel differently about it, but this is a rezoning  
15 seeking an FAR which is above the threshold. Anybody  
16 could seek one above the threshold and then choose to  
17 build below it. Community Board Six was very clear,  
18 you referenced them, but they were very clear in the...  
19 in their vote that they want to see affordable housing  
20 at a level commensurate with MIH. I want... you know  
21 the... I was told throughout the process and even at the  
22 City Planning Commission that there would be a  
23 commitment. We're still here. There's zero  
24 commitment. We have no proposal at all, and I just  
25 think it would be a big mistake for both for my

1  
2 community to give up meaningful M-zone property, which  
3 we sure could use, in exchange for nothing, and I also  
4 think part of what's great here is that we have a  
5 city-wide standard for affordability. Sometimes  
6 members are able to negotiate above it, but we sure  
7 should not be dropping below it. And while I  
8 recognize it's been a long time and that we still  
9 don't know exactly what the in-lieu fee calculation is  
10 knowing that it was going to be comparable to the  
11 onsite inclusion, we would love to have these units  
12 onsite here and there should have been an expectation  
13 that if there was going to be an in-lieu fee it would  
14 roughly cost what replacing those onsite units would  
15 have been. So... anyway I, I...

16 ADAM ROTHKRUG: [interposing] So...

17 COUNCIL MEMBER LANDER: ...appreciate my  
18 colleagues being here. I'm glad to hear other  
19 questions, but to me, so far we just have not heard  
20 any answer, Mr. Chair, to the core question you asked.  
21 What is the public benefit of us rezoning this piece  
22 of property? And without that I, I certainly don't  
23 yet see any reason to support...

24 ADAM ROTHKRUG: [interposing] So...

25 COUNCIL MEMBER LANDER: ...this rezoning.

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2 ADAM ROTHKRUG: So again, let me say for  
3 the record that we are...

4 COUNCIL MEMBER LANDER: [interposing] That,  
5 that... I wasn't asking. I was making my closing  
6 statement...

7 ADAM ROTHKRUG: Okay.

8 COUNCIL MEMBER LANDER: If you want to keep  
9 going back and forth we can but...

10 CHAIRPERSON RICHARDS: [interposing] I just  
11 want to say...

12 ADAM ROTHKRUG: [interposing] No but...

13 CHAIRPERSON RICHARDS: ...let me... and, and  
14 this is as Brad closes out, Council Member Lander  
15 closes out, no matter how perfect or imperfect MIH is,  
16 it's still within the council's purview and I would  
17 ask this question: would you agree to approve or  
18 disapprove an application? And we can look at the  
19 benefits to a community. I mean we, we don't just look  
20 at, you know, one area; we're looking at it  
21 holistically. So, just interested in hearing a little  
22 bit more on that. It's in the council's purview to  
23 disapprove or approve an application based on...

24 ADAM ROTHKRUG: [interposing] Yes...

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2 CHAIRPERSON RICHARDS: ...the things that we  
3 mention today.

4 ADAM ROTHKRUG: [interposing] So, so one, I  
5 would say I think it's wrong for the Council to  
6 disapprove a project which falls within a legal  
7 standard. We talk about the legal standards. We fall  
8 within the legal standard of this law. So I think if  
9 the sole reason that this is being not considered is  
10 because we have... because we fall within this standard,  
11 then I think that that's... you know I disagree with  
12 that as a, as a legal concept...

13 CHAIRPERSON RICHARDS: [interposing] Well  
14 it's been...

15 ADAM ROTHKRUG: ...and the council policy.

16 CHAIRPERSON RICHARDS: And, I mean, we're  
17 looking, once again, and I'm going to go to go to  
18 Council Member Reynoso. I'm not sure if Council  
19 Member Lander has more remarks, but there's no  
20 affordable housing in this project, and you know it's...

21 ADAM ROTHKRUG: [interposing] But that's...  
22 but... again...

23 CHAIRPERSON RICHARDS: [interposing] I  
24 don't know anyone who's going to come to this council

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2 without a conversation at this moment in this time in  
3 history...

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ADAM ROTHKRUG: [interposing] Yes...

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CHAIRPERSON RICHARDS: ...without a proposal  
6 for affordable housing. It's just not something that..

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ADAM ROTHKRUG: [interposing] So we have...

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CHAIRPERSON RICHARDS: ...has happened, you  
9 know...

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ADAM ROTHKRUG: [interposing] Well again,  
11 I'm not...

12

CHAIRPERSON RICHARDS: ...at least in my...  
13 since I've been chair we have not had a discussion  
14 about a project before this committee. Even if it did  
15 not have the amount of affordable housing we wanted or  
16 the levels of AMI, projects still came with a  
17 community benefit, and there's no... you're not speaking  
18 to any benefit with this particular project, and this  
19 is an upzoning.

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ADAM ROTHKRUG: [interposing] I...

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CHAIRPERSON RICHARDS: ...you know so.

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ADAM ROTHKRUG: [interposing] I'm trying to  
23 speak to a benefit. I don't know whether this is the  
24 place to negotiate what dollar figure we'd be willing...

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2 CHAIRPERSON RICHARDS: [interposing] No,  
3 it's not, but...

4 ADAM ROTHKRUG: [interposing] Okay, so, so  
5 then I want to say... so, so then, so then... again, I  
6 want to say... I want to say for the record if you  
7 participate in the MIH program you get a bonus, and  
8 you make a payment. If you elect not to participate  
9 in the MIH program, you're not taking that bonus. So  
10 we're giving up our 10-percent floor area bonus, but  
11 we are willing to contribute in a similar fashion, not  
12 maybe to the HPD fund, but to a local organization  
13 that supports housing that's going to reflect the fact  
14 that we're not taking the bonus. We don't want to be  
15 subject to having to go through HPD for approval of  
16 housing onsite which is another two year process,  
17 another two year process in itself. So we're not  
18 doing nothing. We are willing to participate in a  
19 meaningful fashion comparable. When you've taken to  
20 the consideration that we're not taking the floor area  
21 bonus in a way that reflects our support for the...  
22 reflects the upzoning, reflects our support for the  
23 city's interest in affordable housing ,and we're on  
24 the record right now as agreeing to that.

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2 CHAIRPERSON RICHARDS: Okay, I'm going to  
3 go to Council Member Reynoso.

4 COUNCIL MEMBER REYNOSO: Could I ask per  
5 square footage residential, how much are properties  
6 going for in and around this area, comparables per  
7 square footage for residential?

8 ROBERT SHAPIRO: As a sale?

9 COUNCIL MEMBER REYNOSO: Yes.

10 ROBERT SHAPIRO: I think the figure the  
11 broker's have given us is depending upon front, back,  
12 whatever between 800 and under a 1,000 dollars.

13 COUNCIL MEMBER REYNOSO: Eight hundred and  
14 under 1,000 is that? Okay, so about 1,000 dollars..

15 ADAM ROTHKRUG: [interposing] Nine hundred  
16 average.

17 COUNCIL MEMBER REYNOSO: Per square foot?

18 ADAM ROTHKRUG: Per square foot sale,  
19 that's based upon the usable not the 12... 12,000 feet  
20 would be based upon 10,000 feet.

21 COUNCIL MEMBER REYNOSO: So when we look at  
22 the 2.2 that you keep referencing and it making it so,  
23 so difficult to build and financially unfeasible and  
24 the economics don't work, I think the most absurd  
25 portion of what's happening here is that you paid 100

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2 times the value of the property that was zoned at M1,  
3 which is probably going at the high levels, 24 dollars  
4 a square foot, the... probably at the best locations for  
5 manufacturing, 24 dollars a square foot, and you paid  
6 about 240 dollars a square foot. You paid a 100 times  
7 what the property was valued, but our concerned about  
8 a value on the other end that is much less than...  
9 nowhere near 100 percent, not even 10 percent of 100  
10 percent. So when you just put it on the flipside, you  
11 went into a restaurant and felt like you got  
12 overcharged because you didn't know what it cost. I'm  
13 letting you know that you paid the price of a  
14 Lamborghini for a Civic, and that's your... I'm just  
15 saying...

16 CHAIRPERSON RICHARDS: [interposing] That's  
17 offensive to people...

18 COUNCIL MEMBER REYNOSO: ...even though...  
19 listen, I like civics a lot. Manufacturing is my  
20 thing.

21 CHAIRPERSON RICHARDS: [interposing] What  
22 if you're civic is a Lamborghini?

23 COUNCIL MEMBER REYNOSO: I care deeply  
24 about it, but I just want to make sure that you know  
25 that the absurd part is what you paid for the property

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2 not what we're asking you to do in having an FAR  
3 allowable that would allow for us to get MIH and you  
4 trying to fall short. You could do your part and do  
5 it the right way. At this point, because you have  
6 that FAR available and you can build for MIH that's  
7 what we're asking you to do, and if you're not doing  
8 that on technical legal terms, then we have the right  
9 to deny that application. So far, nothing you've said  
10 here today would... speaks to that. So, I guess it's  
11 not even a question, it's just your... you made a bad  
12 investment. Thank you very much.

13 ROBERT SHAPIRO: It happens.

14 COUNCIL MEMBER REYNOSO: It happens, but  
15 that's your problem not ours.

16 CHAIRPERSON RICHARDS: Any questions? Any  
17 other questions from my colleagues? Okay, seeing  
18 none, okay. Any members...

19 ADAM ROTHKRUG: [interposing] Thank you all  
20 very...

21 CHAIRPERSON RICHARDS: ...from the...

22 ADAM ROTHKRUG: ...much for your time...

23 CHAIRPERSON RICHARDS: ...public... thank you.

24 Thank you for coming out. Any members of the public  
25 here wish to testify on this issue? Alrighty, seeing

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none. Where's my notes? We will lay this over until the next Subcommittee hearing for a future vote, and with that being said, meeting adjourned. I have to bang this gavel.

[gavel]

CHAIRPERSON RICHARDS: Now the hearing is over.

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C E R T I F I C A T E

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



Date December 21, 2016