OFFICE OF THE MAYOR
THE CITY OF NEW YORK

ANTHONY E. SHORRIS
FIRST DEPUTY MAYOR

Testimony of Anthony E. Shorris. First Deputy Mayor
Before the New York City Council
September 29, 2016

First, I want to offer my thanks to the Speaker, Chair Gentile, Chair Kallos, and the Members of the City Council for this opportunity to testify before you. My name is Anthony Shorris and I am the First Deputy Mayor of the City of New York. Joining me are the Corporation Counsel for the City, Zachary Carter, and the Commissioner of the Department of Citywide Administrative Services, Lisette Camilo. I am here today to discuss the Rivington matter, specifically what transpired from my own vantage point.

Before going through my own perspective on what happened, I want to state from the outset that I recognize that what happened here was not the right outcome for the community and taxpayers, nor was it consistent with the policy goals and values of the de Blasio Administration. As has already been noted, the city lost nursing home beds we should have preserved, and perhaps other public benefit uses as well. Being effectively the chief operating officer of the Administration, this outcome is one for which I am ultimately accountable. All I can say is that I am very disappointed in what happened.

When a failure to achieve the stated policy objectives of the Administration occurs in government – indeed, in any of the large organizations I have managed – my first goal has always been to try to rectify what happened as much as possible, and my second goal is to do everything I can to prevent it from ever re-occurring. In terms of making an effort to rectify the mistake that occurred, I believe we have made progress. I am pleased to announce that we have worked with Councilmember Chin and Manhattan Borough President Brewer and have identified a site where we will build affordable senior housing and assisted living units that will replace the bulk of what was lost at Rivington House. Funding for the project will be the $16 million that the City received as part of the lifting of the deed restrictions and which the Mayor committed would go back into the community to address the gap created. While further design work must be done, and a number of State and local approvals put in place, I believe this an important step in rectifying what happened here.

But we need to do more – we need to ensure this kind of thing cannot re-occur and, based on the changes we are putting into place and that I will discuss further, I feel very confident today in saying this kind of failure of execution will not happen again. As I look back on the events of the past two and half years related to Rivington, there are some clear lessons I have learned, which I hope to share with the members of the Council today. In the end, while nursing home beds on

this site were lost, and perhaps some revenue to the City as well, I hope all of us in the Administration will have learned enough to make the government stronger and smarter.

I will start at the beginning of my own involvement with this matter, but first, however, there are some points of background that I'd like to offer, some of which are familiar to the Committee members, but which may be helpful for the general public. Prior to the change of administration in January 2014, the removal or modification of deed restrictions from properties originally purchased from the City was not a matter that typically received senior level attention from City Hall. Since the early 1990s, the City's policy was to permit the lifting of any public benefit deed restrictions from properties purchased from the City which had been held by the purchaser for ten years or more where the original purpose of the deed restriction had been satisfied or was no longer necessary. The only condition was the payment of a fee – specifically, 25% of the current appraised value of the property. There was no requirement that alternative public benefit uses for the property be considered. This was the formal policy administered by the Asset Management Section of DCAS.

With the change of administration in January 2014, a high priority was placed on identifying real estate within New York City for development as affordable or supportive housing and for other public benefit uses. However, in contrast to the formal protocol that governed the lifting of deed restrictions from formerly City-owned properties in exchange for a fee, there was no formal mechanism that ensured that alternative public benefit uses for such properties would be considered and mandated where appropriate. Moreover, with respect to the specific use at issue with Rivington – the continued operation as a non-profit healthcare facility – the City government has virtually no regulatory role when it comes to nursing homes – every aspect of their regulation is handled by New York State, other than building and fire code matters.

Proposals to reduce the number of beds in any healthcare facility – or close such a facility entirely – require approval by the NYS Department of Health and its Public Health and Health Planning Council. And, as I am sure many members of the Council are aware, the Rivington matter is currently under review by the Office of the NYS Attorney General because questions have been raised as to the process for de-certifying these beds and whether the operator was duplicitous with the State when applying for permission to de-certify the beds. We await the results of that review and what course of action the City may have as a result.

I say all this not by way of excuse – much of what happened here is clearly the City's responsibility – but by way of acknowledging that our governmental structure here is limited: the City has no agency focused on nursing homes, no staff units dedicated to these issues, and no specific coverage of the matter at City Hall.

The issue of Rivington came to my attention in mid-2014 when staff informed me that a non-profit nursing home operator running an HIV/AIDS facility was suffering significant losses and was at risk of going bankrupt. Without knowing the details of the situation, I knew enough from my health care policy background not to be surprised since HIV/AIDS care has improved enough over the years that in-patient beds and specialized housing were becoming less essential as care moved to ambulatory and even home-based settings. We initially demurred from allowing any changes to the use of the site that summer.

In the Fall of 2014, after the operator reported continued financial stress and the risk of bankruptcy loomed, we began to explore what options there might be for the nursing home located at Rivington Street. As I usually do, I asked the staff to look at a number of options for the facility – including doing nothing, allowing Village Care to sell the site for the highest price, trying to turn it into an affordable or supportive housing site, or working to find another nursing home operator.

Again, it's worth pointing out that deed restrictions in any form generally did not rise to the level of City Hall review either before or after that time until this issue arose – and as noted, it is my understanding that had been the case for many years. This one came to our attention only because of its scale, its potential impact on the community, and on the delivery of services for a vulnerable population – not because it was deed restriction per se.

My focus at the time was on the best use for building – what would best reflect the needs of the city and the community – not on the specific legal transaction that would facilitate this aim. I did not believe earning the most money for the City Treasury was the primary policy objective here, but rather that addressing the larger policy goals of the Administration should be our central objective. That has been the approach of this Administration generally and certainly here – and as I noted earlier, this differs from the guidelines and practices in place in prior years.

It was also reported to me at the time that there was a clear community preference for some kind of nursing home use, and we wanted to ensure that was a consideration in our thinking as well. Around that time, we also heard from the union representing the workers there that they were concerned about the workers' jobs – something that came as no surprise given their traditional role.

My own sense, after looking over the options, was that a nursing home-type use remained the best one for the building, given the city's need for such beds, the community's preference for such a use, and the benefit of preserving many decently paid jobs. I was informed at the time that an existing deed restriction on the site limited its use to a non-profit nursing home. Despite my general preference for non-profit health care operators, I did agree that we should remove that restriction and allow a for-profit nursing home operator since that would open up the potential for many other nursing homes to maintain the site as an active nursing home. So that was the outcome I wanted: a continued nursing home-like use for the site.

I believe that Mayor has since made clear that would also have been the outcome he would have preferred, though I did not discuss the matter with him at the time since I thought the policy outcome we preferred was pretty obvious and our job was simply to make it happen

This was not the outcome we got, and that is one of the failures in the process that needs to be corrected. Once we decided that was the preferred use for the site, and I believed that the decision was passed along to the agency, I moved on to other matters, and did not address the Rivington issue again until it became a public matter in late February of this year. As far as I was concerned, the matter was settled: we wanted a continued nursing home use, even if by a for-

profit operator, such a use would require some action regarding the deed restriction, and that was the end of the matter.

As I noted, whether the operator that took over from Village Care was forthcoming with his plans for the site or was instead manipulating the process for his own advantage is the subject of continuing investigation. All I can say is that the City certainly had no reason during this time to expect duplicitous behavior.

There has been some discussion of correspondence I received on this matter in the months after, so let me address that as directly as I can. When I started as First Deputy Mayor in January 2014, I asked that agency heads send us brief weekly reports. These reports – usually as attachments to e-mails – came in from about 40 agencies each week. The reports were not designed to be vehicles to raise important or urgent issues – for those matters, agency heads would simply call me, send me e-mails, or report on them in our regular meetings. Instead, they were designed to give me and my staff a general idea of other activities the agencies had undertaken in the prior week or upcoming meetings or activities they had scheduled. While I initially tried to read every one of these reports each week, over the course of time, it became clear that it would be a better use of my time to regularly review a sampling of the reports.

I do not recall whether I read the specific DCAS weekly reports where there was mention of this matter, but having reviewed them more recently, it is clear to me that nothing in them would have flagged the key issue for me concerning the future of Rivington House. The language in the very brief mentions of this matter – reporting that deed restrictions were being removed and that the owner expected the nursing home use to continue – would only have reinforced my understanding that the matter was progressing as planned. These reports arrived eight to twelve months after my last engagement on this issue.

At no time did anyone write, call, meet or discuss with me the notion that the actions being taken by the agency would allow the property to be converted to luxury housing. And I am quite sure that is the case since any such report would certainly have gotten my attention as it would have been directly contrary to what I had directed should happen. Instead, reading such language in an attachment to a weekly e-mail would merely have confirmed what I had expected would happen: a change to the deed restriction.

I did not discuss Rivington again until late February 2016 when the new Commissioner, Lisette Camilo, reported to me that the site had been sold to a luxury housing developer for in excess of $100 million. Knowing this was exactly what I did not want to happen here, I directed Lisette to immediately contact the Department of Investigations and ask for a comprehensive review of the matter. Given how concerned I was, just to make sure I called the Commissioner of Investigation myself and expressed my belief that this matter demanded a full review by his office. I spent the next few days trying to understand what transpired and then I informed the Mayor as news accounts were beginning to run – the first time he heard anything about matter.

We immediately froze all actions on deed restrictions, and began drafting our first executive order on deed restrictions, designed to create more transparency and a better process, one that the Mayor signed shortly after being briefed. From there on, the rest of the story is quite public.

I have fully cooperated with all of the reviews being undertaken on the matter, including sitting for many hours of interviews by the Department of Investigation and the City Comptroller's office. As I mentioned at the outset of my comments, when a failure has occurred in the administration of the government, it is my job to find ways to rectify it where possible and prevent its re-occurrence. We have taken what actions we can to rectify this particular matter. We have committed that all $16 million that the City gained as a result of the transaction will be re-invested in the community to create beds that would support those in need.

We have identified a potential site that would allow for the creation of housing and assisted living for seniors that would replace the bulk of the beds lost at Rivington House – and we look forward to continuing to work with Councilmember Chin, Borough President Brewer, and the entire community on this new project.

But given our goals of ensuring this cannot re-occur, let me share what lessons I have learned from this mess, with the hope they might prove helpful to the Council as you deliberate on the matter.

First, this obscure process of amending or removing deed restrictions on DCAS properties, one that had been going on for many years with little engagement by any City Hall or the public and its representatives, needs to become much more transparent since that is the best protection against errors (or worse). That is the reason we drafted rules some weeks ago – which have now entered the formal public rules review and comment process – that will ensure no seemingly non-descript action like this can go unnoticed. We will distribute information about any deed restriction change to the community and their elected representatives and make all data we have available for review in the community itself

Second, the City needs to be more vigilant against those who would attempt to deceive us and the impacted community, and so we have put in place a number of additional steps to demand more information – data that will be both public and legally actionable if inaccurate – before any actions are taken. That is the reason our rules have substantially increased the amount of data to be filed before any such action is even considered – and any false filings could create a violation of State criminal laws.

Third, within the Administration itself, we need a more rigorous review of these kinds of actions to ensure our policy goals are being reflected in these actions as with any other proposed change. That is why we have established an internal review committee that includes OMB and the Law Department as well as two different units in City Hall to assess the merits of any such actions before allowing them to move forward into the now-broader public engagement process. We have elevated the review of such actions in the future – to make sure that the decision-making on all such changes in deed restrictions happens at the highest levels of government, with the engagement of multiple perspectives and only after a very formal review process is conducted to ensure no gaps in communication can occur.

DANIEL SQUADRON
SENATOR, 26TH DISTRICT

THE SENATE
STATE OF NEW YORK

RANKING MEMBER
CODES

COMMITTEES
CORPORATIONS, AUTHORITIES & COMMISSIONS
FINANCE
INVESTIGATIONS AND GOVERNMENT OPERATIONS
SOCIAL SERVICES
TRANSPORTATION

Testimony of State Senator Daniel Squadron to the New York City Council Committee on Oversight and Investigations and Committee on Governmental Operations Regarding the Rivington House and Int. 1182

September 29, 2016

My name is Daniel Squadron, and I represent the 26th District in the New York State Senate. My district includes Rivington House, as well as the Manhattan neighborhoods of Tribeca, Battery Park City, the Lower East Side, Chinatown, the Financial District, Greenwich Village, Little Italy, SoHo and the East Village and the Brooklyn neighborhoods of Greenpoint, Williamsburg, Vinegar Hill, DUMBO, Fulton Ferry, Brooklyn Heights, Cobble Hill, and Carroll Gardens.

I would like thank the New York City Council, Committee on Oversight and Investigations Chair Councilmember Gentile, and Committee on Governmental Operations Chair Kallos for convening this hearing and for the opportunity to testify. Additionally, I would like to thank Councilmember Chin and Borough President Brewer for their work on Int. 1182-2016, and Manhattan Community Board 3 and Neighbors to Save Rivington House for their ongoing focus on this critical issue.

The Lower East Side has faced a series of nursing home closures in recent years. In less than five years, the neighborhood has lost the Bialystoker Center for Nursing and Rehabilitation and the Cabrini Nursing Home. Both closings were significant losses to the Lower Manhattan community, with residents coming together to protest the loss of critical local health resources, as well as the broader impact on community spaces and the overall community.

Rivington House was meant to serve as a nursing home provider in perpetuity. Instead, the appalling process at Rivington House allowed it to disappear in a puff of profiteering without transparency or community input. As the local representative, let me be clear: the terrible process came at a tremendous and unacceptable cost to the community.

Beyond the very real cost to local nursing home access, the closure of Rivington House also lands another blow to New Yorkers' faith in government. The Lower East Side community is left with one less nursing home, and no confidence that government is looking out for its best interest. This is exacerbated by the fact that Manhattan Community Board 3 raised concerns about Rivington House repeatedly as this process continued -- concerns that seem to be have disregarded.

The closure and lifting of Rivington House's deed restriction highlights significant procedural flaws at the city and state level. On the state side, the Rivington House closure has laid bare an absolutely opaque, and seemingly unenforceable process. Current process allows no public input or transparency when a nursing home closure is threatened or approved by the State Department of Health (DOH). Further, DOH is not required to consider how a facility's closure will impact health needs in the community, and that there is a major breakdown in information between on the ground realities and the state closure process.

The opaque and ineffective state process has disturbing similarities to the broken state hospital closure process, as experienced in painful detail at Long Island College Hospital, also in my district, leading me to introduce the "Local Input in Community Healthcare (LICH) Act," along with Assemblymember Simon. In the coming weeks, I will be working with colleagues to introduce state legislation to improve the broken process surrounding at-risk nursing homes.

Both Rivington House and LICH show how toothless the broader state process is when other levels of government, such as the State University of New York System which oversaw LICH, or New York City, have failures within their own systems.

Of course, Rivington House makes clear that reforming the city's laws around deed restrictions is also critical. The process to remove the deed restriction was insufficiently transparent, and failed to protect the public interest. Both components of Int. 1182 would be important improvements to the existing process.

The Rivington House closure has come at a significant cost to the Lower East Side community, and highlighted major flaws in the state and city processes by which nursing home facility closures move forward and deed restrictions are governed. As investigations into what happened continue, it is urgent that we reform every step of what went wrong here. The underlying state and city laws that allowed this to happen must be part of that reform. It is also critical that the Lower East Side community's need for nursing beds and the loss of this facility be addressed. We are not willing to simply accept the consequences of these failures and move on.

Thank you again to Chairs Gentile and Kallos for the opportunity to testify, as well as Councilmember Chin, Borough President Brewer, Community Board 3, and Neighbors to Save Rivington House.

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July 19, 2016

New York City Planning Commission
120 Broadway
New York, NY 10271

Dear Chair Weisbrod and Members of the City Planning Commission:

We write having just completed a review of the New York City Department of Investigation's "Examination of the City's Removal of the Deed Restriction 45 Rivington Street in Manhattan" (the "DOI Report").

Since these matters were first brought to light, we have thought that resolving the issues raised by the Rivington House episode would need to go further than administrative adoption of a more formal process for lifting deed restrictions on formerly city-owned property. In the wake of the Rivington House deed restriction removal, we proposed legislation to create a searchable database of properties where the City imposed a restriction and to codify requirements for a public and transparent process for the lifting or modification of those restrictions.

We still believe both these steps are necessary, but we no longer believe they are sufficient.

For that reason, we request that the City Planning Commission act pursuant to City Charter Section 197-c(12) to propose that the modification or removal of deed restrictions imposed on property formerly owned by the City be subject to the Uniform Land Use Review Procedure ("ULURP"). This section of the Charter provides that the City Council may do this by enacting a local law upon recommendation of the City Planning Commission. This would subject deed restriction changes to ULURP, the city's gold standard of public review.

As we are all painfully aware, the removal of the Rivington House deed restrictions allowed that property – previously restricted to use as a not-for-profit healthcare facility – to be sold for development as luxury condominiums, without any input from, or meaningful notice to, local elected officials and the community. Since this occurred, we have been extremely concerned about the lack of a consistent process for (1) reviewing and (2) deciding whether to alter or remove, deed restrictions, placed on property once owned by the City of New York.

The DOI Report is troubling in its portrayal of the lack of transparency and accountability that are the hallmarks of the current process and that resulted in the lifting of the Rivington House restrictions. Both of these problems could be addressed by the creation of a public process. However, the problems appear to have gone deeper.

The DOI Report reveals that the Department of Citywide Administrative Services (DCAS), essentially the City's facilities and property manager, was responsible for crafting a "Land Use Justification Memo" for the lifting of the deed restrictions (DOI Report at 11). Land use review is a function that we believe should be performed in conjunction with the City Planning Commission.

The City already has a process for determining land use planning that involves the Department of City Planning and the City Planning Commission, public review by the Community and local officials, and final action by the City Council, all within a formal, tried-and-true, legally sound procedure. That process is called the Uniform Land Use Review Procedure, or "ULURP."

In fact, the lifting of some deed restrictions – those that were placed on property through the ULURP process – is subject to change only through the ULURP process. Yet, deed restrictions that for whatever reason were placed administratively on property years or even decades ago avoid public review under today's rules – with disastrous consequences, as we've seen at Rivington House. There is no reason to treat the same types of restrictions designed for the benefit of the public so differently; indeed, by invoking section 197-c(12) of the Charter, properties with deed restrictions would receive identical treatment, regardless of the process by which that restriction was placed.

Section 197-c outlines the City's ULURP process and lists the types of actions subject to ULURP – but the Charter also makes explicit that this list need not be exhaustive. Paragraph 12 of subdivision (a) in that section states, "[s]uch other matters involving the use, development or improvement of property as are proposed by the city planning commission and enacted by the council pursuant to local law" may be made subject to ULURP.

We strongly urge you to make such a proposal to the City Council and stand ready to support you in any way we can.

Sincerely,

Gale A. Brewer
Manhattan Borough President

Margaret S. Chin
City Council Member, District 1

cc: Hon. Melissa Mark-Viverito, Speaker
Hon. David Greenfield, Chair, Land Use Committee

September 1, 2016

New York City Planning Commission
120 Broadway
New York, NY 10271

Dear Chair Weisbrod and Members of the City Planning Commission:

On July 19, 2016, we requested that the City Planning Commission act pursuant to City Charter Section 197-c(12) to propose that the modification or removal of deed restrictions imposed on property formerly owned by the City be subject to the Uniform Land Use Review Procedure ("ULURP").

Since then we appreciate the fact that the Commission has had an initial discussion on this matter, with a presentation from the Department of City Planning. However, we understand that it is your intention to make a decision on our request before the end of September.

We understand that at the Commission's initial discussion there were concerns raised by the Department that deed restrictions are varied and numerous, and in many instances "land use considerations are not the primary impetus." However, we are still unaware of the breadth, variety of, and purposes served by, the various types of deed restrictions. In addition, the discussion on the Commission's ability to act on our request appeared to be characterized as the ability to accept or reject our proposal – in other words to subject all, or no deed restrictions, to ULURP. It is not our position that the modification of every type of restriction should go through a full ULURP. We could not take such a position because we do not know the variety of such restrictions that may exist. But thus far we are unaware of anyone in City government who does know the full breadth and variety of these restrictions. Certainly this information has not been shared with us or, to our knowledge, with the Commission.

We believe that before making a decision on this, the Commission should more thoroughly explore the different types of restrictions, including which types have been labeled "business terms" as opposed to "land use" restrictions, how those decisions have been made and whether those labels actually correspond to the effect those restrictions have on our communities and the "use, development or improvement of real property." (NYC Charter §197-c)

We also believe it is safe to say, based upon the information we do have, that at a minimum, restrictions on property limiting the use of a facility to a public purpose should go through ULURP before a decision is made to relax or eliminate these restrictions. However one wants to characterize such a decision, we view it as one that should be subject to our City's land use

public review process. The process by which such a restriction was imposed, or the intent behind its imposition, should not determine the type of review that occurs to change or remove the restriction. Rather it is the effect of the decision that should be determinative. A decision as to whether land should continue to be used for a public purpose or under what circumstances it can or should be developed by a private developer should involve our City Planning Commission, community input, and should ultimately be subject to review by the City Council.

Thank you for your continued consideration of this important matter.

Sincerely,

Gale A. Brewer
Manhattan Borough President

Melissa Mark-Viverito
Speaker, NYC Council

Margaret Chin
Council Member, 1st District

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Gale A. Brewer, Borough President

Testimony of Manhattan Borough President Gale A. Brewer
New York City Council Committee on Governmental Operations
Jointly with the Committee on Investigations
September 29, 2016

Thank you Chairs Kallos and Gentile for having this important hearing on deed restrictions and the recent removal of the restriction on Rivington House. I am Manhattan Borough President Gale A. Brewer.

As we are all painfully aware, on November 10, 2015 the City issued a deed modification removing the restriction that limited the use and development of Rivington House in perpetuity to a not for profit "Residential Health Care Facility." That restriction had been in effect for almost 25 years.

As we were reacting to the loss of Rivington House as an institution serving a public need, just three months later a deed restriction limiting use and ownership of property owned by the Dance Theater of Harlem to "Non-profit use by a community… organization offering cultural services to the community," was similarly lifted. That restriction had preserved this property for a public use for almost 40 years.

These two losses -- in a Borough that is at risk of having its spirit crushed under the weight of luxury condo development -- are disastrous. With virtually no notice – and I do not consider publication for one day in the City Record as notice – the restrictions limiting these properties to public use were removed so that they could be developed by for profit real estate developers. No input was solicited from the communities or from the local elected officials, the planning experts on the City Planning Commission were not involved, and the City Council which is supposed to balance local concerns and citywide needs was not consulted.

Now the Administration has proposed a rule that would address some of the most obvious concerns. The proposed rule requires notice to the affected community board, borough president and council member as well as a public hearing. However, this rulemaking does not help us to get a handle on the range of deed restrictions that exist so that we can best formulate one or more processes for amending or removing them. In addition, it is a DCAS rule which can be changed without the approval of anyone but the agency involved and need not be maintained in subsequent administrations.

Int. No. 1182, proposed by Council Member Chin and me, would require the development over time of a searchable database of all former city properties with deed

restrictions with as much relevant information on those restrictions as can be assembled. In addition, the legislation mandates at least 60 days' notice to the community board and local elected officials and a hearing at least 20 and not more than 30 days prior to the removal of the restriction.

However, Council Member Chin and I, together with Council Speaker Mark-Viverito and Public Advocate James, have come to believe that there is a better process that should be applied to at least some deed restriction amendments or removals. That process is our City's very own Uniform Land Use Review Procedure or ULURP, and at a minimum this process should be applied to the removal or amendment of deed restrictions that limit former City-owned property to public uses for the benefit of the community or public at large. Section 197-c(12) of the City Charter provides that the City Council may, by local law, subject a category of actions affecting the use or development of real property, to ULURP. Pursuant to this section, I, together with Speaker Mark-Viverito, Council Member Chin and Public Advocate James have called upon the City Planning Commission to propose that the Council add modification or removal of certain deed restrictions to ULURP.

Deed restrictions that require property to be used for public purposes are closer to land use restrictions than to a business term in a contract. Yet the Mayor's proposed policy would still have DCAS spearheading the process of considering changes or removal of such restrictions, although with input from other agency representatives. The City Planning Commission should spearhead any process that could allow property required to be used for public purposes to be turned over to a private developer.

It shouldn't matter how a deed restriction was put in place, but rather why it was put in place. If its purpose was to benefit the public, then removing or altering it to allow a private developer to develop it should go through our City's land use review process and the City Council should have the final say on such actions. The best support for this position is found in what apparently happened with the parcel owned by the Dance Theater of Harlem. The City Council did not include this property in the 2012 downzoning of Harlem because we were under the impression it could only be used for cultural purposes. In light of that, how can anyone argue that the removal of this deed restriction was not a land use decision?

The ULURP process is far from perfect and can be cumbersome. But it is a tested and dependable process for making land use decisions, with ample provision for both public and government review and comment. Land in New York City is at a premium and developers stand to make steep profits. Using an existing process, known to all, seems to be a fair proposition. If there are actions on deed restrictions that are less substantive and more ministerial, section two of our legislation provides a process that does not subject these to a ULURP process but provides notice and opportunity for all to be heard.

Finally, I must add that I am very unhappy that the Administration has proceeded this week with rulemaking on its proposed new deed restriction process. I believe that the Speaker, Council Member Chin, the Public Advocate and I have come forth with some ideas worthy of serious consideration. I also believe that this Council hearing and your two Committees could develop further proposals or help to refine those that we have put forward. I feel it is a bit of a

slap in the face that two days before this hearing, the Administration published its proposed rule on deed restrictions. Not taking sufficient time to reach out to others and not seeking input is what got us into this situation. I do not think it is the correct recipe to get us out of it.

Citywide Administrative Services

City Council Hearing
Rivington House
September 29, 2016

Introduction

Good morning, I am Lisette Camilo, Commissioner of the Department of Citywide Administrative Services (DCAS). I want to thank Speaker Mark-Viverito, Chair Kallos and Chair Gentile for the opportunity to testify today on the matter of Rivington House.

Rivington House has been the subject of much scrutiny throughout most of my time at DCAS. I would like to start off by saying that DCAS and this Administration are disappointed by the outcome. We recognize that the system we had in place was flawed and we are committed to ensuring that we – along with the Council – create a process that is more transparent and allows for outcomes that align with our priorities, unlike what transpired on the lower east side.

Today, I am here to discuss DCAS' role as manager of the City's commercial office, court and surplus real estate portfolio and to offer insight into deed restrictions, how and why restrictions may be placed on properties, and the proposed new process that we developed which provides more coordination with our partner agencies and allows for greater community notification and input. I will also provide comments on Intro. 1182.

By way of background, through our Asset Management Line of Service, DCAS acts as the real estate arm of the City of New York. DCAS manages approximately 15 million square feet of property in over 55 City-owned buildings that support various functions of government, including State court operations and City agency offices. We also negotiate leases of private property on behalf of other agencies. There are currently over 430 leases totaling over 22 million square feet. DCAS also acquires private property for City use, and manages and disposes of City-owned surplus properties.

Disposition of City Property

Over the last four decades, DCAS (and its predecessor Department of General Services) has disposed of surplus City property through its public auction program. In doing so, the City has sought to promote redevelopment of sites by the private sector to generate sales and tax revenue for the City, to encourage expansion of ownership by communities and homeowners, and to reduce the City's liability for overseeing vacant lots.

With certain exceptions, disposition of property requires review and approval through ULURP. Through this public review process, some dispositions are "unrestricted", which allow owners to use the property as they see fit, and some are "restricted" which limits uses. Restrictions are imposed to promote certain uses or to support City goals, often based on neighborhood

context at the time. The reasons for imposing restrictions can change, as can neighborhood character and market conditions.

In many cases, restrictions are imposed through the ULURP process. Restrictions can also be imposed outside of the ULURP process through the authorization for sale by the Mayor or his designee or, previously, the Board of Estimate.

Through the DCAS sales programs, thousands of surplus properties have been sold since the 1950s, some of which contain deed restrictions. Most restrictions were imposed in order to support sale to and use of the property by adjacent owners. Other restrictions are crafted to promote purchase for use as a community facility. Others require construction of buildings to remove blight.

A few times per year, DCAS receives requests from property owners to modify or remove these restrictions. A deed restriction cannot be removed or modified without City approval unless otherwise provided for in the deed itself. Restrictions are modified in the same manner that they were originally imposed. For those restrictions that were imposed through the ULURP process, a new ULURP process is necessary. Restrictions imposed through a Board of Estimate sales resolution or through Mayoral authorization are modified or removed through executive action.

Old Process

As the Rivington transaction illustrated, the process that DCAS followed, which had been in place for the last quarter century, focused primarily on a formulaic procedure to accomplish the transaction. The process was developed in consultation with the Law Department in 1991. DCAS has since followed the process for all requests to lift or modify deed restrictions that it received. In this process, little consideration was given to factors other than whether the deed restriction had been in place for 10 years and assessing the fee--25% of the fair market value of the property. The values of this Administration were not considered in the process. When this came to light, we immediately placed a hold on deed modifications while a new process was developed.

New Process

The proposed new process for modifying deed restrictions, creates a systematized approach that ensures restrictions will be modified only when they advance City policy goals and community concerns. Some highlights of this new system include:

1. Enhanced Community Engagement: Notices of requests for deed restriction modifications will be required early in the process and will be sent directly to the affected community board, councilmember and borough presidents. There will also be

a public hearing that will take place in the affected community board. The public hearing notices will have enhanced requirements, including increasing the number of days they will be published in the City Record from one to seven.

2. Additional Disclosure Requirements of Applicants: DCAS will require a property owner seeking to modify a deed restriction to detail the intended use, development, and need for the modification of a deed restriction. DCAS will also require the property owner to disclose any intended buyer of the property, if known, as well as individuals and companies with ownership interests in both the owner and the buyer. DCAS will require the property owner to disclose any additional changes that occur after the submission to DCAS prior to final action by the City. If the City, in its evaluation of the request, ultimately makes the recommendation to modify a deed restriction, DCAS will include legally binding language around the proposed use of the property in the revised deed restriction.

3. Enhanced Review and Due Diligence Process: DCAS will require additional due diligence of the parties requesting to modify a deed restriction, including information requested from other City agencies and adverse information searches of public databases.

4. Consultation with Other City Agencies Will Be Mandated: DCAS will consult broadly with other City agencies to determine if there are alternative uses for the property or policy needs of the city and the community that are advanced through a modification of the deed restriction. This will include consulting with HPD on whether affordable housing units can be created as a result of the action, and any other agency that has jurisdiction over public benefits included in the initial restriction.

5. Elimination of the Formulaic Approach to Valuing Restrictions: DCAS will no longer charge 25% of fair market value to remove or modify deed restrictions. Changes will be valued on a case-by-case basis, focusing on the nature of the restriction and the proposed amendment.

6. Two Appraisals Will Be Required: Any request will require at least two contemporaneous appraisals of the property, one conducted internally by DCAS and one by an external, independent third party appraiser.

7. Intra-agency Committee Review: In order to create a system of thorough consideration and analysis, all deed restriction modification requests will be presented to a newly created committee composed of representatives of the First Deputy Mayor, the Deputy Mayor for Housing and Economic Development, the Corporation Counsel, and the Office of Management and Budget. The committee will review the appraisals, community feedback, land use analysis, enhanced due diligence results, and the assessment of the public benefit from other City agencies. The committee will evaluate the transaction's

alignment with City policy goals and determine whether it is consistent with the values of the Administration. A recommendation will then be presented to the Mayor for consideration prior to final action.

We are confident that the changes in our proposed new process will prevent another Rivington from happening.

I now turn to Intro. 1182.

Intro. 1182

DCAS shares the goals of increased transparency in Intro. 1182.

We welcome the opportunity for further dialogue with the City Council on the creation of a database that would allow for the tracking of properties with deed restrictions. DCAS believes proper record keeping and public access to information is important. The City has sold thousands of properties through auctions and other means since the 1950's when, unfortunately, record keeping was not as thorough as it is today. Given the lack of complete data sets, complying with the proposed legislation would present some challenges for the agency. Regardless of these challenges, DCAS has begun to review and compile data about these transactions. We are committed to working with the City Council to create a database that meets the needs of the public and that furthers our efforts to create a much more transparent process.

Intro. 1182 also requires additional notification requirements regarding proposed removal or modifications of deed restrictions and public hearings. We support these enhanced requirements as many of them are echoed in the proposed new process.

Conclusion

The Rivington transaction highlighted that the decades-old procedure used in the rare instances in which deed restrictions are modified or removed did not properly give due consideration to the policy priorities of the Administration, was opaque in its approach and failed to take into consideration input from the community. This is why we worked to create a proposed process to close the gaps of the previous one. We are confident that the new process will better protect our policy goals as well as the needs of the community.

Thank you for your time, and I'm happy to answer any questions that you may have.

THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD 3

59 East 4th Street - New York, NY 10003
Phone (212) 533-5300 - Fax (212) 533-3659
www.cb3manhattan.org - info@cb3manhattan.org

Jamie Rogers, Board Chair

Susan Stetzer, District Manager

September 29, 2016
Committee on Governmental Operations
Support for Intro 1182-2016

Community Board 3 supports legislation that will prevent the loss of city properties due to lifting of deed restrictions without public notice or input. The deed restriction process for Rivington House lacked transparency, and the lack of community notification and input caused great harm to the community. When VillageCare first alerted CB 3 of the proposed sale of the skilled nursing home for AIDS patients, there was no mention of the deed. When the proposed sale became public, I was informed about the deed restriction from a community member involved in work with AIDS patients—the CB was never formally informed of the restriction by the owner or administration. I mention this to highlight the need for public notice and input. VillageCare did not acknowledge the deed's existence in the beginning of the sale discussion. We did not know for two years that this was because of their attempt to have the deed restriction lifted. This points to the need for the searchable databased proposed in the new legislation and supported by CB 3 in a resolution May, 2016 and attached. When an important community property is proposed for any land disposition, we should be able to research all files for the property as it is not always in the interests of the owner to disclose information.

The Rivington House deed restriction hearing was published one day in the City Record—this is not notice. There is no community board that has the resources to thoroughly read the City Record every day. The Community Board knew there was a deed restriction for both nonprofit ownership and in perpetuity nursing home facility and knew the owner would request a waiver of the nonprofit provision. However, there was complete lack of transparency as to the implementation of action to lift the restriction for both aspects of the deed restriction. There was such lack of transparency that until we read the FOILed material in the media a year later, we had no idea there had been a conscious decision by the administration to lift both provisions.

CB 3 supports notification of elected officials and the community board. The notice of the public hearing should be at least 45 days and preferably 60 days prior to the public hearing to ensure that the community board can schedule and post the agenda item for public committee hearing and receive input from the public to inform a community board vote prior to the public hearing.

CB 3 further supports the requirement that the notice of the hearing be sent to the elected officials and community board and that the hearing be held within the community district to allow for input from the impacted community. Community Board 3 supports and appreciates the City Council's legislation to prevent further lack of transparency in removing deed restriction on city properties and former city properties.

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Gigi Li, Board Chair

Susan Stetzer, District Manager

May 26, 2016

Mayor Bill de Blasio
City Hall
New York, NY 10007

Dear Mayor de Blasio,

At its May 2016 monthly meeting, Community Board 3 passed the following resolution:

VOTE: Community Board 3 support for legislation codifying the Mayor's Executive Order 17 (Public Notice of Requests to Remove or Modify Deed Restrictions) and call for the development of a publicly accessible database documenting all deed restrictions

WHEREAS, it has become evident to CB 3 that the current process by which a restrictive deed imposed by the City of New York is lifted is flawed in that procedures do not allow for notification of and input by the relevant Community Board, City Council Member, or Borough President; and

WHEREAS, the City Council Governmental Operations Committee will likely hold a hearing regarding legislation codifying the Mayor's Executive Order No. 17 (Public Notice of Requests to Remove or Modify Deed Restrictions); and

WHEREAS, Executive Order No. 17 provides that:

a. A public notice shall be published in the City Record for at least seven consecutive business days commencing at least thirty days and no more than forty days prior to the public hearing;
b. Notice of the public hearing shall be mailed to the Community Board in which the subject property is located and to the Borough President and the Council Member who represent the area in which the subject property is located;
c. The public hearing shall be held within the Community District in which the subject property is located; and
d. A public file containing copies of the calendar document and other public documents shall be made available to the Community Board in which the subject property is located for public review at said Community Board's office no later than twenty days prior to the public hearing.

WHEREAS, in addition to the provisions of Executive Order No. 17, the proposed legislation must require development of a publicly available, easily searchable database of properties with deed restrictions imposed by the City of New York; so

THEREFORE BE IT RESOLVED, the proposed legislative framework is at a minimum what CB 3 finds necessary in order to increase transparency and community input; and

THEREFORE BE IT FURTHER RESOLVED, CB3 expects the governmental operations hearing will be one of many opportunities for greater community input and transparency into the process of lifting deed restrictions; and

THEREFORE BE IT FURTHER RESOLVED, a publicly available, easily searchable database is essential so that the public, Community Boards, and elected officials may be aware of deed restrictions in their community and participate in decision-making with regard to the lifting of a deed restriction.

Please contact the community board office with any questions.

Sincerely,

Gigi Li, Chair
Community Board 3

MyPhuong Chung, Chair
Land Use, Zoning, Public and Private Housing Committee

Cc: Lisette Camilo, Commissioner, Citywide Administrative Services
Iris Quinones, Office of U.S. Congresswoman Nydia Velazquez
Mauricio Pazmino, Office of New York State Senator Daniel Squadron
New York State Assembly Member Alice Cancel
Tommy Lin, Mayor's Office of Community Affairs
Lucille Songhai, Office of Manhattan Borough President Gale Brewer
Roxanne Earley, Office of New York City Council Member Margaret Chin
Matthew Viggiano, Office of New York City Council Member Rosie Mendez

My name is K Webster. I'm a member of Neighbors to Save Rivington House and President of the Sara Roosevelt Park Community Coalition.

Last night we celebrated a neighbor's photography exhibit. Council Member Chin wrote a heartwarming Proclamation for him. But he losing ground to Alzheimer's disease and should be a resident of Rivington House – and would be - if it had been protected, as was intended, as a health care facility in perpetuity.

The final days of Rivington House as a skilled nursing home for people with AIDS I saw the last five residents reluctantly end their visit to the Park's quiet turtle pond. They didn't want to leave.

Bob who has worked in the park as a volunteer since 1980 said: "I have given my life to remove drug dealers and pimps to make this park a good place for children. I thought that when I could no longer give back – I would be in Rivington House looking out the window at my life's work."

Those whose home it was, those in need of skilled care now or in the future, families with loved ones who need care, health care workers who lost their jobs (almost 200 of them) are the only ones who have felt the consequences of this mess.

For the evicted this has been a nightmare - losing home, caregivers and sometimes their health. For those who need care and for those who are trying to provide it, that nightmare is just beginning. There are eleven neighbors and friends, two caregivers and a senior center trying to keep *one* elder safe until we find him a nursing home bed.

All for the profit of a few.

Those of us who refuse to give up on Rivington House have been treated to stonewalling, pity, dismissal, insults, callousness and sarcasm by this administration for our, admittedly, dogged and angry fight.

After a year of fighting for Rivington House to remain a nursing home, I personally spoke to Tommy Lin the mayor's official liaison on December 1, 2015 and emailed him later that evening with my warning about Rivington House. I didn't have $40,000 to offer a campaign. I had only the representative I was afforded by this administration.

And I spoke at length in May 2015 to the new operator of the supposed nursing home The Allure Group set up. He could not figure out how to re-instate long-term care contracts – and didn't seem to want to. Rehab patients are so much easier to empty from a building you intend to sell.

There were so many missed opportunities, smoking guns, lobbyists, profiteers and outright lies told.

People understand there isn't a level playing field in our city or country. Some despair and follow demagogues; some just walk away, and some settle for the wrong way to reach goals – which ends up eroding our confidence in democracy and continuing rotten practices.

As Preet Bharara said recently about the ethics of his office: "You do the right thing in the right way for the right reason. Always. That's it."

A nursing home bed is a home. We insist that these 215 affordable 'homes' be returned to the community as Rivington House. Because it's the right thing to do.

Thank you.

K Webster
Neighbors to Save Rivington House
Facebook
Twitter #CareNotCondos #RivingtonHouse
Petition

New York City Council: Committees on Oversight and Investigation and Governmental Operations September 29, 2016 Rivington House and Legislation INT-1182

Testimony: Alice Blank, Architect alice@aliceblankarchitect.com

Good morning. My name is Alice Blank. I am a member of Community Board 1. Today I am speaking to you as an architect who lives and works in downtown Manhattan.

I give heartfelt thanks to Manhattan Borough President Gale Brewer and City Council Member Margaret Chin for providing legislation that ensures accountability and transparency in the review of all future deed restrictions in the City.

As urged by Brewer and Chin in their July 2016 letter to the City Planning Commission, The City Council must work with the City Planning Commission to enact legislation that assures that in the future all proposals to modify or remove deed restrictions be subject to the Uniform Land Use Review Procedure (ULURP). The public must be assured that the example of Rivington House, in which no meaningful review occurred, and in which the City essentially gave away a multimillion dollar property with no compensation to the public, will never be repeated.

At a minimum, proposed changes to deed restrictions on major land use proposals -such as the now currently pending, highly controversial proposal to modify the deed restriction at 1 Chase Plaza to allow for the addition of 3 "Apple Cube" retail entrances- must be governed by ULURP.

The public must be assured that the modification of a deed covering 2-1/2 acres of the City's most valuable real estate be given more than a "Land Use Justification Memo" as was provided by the Department of Citywide Administrative Services for Rivington House.

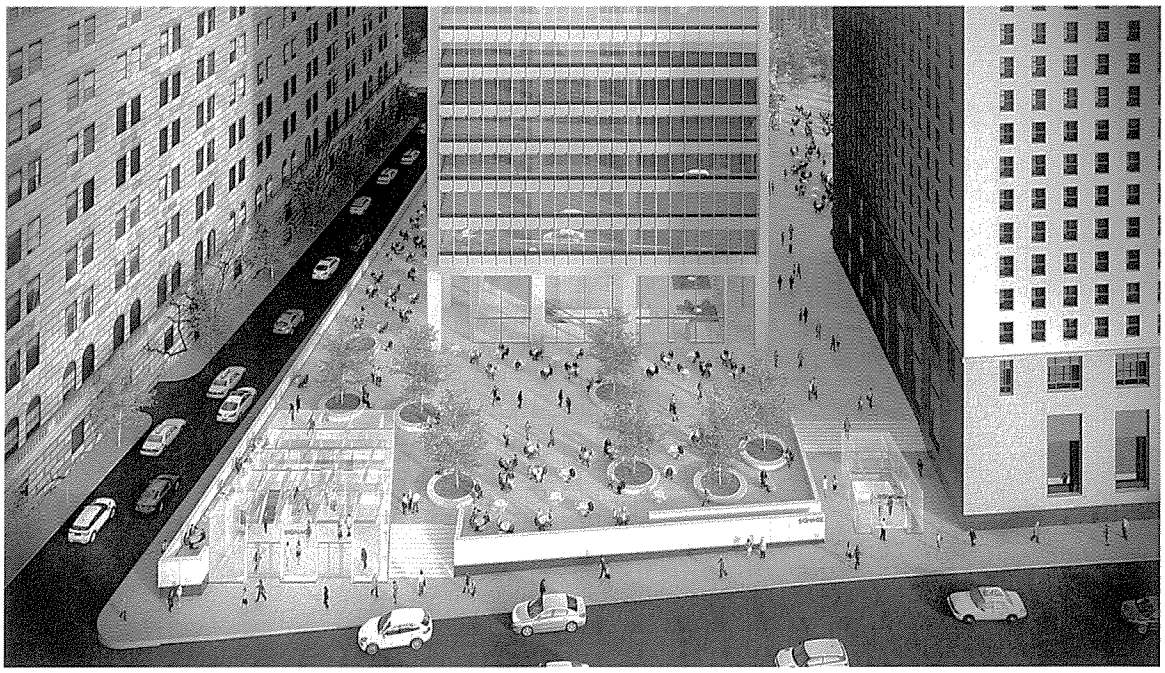
Of course it is not just Rivington House, the Harlem Dance Center or 1 Chase Plaza, that are at stake here. It is properties across the entire City. Our City urgently needs this legislation to bring all changes to deed restrictions within the coverage of ULURP. The legislation will not solve all of the challenges we face, but it will add a vitally important layer of protection that will enable the public to have at least some critical assurance that the new deals struck by developers with the City will be looked at in a meaningful way to assure that they are in the public's best interest.

(For news coverage on the deed restriction at 1 Chase Manhattan Bank Plaza/28 Liberty, see: http://archpaper.com/2016/09/community-board-1-vote-controversial-plaza-28-liberty/ http://archpaper.com/2016/09/glass-cubes-landmarked-som-28-liberty-plaza/#gallery-0-slide-0 (attached here) see also: https://www.dnainfo.com/new-york/20160630/financial-district/lobbyist-tied-shady-hospice-sale-made-250k-pushing-other-deed-changes

SIZE MATTERS

Developer wants to put glass cubes on landmarked SOM public plaza

By AUDREY WACHS (@GRIDWACHS) • September 26, 2016

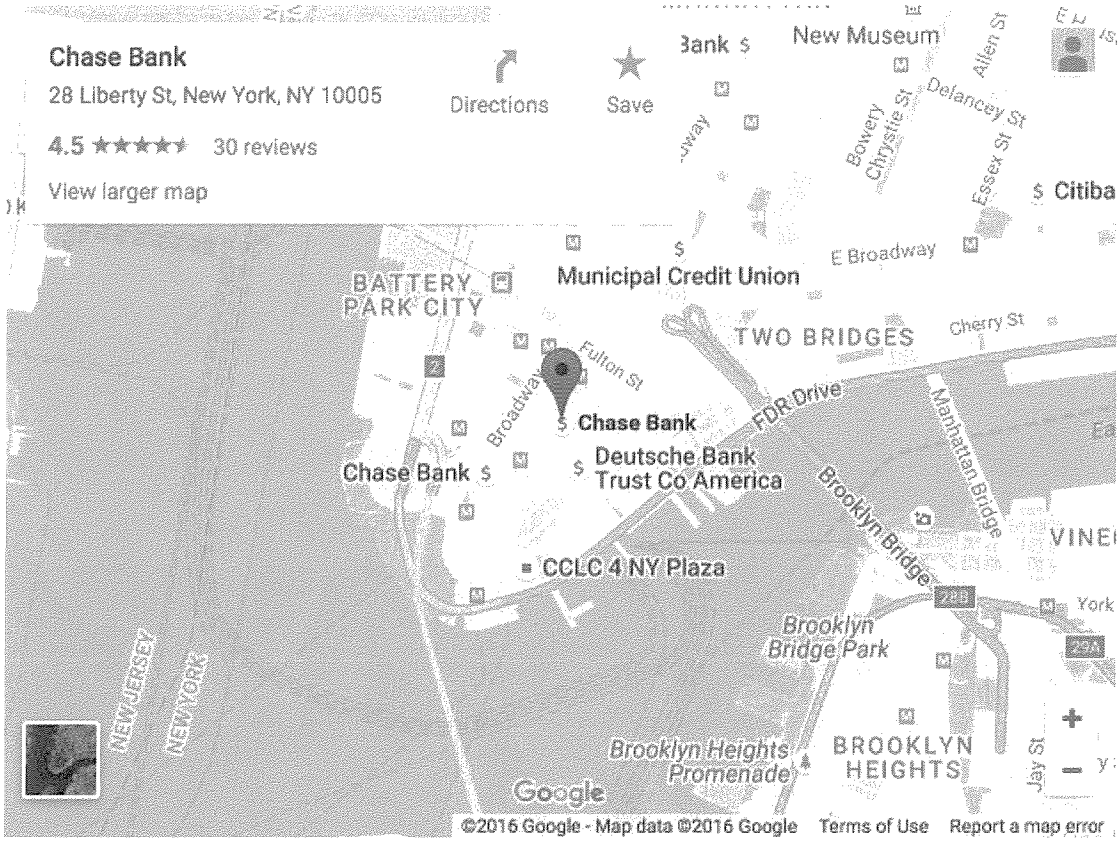


In August 2015, the LPC approved plans for glass pavilions that provide signature entrances to below-plaza retail. (Courtesy SOM)

An ongoing fight over a storied Manhattan landmark proves that indeed, size does matter.

Fosun International, the Shanghai-based owner of lower Manhattan's 28 Liberty Street (formerly One Chase Manhattan Plaza), has commissioned SOM to revamp their own classic International Style building and 2.5-acre plaza design. Among its planned changes to the site, Fosun received Landmarks Preservation Commission(LPC) approval to build three glass cubes on the landmarked plaza that will serve as entrances to below-ground retail.

Although the commission approved the scheme, implementing changes at 28 Liberty requires an additional, and contentious, next step.



Fosun is seeking a modification of 28 Liberty's deed restriction that would allow the cubes to rise 11 to 17 feet above the highest points of the plaza, heights that far exceed the deed restriction's stipulation that structures rise no more than six feet above the highest point on the plaza.

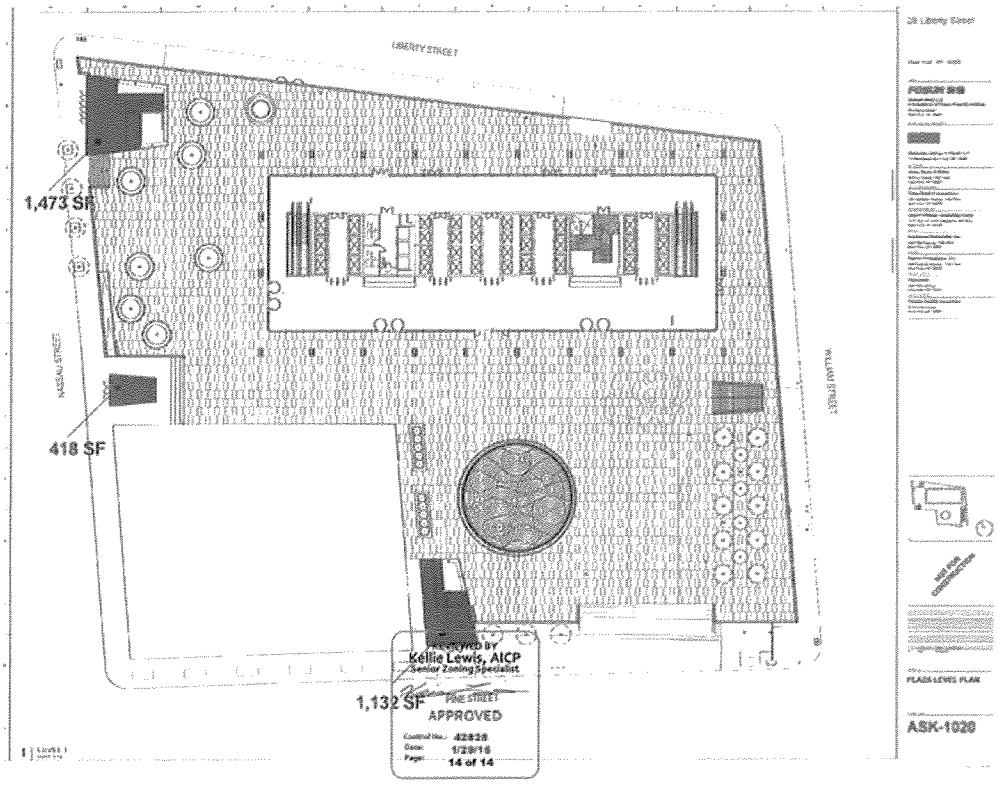
Both the International Style building and plaza were designated a New York City Landmark in 2009. SOM is updating the tower's office space and plaza and reintroducing original details lost in prior renovations while transforming approximately 290,000 square feet (four floors) of basement space into retail. (AN first covered the design proposal, and ensuing controversy, in July.)

Renovations will add accessible entrances and restore tree wells on the south plaza. Along Pine Street, the project will conserve on-site art, remove air intakes, and perhaps most crucially to the design, reinstate the parapet that encircles the space, particularly a corner at Liberty and Nassau Streets that renovations have compromised over time.

The developers maintain that the glass cubes, or pavilions, are a key part of the renovations. Fosun argues that the three pavilions will improve handicap accessibility to the stepped plaza as well as protect shoppers entering and exiting the retail spaces from inclement weather. The pavilions, along with glass storefronts along Liberty and Williams Streets, are intended to activate street frontage and encourage more fluidity between indoor and outdoor, below-grade and street-level spaces of the plaza, sidewalk, and tower.

Glass pavilion on Nassau Street. (Courtesy SOM)

Although some later modifications imitate original conditions, all of the plaza's elements are non-original aside from the Isamu Noguchi sunken garden. (The black-and-white Jean Dubuffet sculpture, installed 1971, was not included in the landmark designation.) The space is not a privately-owned public space (POPS), but remains open to the public nonetheless.



Plan showing the location of the cubes, in red. (Courtesy DOB)

Some local Community Board 1 (CB1) members say the design and the deed restriction, although technically unrelated, cannot be considered independently from each other. They point to the scale of the pavilions as proof: According to plans filed with the Department of Buildings, the three proposed pavilions, pictured in plan above, are a 17-foot-tall, 46-foot-long, 1,473-square-foot cube at the corner of Nassau and Liberty Streets; another 16-foot-tall, 43-foot-long, 1,132-square-foot cube facing Pine Street; and a third 11-foot-tall, 18-foot-long, and 418-square-foot at Cedar Street (which a CB1 joint committee ultimately rejected at a July 2016 meeting).

A site tour with the architects scheduled September 23 was canceled because key stakeholders from Fosun and SOM were not able to attend. Instead, CB1 board members led a peer-to-peer tour, showing their colleagues the scale of the pavilions and their placement on the plaza.

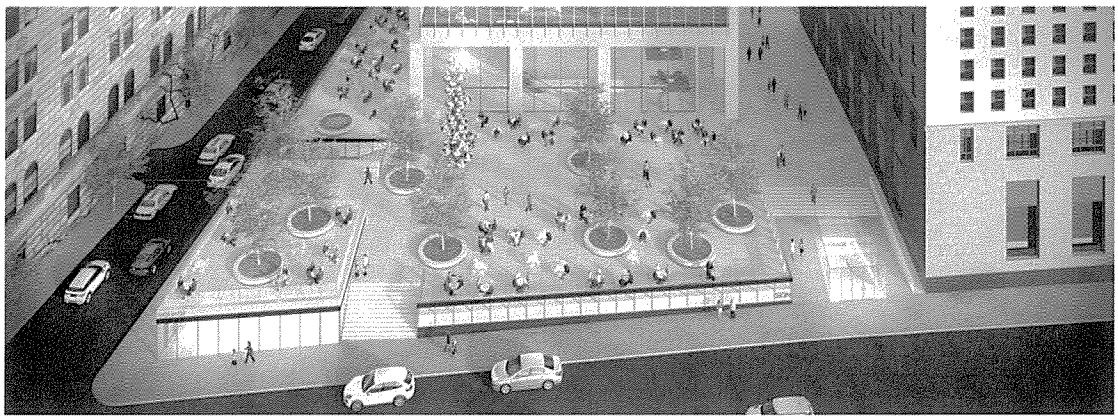
The cubes' size is not the only point of contention. Some residents think the architects' renderings suggest the cubes are being rendered too transparently (a common offense in renderings), and that the built structures will impede sightlines on the plaza, especially to the Dubuffet and Noguchi pieces.

"Depending on light angles and angles, a glass cube can be quite reflective. At most angles, glass cubes are pretty transparent, but they are not like a window, they're totally going to interrupt the view," said Michael Ludvik, glass engineer and founding principal of M. Ludvik Engineering.

SOM's glass pavilions have been compared to the Apple Cube, which is not entirely accurate, Ludvik said. The Apple Cube is not made of anti-reflective glass, so when viewed from an angle, it can look almost opaque. To make the proposed pavilions as transparent as possible, he suggested using the thinnest and clearest glass available, along with appropriate fins to minimize impact on clarity.

SOM could not be reached for comment on the glass choice, but a spokesperson for the developer explained that they are not far enough along in the process to have made a materials choice.

For one CB1 board member, design and deed are unequivocally separate. "The current owners are not the omnivorous developer creatures we'd expect," said Bruce Ehrmann, co-chair of CB1's Landmarks Committee. "They are trying to steward the plaza. They followed our original CB1 resolution, and they followed the instructions from the LPC. This issue is about a six-foot height cap," not the design, Ehrmann said. An architecture enthusiast, Ehrmann maintained that "the first proposal changed the whole nature of the Modernist platform. It's important to the plaza that the parapet is restored."



A May 2015 rendering of the plaza at Nassau and Liberty Streets shows a capped entrance to below-plaza retail, left, as well as a glass pavilion at Cedar Street, right. (Courtesy SOM)

Alice Blank, an architect and resident who also serves on CB1's board, asks why the design can't be done differently, without the large pavilions that trigger the deed restriction modification: "I need to know, have all alternatives been considered before pavilions were added on top of the plaza? I need to know why the existing street level entrances to the underground cannot be adapted."

She noted that the pavilions didn't appear in earlier iterations of the design, pointing to SOM's May 2015 LPC presentation that showed capped entrances to the retail space and only one pavilion, a stair enclosure at Cedar Street, pictured above. While she doesn't endorse the first design per se, she sees it as an example of how alternatives could be crafted to improve access without adding glass cubes.

At the August 2015 meeting, commissioners raised questions about the height and transparency of the cubes before granting approval. One LPC commissioner, noting that the cubes were two and three times taller than an average human, asked what was driving the height of the cubes. "The sidewalk is incredibly varied around the site," said Roger Duffy, design partner at SOM. He explained to the commission that the taller-than-human height is required to prevent mischief and liability: "If [a person] climbed on top of the parapet, they couldn't climb on top of the pavilion," Duffy said.

The community board, though, didn't approve the same plans that the LPC did. The LPC's August decision came after the community board's review of SOM and Fosun's original plans. "We are being asked to modify a deed on a proposal the full Board never saw or approved," said Blank.

In July, a spokesperson for the developer issued a statement on the deed restriction modification to assuage concerns about the modification: "CB1 is voting on a MINOR MODIFICATION which would ONLY PERMIT THE CONSTRUCTION OF THE GLASS PAVILLIONS [sic] AS APPROVED BY THE LANDMARKS AND PRESERVATION COMMISSION [sic], AND NO OTHER CHANGES. THERE IS NO CREATION OF ADDITIONAL RETAIL SPACE, AND NO CHANGE OF USE."

Blank questioned the impact of the changes and the legacy they could set. "Development is important, but [a] violation of commitments to preserve open space for the public in perpetuity ought to be reviewed with extraordinary care in light of the compromise of the public interest. What would be next—Seagrams, Lever House?"

In a statement, the preservation advocacy group Historic Districts Council (HDC) echoed Blank's question in their indictment of the proposed deed restriction modification:

"The sheer existence of such a restriction reveals the great foresight and care which went into the planning of this architecture to prevent it from being marred from future, insensitive fads, most relevantly the corporate 'Apple Cube.' More broadly, the proliferation of recent deed changes which disadvantage the public to serve private entities is deplorable. Any changes should be weighed in the context of the long term: Is it wise to permanently alter an individual landmark for the current owner? Do these proposed spaces hold any longitudinal, classical value?"

Both the HDC's and Blank's concerns mirror public outcry over the recent Rivington House scandal, in which the city lifted a deed restriction that mandated the property be managed as a healthcare nonprofit, a move that allowed the owner to profit handsomely from the sale of the property. In response, Mayor de Blasio has announced a series of reforms to the deed modification process that could impact the dealings at 28 Liberty in the near future. Faulting "a process that has failed to protect and preserve significant community assets, like Rivington House," Councilmember Margaret Chin, whose district includes 28

Liberty, along with speaker Melissa Mark-Viverito, Councilmember Ben Kallos, and Manhattan borough president Gale Brewer,favor a process that would make deed restriction changes subject to a ULURP.

Although Fosun is not seeking to lift the deed restrictions, it has paid James Capalino, the same lobbyist involved in the Rivington House deal, $120,000 since January 2015 to push the city's Department of Citywide Administrative Services (DCAS) for deed modifications at 28 Liberty, DNAinfo reports.

Judgment day for the plaza is near. The board is voting tomorrow on the modification of the deed restriction it tabled in July, thus confirming the fate of the design and the deed restriction. Although the board's decision is purely advisory, a vote to modify could give Fosun leverage in future discussions with DCAS to modify the deed restriction.

ABOUT THE AUTHOR

Audrey Wachs (@gridwachs)

Associate Editor, The Architect's Newspaper

Link: http://archpaper.com/2016/09/glass-cubes-landmarked-som-28-liberty-plaza/#gallery-0-slide-0

John Pettit West III
250 W 94 Street
New York, NY 10025
john.west.iii@gmail.com

28 Sep 16

Testimony concerning the procedure for modifying or removing deed restrictions concerning the City (Intro 1182) on Thursday 29 September 2016:

I am John West.

I am an urban designer. I have worked for government and for real estate developers and am now a consultant.

I am a member off the City Club and its Urban Design Committee; I am a member of the Municipal Art Society and its Planning Committee; I am a member of the American Institute of Architects and its Planning and Urban Design Committee; and I am a member of Manhattan Community Board Six and its Land Use Committee.

However, today I speak as a citizen of the City of New York.

Deed restrictions can be of substantial value to the community and to the property owner. They are likely to have been imposed to achieve some important public purpose and they should not be disposed of lightly. I think that ULURP, as called for by Manhattan Borough President Gale Brewer and Council Member Margaret Chin in their letter dated 19 July 2016, is the proper procedure.

Actually, I do not understand why ULURP is not already the required procedure.

I have been taught that a deed restriction is an interest in real property. If so, sections 384-b-5, 197-c(10), and 197-d of the City Charter seem to say that the removal or modification of a deed restriction by the City is already subject to ULURP.

> 384-b-5. "Any application for the sale, lease (other than lease of office space), exchange or other disposition of real property of the city shall be subject to review and approval pursuant to sections one hundred ninety-seven-c and one hundred ninety-seven-d. Such review shall be limited to the land use impact and implications of the proposed transaction."

Ownership of real property is sometimes likened to a bundle of sticks, each representing a different interest in the property -- water rights, air rights, mineral rights. Fee simple suggests complete ownership of all the sticks. A deed restriction withholds one or more of the sticks -- in the case of Rivington House a two-part deed restriction: 1) a "user" restriction that required the building be run by a non-profit, and 2) a "use"

restriction that required the building be used as a medical residential care facility. In removing the deed restriction the City disposes of those sticks of the real property.

Disposing of those sticks of real property interest should be subject to careful public scrutiny and ULURP is a good way to do that.

Thank you for the opportunity to testify.

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NYC City Council Hearing - September 29th, 2016 Testimony

My name is Tessa Huxley. I have lived in the neighborhood since 1971 and on Forsyth Street between Rivington and Delancey Streets since 1981. I am the President of a Limited Equity Cooperative that is located adjacent to Rivington House. I am also a member of the Neighbors to Save Rivington House. I am here today to tell you a story about a serious, significant and permanent commitment made by the City of New York to me, to my neighbors, and to the Lower East Side community in general. That commitment was broken. Today we are asking for that commitment to be honored and for the situation to be remedied. We want Rivington House back in operation serving our neighbors who desperately need its services. Rivington House was permanent affordable housing which Mayor DeBlasio has repeatedly said is a major priority of his administration. It appears that we have been repeatedly ignored and lied to. We do not accept this situation.

In the early 1990's, when AIDS was an epidemic without any obvious positive outcomes our community was asked to approve the reinvention of our school on Rivington Street between Eldridge and Forsyth Streets as a nursing home for AIDS patients. While many communities were uncomfortable with the idea of an AIDS facility in their area, we welcomed the Village Nursing Home and its quest for a place to create Rivington House. We were promised that the building would remain a community medical facility forever, even if the need for an AIDS facility was eliminated. That promise was memorialized in the form of a New York City deed restriction, which, we were told, was permanent. The community garden that used to exist where the current loading dock was eventually built voluntarily chose not to fight for its survival because we believed, that this community ought to be welcoming and supportive of such an important community resource and that a permanent facility of this type was critical.

In early December of 2015 I received a call from a man named Jay Chenges, an employee of Slate Construction. He called to inform me that Slate would be starting construction on Rivington House and that Slate wanted to meet with our cooperative beforehand. I told Mr. Chenges that this could not be possible since the property had a deed restriction that would not allow a luxury condominium to take over Rivington House. I immediately called Community Board #3 and was told that they were trying to find out what was going on and that they would be sending a resolution to Mayor DeBlasio asking for his assistance in preserving the facility for the community. I then wrote a letter on behalf of my cooperative to Tommy Lin, the Mayor's Director of Constituent Services (dated December 14th). There was no response. I wrote another letter to Mr. Lin (On March 31st, 2016) and again had no response. I spoke directly to the Mayor via the Brian Lehrer show on WNYC; he tried to evade my question which was about how we were going to get Rivington House back for the community by discussing how he was going to make sure that the deed restriction removal process was reformed. Mr. Lehrer pointed out that I had asked a particular question and he had not answered it. At that point Mayor DeBlasio said he did not have an answer YET but that his staff was working on it and he would get back to the community. After the show was over, Mr Lehrer's staff called me to ask if they could give my telephone number to the Mayor's staff; that they said they wanted to follow up. I was delighted. I am still waiting for that follow up call, I am still waiting for the Mayor DeBlasio's Director of Constituent Service to respond.

Communities are strongest and most vibrant when they are a mix of incomes, religions, races, ages, etc. The Lower East Side is being overwhelmed by high rise, market rate apartments. We need the Mayor and the City Council to take the lead in the effort/the fight to bring Rivington House back to our community, to the public for whom it was created and to whom it belongs. We want our neighbors back!

Tessa Huxley
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University Settlement and the Lower East Side say the Mayor's response to the Rivington House Scandal Isn't Good Enough.

"The City needs to do much more than make a few promises and hope that we go away."

(New York, NY) September 29, 2016 – University Settlement called on the Mayor to take the fair, the right, and the necessary steps to restore high quality, long-term health care to the Lower East Side's seniors.

Mr. Kevin Tobar Pesantez, a Senior Housing Advocate at University Settlement, testified at the City Council hearing about Rivington House today. University Settlement has worked closely with elected officials and The Neighbors to Save Rivington House committee since the Rivington House scandal first came to light. Mr. Pesantez's testimony is below.

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Good morning, my name is Kevin Tobar Pesantez. I'm a Senior Housing Advocate at University Settlement. We are America's first social settlement house and have been across the street from Rivington House since 1899.

For over 130 years, University Settlement has joined with our neighbors in the never ending fight for social and economic justice. **The Lower East Side didn't become a destination neighborhood overnight; we built this neighborhood.** Community activists reclaimed our streets and parks; renovated and repaired tenement buildings; created new affordable and supportive housing; and we continue to invest resources in a robust social service and education network.

Today, we stand with our neighbors and say that the Mayor's response to the Rivington House scandal is not good enough. We demand that Rivington House be returned to the Lower East Side community with deed restrictions that protect the uses for the most vulnerable of our community.

What do we think of the City's promised investment of $16 million? Too little.

It cost New York City tax payers $70 million dollars to renovate Rivington House into a functional and compliant nursing home. Will they be reimbursed for this loss? Additionally, the deed restriction fee should have been $29 million, not $16 million, based on the price Allure paid for

Rivington House. Will the City make up the difference? Even with this amount we would not regain all that New Yorkers have lost.

What do we think of the City's efforts to change the deed process? Too late.

First Bialystoker and Cabrini nursing homes were closed. With the possible loss of Rivington House, our community would lose another150,000 square feet of community-benefit skilled nursing home space. **Where is the City's concrete, detailed plan to replace Rivington House if it isn't restored to the neighborhood?**

The City needs to do much more than make a few promises and hope that we go away.

Here are the facts. The Lower East Side is ranked the third highest gentrifying district in New York City. But there are still deep, chronic needs in our neighborhood. The Furman Center ranked the Lower East Side as one of the neighborhoods with the highest gap between lower income and higher income residents. Nearly one out of three seniors in the Lower East Side lives in poverty. Over 70% of seniors in the neighborhood are foreign born – one of the highest rates in NYC. University Settlement knows these seniors – we serve over 2,000 people, ages 60 to 106, each year. We work with them through every cycle of life, including when it is time for long-term nursing care assistance in their own neighborhood.

The City's needs to step up and seriously discuss returning Rivington House to the Lower East Side. It's fair, it's right, and it's necessary. We need and deserve better than promises and excuses. Thank you for your time.

University Settlement is one of New York's most dynamic social justice institutions with deep roots on the Lower East Side. Each year University Settlement's diverse programs help over 30,000 low-income and at-risk people build better lives for themselves and their families. With an impressive legacy as the first settlement house in the United States, University Settlement has been an incubator for progressive ideas for 130 years, offering pioneering programs in mental health, early childhood education, literacy, arts education, and adolescent development that set the standard. Building on the strength of this experience, University Settlement now provides services at 30+ locations in Manhattan and Brooklyn. To learn more, visit www.universitysettlement.org.

UNIVERSITY SETTLEMENT
THE DOOR

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The Municipal Art Society of New York
MASNYC

MAS Testimony to the New York City Council Committee on Oversight and Investigations regarding Intro. 1182, a proposal for a Local Law to amend the New York City Charter, in relation to tracking and removing deed restrictions placed on city properties when they are sold or otherwise disposed of.

September 28, 2016

Position

The Municipal Art Society of New York (MAS) supports Intro. 1182 but with modifications to provide more oversight and inclusion of the environmental review process. This will strengthen the proposed reforms to the process of removing and/or modifying deed restrictions to city-owned property.

Background

Intro. 1182 would amend the New York City Charter to require tracking of all city-owned properties subject to deed restrictions imposed by or on behalf of the City through the creation of a publicly available searchable database on the City's website. The bill would also require the provision of additional public notice for actions involving deed restrictions through the Borough President's office, the Council Member, and the Community Board in which the property associated with the deed restriction occurs.

MAS Recommended Modifications

As a means to strengthen the bill, MAS concurs with Manhattan Borough President Gale Brewer and Council Member Margaret Chin's request to subject all deed removals and/or modifications on city-owned property to ULURP. In addition, MAS proposes that the bill be further amended to require deed restriction removals and/or modifications to be subject to City Environmental Quality Review (CEQR) to determine if such actions have the potential to result in adverse environmental impacts. Together, these modifications would add a much needed level of transparency, provide a forum for public review, and address environmental concerns.

The poor handling and lack of accountability surrounding the removal of the deed restriction for Rivington House brought to light the need for transparency and public input in what has been up to now a rather clandestine City process. We are aware there are 14 properties citywide with pending applications for deed modifications or removals and that nearly half are owned by limited-liability corporations. This makes it difficult to identify the entities seeking to change the restrictions and their reasons for doing so.

As we have seen with the Rivington House case, the removals of use restrictions in deed restrictions have the potential to result in environmental impacts. In another example, one that involves private property, a proposed deed restriction modification would lift a structural height limitation to allow construction of three glass pavilions at the Chase Manhattan Plaza in Lower Manhattan, which would affect historic resources and view corridors.

The time is ripe for deed restriction reform. MAS supports Intro. 1182 if it is amended to include the provision of ULURP and environmental review. Please note that MAS is also aware of the proposals from the Mayor's Office and New York City Department of Citywide Administrative Services to amend their Rules of the City of New York regarding policies and

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procedures for the modification or removal of certain deed restrictions. MAS feels that agency rulemaking does not go far enough to address the concerns mentioned herein.

Thank you for the opportunity to provide comments on this critically important proposal.

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Thank you for holding this hearing and accepting my testimony today. My name is Paula Segal. I am an attorney and the founding director of New York City's Community Land Access Advocacy organization, 596 Acres.

I am here to wholeheartedly support Intro 1182's requirement that the City produce a searchable electronic database of deed restricted property. I think the bill does not go far enough. It requires that the database contain "all real property of the city sold, exchanged, or otherwise disposed of if the deed to such property contains a deed restriction imposed by or on behalf of the City," a historical record.

I urge that this bill be amended to require the searchable electronic database to also include ALL property in the City of New York if the deed to such property contains a deed restriction imposed by or on behalf of the City. The key difference between what Intro 1182 requires and my recommendation is that the database would contain not only those properties that have been disposed of but those that exist. A backward look at what has already been lost is important but in order for this Council and the residents of our neighborhoods to be able to protect the places that matter to them, we need to have a prospective list of all the properties that we as a City have interests in via the deed restrictions imposed by or on behalf of the City.

Intro 1182, the proposed rules that the Mayor's Office put forward and the proposed DCAS rules all add transparency to the process of lifting deed restrictions and I commend this as an improvement to the current process. **But the legislation and rules do not go far enough. In the legal sense, "property" is not a single thing. It is a collection of rights that can be held by different parties in relation to a discrete legally defined place. A deed restriction imposed by or on behalf of the City is clearly a City property – it is one of the bundle of rights that is encompassed by the lay term "property."**

The New York City Charter that all dispositions of City property be subject to the City's Uniform Land Use Review Process - ULURP. I am heartened to see that the rules that DCAS proposes recognizes that ULURP is the appropriate process for the approval of the disposition of such restrictions. But none of the proposed rules, or Intro 1182, clarify when ULURP is triggered. We look to the Council for leadership to clarify that ULURP should be applied to all such dispositions and to

clarify the unique circumstances under which some deed restrictions of an insignificant scale may be exempt from ULURP.

For the property we are discussing today, I strongly urge the Council and the Administration to use the 16 Million set aside for the creation of nursing home beds in the neighborhood to replace the deed restriction on this property and thereby return Rivington House to a restricted use as a not for profit nursing home. $16 Million should be sufficient to do so since that is the valuation that DCAS placed on the restriction when it was lifted.

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596 Acres champions resident stewardship of land to build just and equitable cities.

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I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: ~~Sept~~ 29, 16

(PLEASE PRINT)

Name: ANNIE WILSON

Address: 544 E 13 ST, NYC, NY 10009

I represent: myself

Address: Same as above

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Name: Steve Stein Cushman

Address: NYC Law Department

I represent: 100 Church Street

Address:

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Questions

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Date: 9/29/16

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Name: ANITA LAREMONT

Address: 1 Liberty Island NY

I represent: DEPT OF CITY PLANNING

Address: 120 B'way

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Name: Lisette Camilo

Address: 1 Centre Street

I represent: DCAS

Address: _____

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Date: _____

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Name: Manhattan BP Gale Brewer

Address: _____

I represent: _____

Address: _____

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Name: Anthony Shorris

Address: City Hall

I represent: _____

Address: _____

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Name: Zachary Carter

Address: Law Dept.

I represent: _____

Address: _____

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Date: _____

(PLEASE PRINT)

Name: State Senator Daniel Squadron

Address: 250 Broadway

I represent: _____

Address: _____

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Rivington House *Date:* 9.29.16

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Name: Enrique Cruz

Address: 175 Stanton Street

I represent: Association of Latino Bus. Owners & Residents (ALBOR)

Address: _____

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(PLEASE PRINT)

Name: Marsha Kimler

Address: 215 Adams St 10A - 11201

I represent: Love Brooklyn Tuhaire Inc

Address: 215 Adams St. 10A 11201

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(PLEASE PRINT)

Name: Kevin Coenen

Address: 4545 Center Boulevard LIC NY

I represent: Myself

Address:

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Date: _____

(PLEASE PRINT)

Name: Carlos Glenn Garcia

Address: PO Box 495 NY NY 10028

I represent: Charas/El Bohio

Address:

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Date: 9/29/16

(PLEASE PRINT)

Name: MARCELO MIA SOARES

Address: 621 E 11 ST # 3B NY, NY 10009

I represent: ACT UP NY

Address: 207 W 13 ST

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Date: _____

(PLEASE PRINT)

Name: Aurora Guzman

Address: 184 Eldridge St

I represent: Neighbors & myself

Address: _____

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☒ in favor ☐ in opposition

Date: 9/29/16

(PLEASE PRINT)

Name: Tessa Huxley

Address: 152 Forsyth Street # 16

I represent: Neighbors to Save Rivington House

Address: Jerme

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Date: 9/ /2016

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Name: K Webster

Address: 246 Bowery

I represent: Neighbors to Save Rivington House

Address: 30 Delancey St.

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Date: _____

(PLEASE PRINT)

Name: Cao kai Xuan

Address: Community Resident - Lower Eastside

I represent: _____

Address: _____

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☐ in favor ☐ in opposition

Date: 9/29/2016

(PLEASE PRINT)

Name: Kevin Tubar Pesantez

Address: 184 Eldridge

I represent: University Settlement

Address: _____

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☒ in favor ☐ in opposition

Date: Sept. 29, 2016

(PLEASE PRINT)

Name: SUSAN STETZER

Address: _____

I represent: COMMUNITY BOARD 3

Address: 59E 4 St NYC 10003

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☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: THOMAS DRUANEY

Address: 410-14 62nd St Woodside Queens

I represent: MUNICIPAL ART SOCIETY

Address: 488 MADISON AVE

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Date: _____

(PLEASE PRINT)

Name: John West

Address: 250 W 94 ST, NY, NY 10025

I represent: _____

Address: _____

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☒ in favor ☐ in opposition

w/changes Date: _____

(PLEASE PRINT)

Name: Paula Z. Segal

Address: _____

I represent: 596 Acres

Address: 540 President St. 11215

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☒ in favor ☐ in opposition

w/ amendment Date: 9/29/16

(PLEASE PRINT)

Name: Alice Blank, Architect

Address: 13a Thompson St.

I represent: myself

Address: _____

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