

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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August 14, 2008
Start: 10:35am
Recess: 11:25am

HELD AT: Council Chambers
City Hall

B E F O R E:
SIMCHA FELDER
Chairperson

COUNCIL MEMBERS:
Tony Avella
Gale A. Brewer
Inez E. Dickens
Erik Martin Dilan
Domenic M. Recchia, Jr.
Larry Seabrook
Helen Sears
James Vacca
Peter F. Vallone, Jr.

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

Ken Fisher

Marc Chiffert

President

New York State Society of Professional Engineers,
New York Chapter

James McCullar

President

American Institute of Architects, New York Chapter

Guy Kohn

Registered Architect

Michael J. Macaluso

President

Architects Council of New York

John Hennessy

National Chairman

American Council of Engineering Companies

Laura Gallo

Vice President

New York Building Congress

Tom Szekely

Vice President

New York State Society of Professional Engineers,
New York City Region

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2 MALE VOICE: Testing one, two,
3 three. Testing one, two, three. Next committee
4 is going to be Government Operations. Today's
5 date is August 14, 2008 and it's being recorded by
6 Yvette Molina.

7 CHAIRPERSON SIMCHA FELDER: Sorry
8 that we're starting a bit late. Is the tape
9 machine ready? Thank you. Good morning ladies
10 and gentlemen. Can the Sergeant at Arms please
11 bring up the sheets that you have already.

12 Good morning and welcome to the
13 Governmental Operations Committee hearing. I am
14 Simcha Felder, Chair of this committee. I am
15 joined by my esteemed colleagues, first from the
16 Committee, Councilman Dominic Recchia, Councilman
17 Peter Vallone, Jr., Councilman Erik Dilan and of
18 course by my esteemed colleagues who are here with
19 us, Council Member Tony Avella, Helen Sears and
20 Gale Brewer as well. I'd also like to acknowledge
21 that staff that prepared today's hearing. To my
22 right is Matt, how do you pronounce it? Giwald,
23 Matt Giwald, the counsel to the Committee, new
24 counsel, I should say Committee counsel.

25 Before I continue I must apologize.

1
2 I forgot that Council Member Helen Sears, we're
3 honored that she has joined our Committee. So I
4 mention her a second time and wish her good luck
5 and my condolences to you, Council Member Sears.
6 [Laughter] I didn't say anything.

7 To my right, to his right is Israel
8 Rodriguez, a policy analyst. And I'd also like to
9 thank Lasette Camillo who's in the crowd somewhere
10 who has helped us out, who is sitting right in the
11 portrait in the back to the left. If you still
12 don't know who she is, can you pick up your hand?
13 Thank you. Now that we've embarrassed everybody
14 in the room, almost.

15 Today, the Committee considers
16 Intro 755-A of 2008, which amends the City Charter
17 by removing the professional criteria requirements
18 for the Commissioner for the Department of
19 Buildings. Recently or currently, I should say,
20 the Charter requires that the Commissioner of the
21 DOB be either a licensed architect or engineer.
22 The new law allows the mayor to appoint the
23 Buildings Commissioner without these professional
24 qualifications. It gives the Mayor a wider pool
25 from which to choose the best qualified person for

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2 this critical job.

3 There's also been an important
4 change made to the original version of the bill, a
5 provision that's been added mandated that the
6 First Deputy Commissioner be either a licensed
7 architect or engineer. The addition should allay
8 some of the concerns regarding the absence of
9 technical expertise that the - - DOB.

10 Just for the record, I want you to
11 know that the comments that were prepared for me
12 are excellent. But the comments, this is no
13 reflection of anybody on my staff, but I still
14 have the right to change something that was
15 written. I just want to say that although the
16 comments prepared for me say, I'll think you'll
17 like this one. Whoever's talking, I think you may
18 like this one. Although the comments say this
19 addition should allay any concerns, I've modified
20 that 'cause I don't think that's entirely
21 accurate. I don't think it allays any concerns.
22 I think it allays some of the concerns but
23 certainly not all.

24 The amended bill represents an
25 excellent balance between maintaining high

1 standards--Is everything okay? What's going on?
2 Where's Melinda when you need her? An excellent
3 balance between maintaining high standards for the
4 posts of Commissioner and First Deputy
5 Commissioner while ensuring that the Mayor will
6 have the ability to hire the person best suited to
7 serve as Commissioner of DOB.
8

9 And since--Michael Cassatano, who
10 just walked in is my legislative director, I thank
11 you. The reason Council Member Brewer is clapping
12 is because I stole him from her. He worked as an
13 intern for her. We've been joined by Council
14 Member Larry Seabrook.

15 And, as we mentioned earlier, since
16 there was an amendment to the bill we are going to
17 allow testimony for those that I have signed up,
18 nobody else. So if you didn't sign up, it's not
19 my fault. We have one, two, three, four, five,
20 six, seven. We'll do four first, Guy Kohn, Ken
21 Fisher, Marc Chiffert, how do you say it,
22 Chiffert? Okay. I'm sorry. James McCullar, is
23 that four? You can come up. I'm asking the
24 Sergeant at Arms to please start the clock. We'll
25 go from right to left.

2 KEN FISHER: Mr. Chairman if I may?

3 CHAIRPERSON FELDER: Yes.

4 MR. FISHER: I'm Ken Fisher for the
5 record. I represent two organizations who's going
6 to be testifying. So I'm not going to testify but
7 I'll be available to answer any questions after
8 their presentations if that's okay with you.

9 CHAIRPERSON FELDER: You're not
10 going to say anything unless we ask you to say
11 something?

12 MR. FISHER: I find that I'm on my
13 best behavior that way.

14 CHAIRPERSON FELDER: All right.
15 Can I ask the Sergeant at Arms to add a fourth
16 chair? Who is the third person? All right.
17 Leave it the way it is. We're ready. Whenever
18 you want, you can start please.

19 MARC CHIFFERT: Good morning. My
20 name is Marc Chiffert. I'm the President of the
21 New York Chapter of the New York State Society of
22 Professional Engineers. The amendment appears to
23 be a compromise we still oppose this. We believe
24 that the professional engineering licensed or
25 registered architect license is necessary for the

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2 Commissioner of the Department of Buildings. His
3 licenses previously gave you extensive testimony
4 on why we should--we believe those licenses are
5 not that hard to get. Also that anybody was
6 considered for the position should be getting
7 those licenses. I would like you to vote to
8 oppose that provision to the City Charter and
9 leave it the way it is. And have the Mayor
10 appoint a professional engineer or registered
11 architect for the position.

12 CHAIRPERSON FELDER: Thank you.

13 JAMES MCCULLAR: My name is James
14 McCullar. I'm president of the AIA New York
15 Chapter and I'd like to read our policy position.
16 On behalf of the American Institute of Architects,
17 New York Chapter and it's 4,400 members, we are
18 here in opposition to Intro 755-A. The
19 Commissioner of the Department of Buildings must
20 be a registered architect or a professional
21 engineer. The current law is logical and
22 necessary and the compromise bill is not
23 acceptable to us.

24 The Commissioner is the final
25 authority in the department that governs the

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2 quality and the safety of our building environment
3 must be trained and tested in how buildings rise
4 and how they stand. A permanent change in the
5 City Charter on this issue is not in the best
6 interest in the City of New York. By letter,
7 emails and petitions you have heard from many of
8 your constituents about the importance of this
9 issue for those of us who work within the
10 buildings industry and all of us who live in
11 neighborhood where construction is an everyday
12 reality.

13 The process by which an architect
14 or engineer becomes licensed by the State of New
15 York is arduous. Its test, comprehensive
16 knowledge of codes, zoning and building practices,
17 environmental standards, to name but four of the
18 many constituent issues that are important to New
19 York City neighborhoods. Once a licensed, a
20 registered architect or professional engineer must
21 take 12 to 18 credits of continuing education each
22 year to maintain his or her license and to be
23 current on current practices.

24 In addition to technical training,
25 architects by law are personally responsible for

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2 our work and have a fiduciary responsibility to
3 maintain the health, safety and welfare of the
4 public. As licensed professionals, we bring to
5 the task a special degree of commitment that we
6 believe is crucial to the position of Buildings
7 Commissioner.

8 There are some that have insisted
9 that any department could be run with good
10 management skills and that those skills are more
11 important than mere credentials. However, this is
12 not about tradition, this is about professionalism
13 and the fact that the person heading the
14 Department of Buildings must be able to make the
15 tough decision as the final authority on matters
16 of zoning, site safety and building construction.

17 Having a Deputy who is a licensed
18 professional is simply not the same thing. We
19 urge you to support maintaining the requirements
20 that the Commissioner be a registered
21 professional. Thank you.

22 GUY KOHN: Good morning Mr.
23 Chairman and the rest of the Council. My name is
24 Guy Kohn, I'm a registered architect with my own
25 firm in New York City. I just found out about

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2 this change last night as I was going home. I was
3 a little surprised because of the nature of the
4 announcement because we had heard about the change
5 or the requested change of the mayor to allow a
6 non registered architect to run the Buildings
7 Department. Just as I was leaving last night, I
8 got an email saying that this was coming up to
9 vote.

10 So I'm here to register my
11 disapproval of this vote or this particular bill
12 because I feel that there is a huge pool of
13 professionals within the city that the mayor can
14 draw upon. It also goes against the state
15 licensing laws. So my guess is that if it does
16 get passed, there'll be quite a lot of legal
17 litigation. I'm not sure that the City wants to
18 embark on that, pay for that or the taxpayers
19 should also be part of that as well.

20 My general feeling is that as a
21 licensed architect you have to go through a very
22 rigorous training and learning school experience.
23 Just as an analogy, if you want to open a beauty
24 parlor in New York you have to be a licensed
25 beautician. So why should the Commissioner of New

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2 York City Department of Buildings be anything
3 other than a fully licensed professional?

4 Generally my feeling is that
5 architects, engineers learn by experience.
6 There's never been a child prodigy architect born.
7 As you know, if you ever renovated a house or a
8 building you don't want somebody inexperienced
9 coming to your site and looking at something that
10 might involve the safety and health of you, your
11 family and anybody else who happens to be at risk.

12 My main concern is that let's say
13 there's some catastrophe, major accident. They
14 happen unfortunately. If the Building
15 Commissioner is required to come to the site and
16 they're looking at something they don't
17 understand, how are they going to make the proper
18 decisions? They'll have to consult with a Deputy
19 and various other experts under their watch.
20 However, they should--I feel very strongly and I
21 think many of my compatriots feel the same way.
22 That we absolutely need that level of experience
23 and expertise in that position. And that's pretty
24 much my main comment.

25 Except for I'd like to say I've

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2 worked with many, many fine people--Sorry. One
3 sentence. Many fine professionals in the
4 industry, construction. There are many qualified
5 people however this is a very, very important
6 position and shouldn't be put in the hands of a
7 non professional. Thank you.

8 COUNCIL MEMBER GALE A. BREWER:

9 Thank you very much. I'm undecided. I think a
10 lot of my colleagues have made up their mind on
11 this but I came here today because I am undecided.
12 Because I have many friends who are architects and
13 engineers and I feel that it should be an
14 architect and an engineer. But on the other hand,
15 we are also told that it was hard to fill Patricia
16 Lancaster's position and that there may be 40,000
17 or 80,000 architects, as an example, statewide but
18 they're--one must live in the city and we don't
19 look favorably about people who move in to the
20 city to take the job.

21 I just wanted to hear about who you
22 think, other people out there who wanted this job.
23 With all respect to all three of you, if you can't
24 kick butt like Ken Fisher, you can't be the
25 Commissioner. You got to have somebody who's both

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2 an architect and engineer and you can maneuver
3 political life. You can do that sir, besides you,
4 and you're not a registered architect?

5 MR. FISHER: I'll defer to the
6 professionals but I just want to give you two
7 examples, Council Member. One would be David
8 Bernan, he's the Commissioner of DDC. He's a
9 registered architect, he just became a fellow of
10 the AIA. He's done a remarkable job at that
11 agency. He's already vetted by DOI. He works for
12 the Mayor and if the Mayor asked him to take on
13 this important assignment, I think he'd be hard
14 pressed to say no. There are others at DEP, at
15 DOT, at HPD who are already working for the City
16 who have the leadership qualities that the job
17 requires.

18 Secondly, I know that the
19 professional organizations have submitted or
20 facilitated the submission of many, many resumes.
21 To the best of my knowledge, none of those folks
22 have been interviewed. At the risk of
23 embarrassing him, I don't know this first hand.
24 Anecdotally one of the names was Joel Mealy, the
25 former DEP and Building Commissioners. There may

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2 be others that I'm not aware of and I'll defer to
3 my colleagues.

4 But I also want to emphasize, aside
5 from the state education issue, we've continuously
6 asked if you don't have something in writing from
7 the state education department, you should on this
8 issue. But there's also some accountability issue
9 because we all rely o our staff, we all rely on
10 our professional colleagues. But at the end of
11 the day you're all accountable to the voters and
12 we want the Builds Commissioner to be accountable
13 not just to the mayor, but also to the higher
14 standard of a license.

15 MS. BREWER: Okay.

16 MR. CHIFFERT: Yes. Along the same
17 lines, we also as the New York State Society of
18 Professional Engineers did recommend Joe Nealy,
19 who is a very experienced professional engineer
20 who is heading the DEP. And has been previously a
21 Buildings Commissioner. There are many, many
22 professional engineers, high level professional
23 engineers in the City of New York running some of
24 the largest corporations in the world. So the
25 resources are here.

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2 At the more local level, I myself
3 also a smaller engineering firm. WE go to the
4 Department of Buildings and we need to know that
5 at the top of that agency there is somebody who is
6 held to the same ethical standards that we are. I
7 think we are able to work together, somebody who
8 understands that process.

9 MS. BREWER: Okay. Thank you.

10 COUNCIL MEMBER HELEN SEARS: This
11 is probably one of the few times that I don't agree
12 with those that are sitting there. Most of the
13 time I'm in agreement with you. I think we're
14 overlooking one very important [No audio] First of
15 all, this does not stop the mayor from hiring an
16 architect or an engineer. But [No audio] what it
17 gives, it gives the flexibility. Try to look at
18 it from another side, having worked in
19 Transportation. It gives him the flexibility to
20 hire somebody with extraordinary managerial
21 skills. I think I'm losing my voice.

22 To be a renowned engineer doesn't
23 mean you have those managerial skills that are
24 necessary to run as chaotic an agency as the
25 Buildings Department. The whole idea for the

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2 administration to have that flexibility is that
3 they can bring that Department back into something
4 that is fine.

5 There will be and there are people
6 who are engineers, so we're not excluding that. I
7 can tell you from my experience, and I have to
8 inject that because that's why I feel so strongly
9 about this bill, I didn't know a thing about
10 transportation, not a thing. And I was called
11 from Puerto Rico to work on airport access and I
12 refused. I said I don't know anything about
13 transportation. And they finally, after three
14 phone calls, I accepted on a temporary basis
15 because I didn't want to mess up the project.

16 Well from 19 alignments, I got it
17 down to 3. I worked with the engineers and I
18 worked with the architects. But I knew what was
19 going to work and what wasn't going to work for
20 the communities that were affected by it. It's
21 the same thing with running. [No audio] balance
22 those skills.

23 I would find it very hard to
24 believe that someone would take on a job as large
25 as the Buildings Department that was not

1 professional in one capacity or another,
2 professional. Managerial, a CEO of a company, [No
3 audio] to do a professional assessment [No audio]
4 architects and engineers they don't [No audio]
5 respectfully. But you can get a manager, you can
6 get one that [No audio].
7

8 What this does is to extend the
9 flexibility so that a department can get back on
10 track what it is supposed to be doing. Thank you
11 Mr. Chairman.

12 MR. CHIFFERT: [No audio] in the
13 form of a comment, what do we [No audio]

14 MR. SEARS: That skills are
15 transferable and do you believe they are. That is
16 my question.

17 MR. CHIFFERT: Can I answer?

18 CHAIRPERSON FELDER: Yes.

19 MR. CHIFFERT: I absolutely agree
20 with you. I think it is essential, the Building
21 Department I believe takes in approximately over
22 \$70 million of fees. It's essential that it's
23 managed properly. And I think it is essential
24 that maybe the First Deputy Commissioner be top
25 manager in the city. That the Building

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2 Commissioner must be a licensed person with the
3 New York State licensed either professional
4 engineer or registered architect. And under him,
5 he needs tremendous support of people with top
6 managerial skills who will be able to manage and
7 implement processes.

8 But the policy decisions and the
9 interpretation of the building code must be done
10 by a person who is familiar with the profession.
11 Just like you have a lawyer who has the court
12 systems or you have doctors who have the hospitals
13 and health corporations. In our case we need
14 either a professional engineer or registered
15 architect with strong managerial support around
16 him. Thank you.

17 MR. MCCULLAR: May I respond
18 briefly to your question, which I think is an
19 excellent question. And thinking about it, I
20 believe at the end of the Lindsey administration,
21 at that time the Commissioner did not before that,
22 was not required to be a professional. But there
23 was a spade of construction accidents at that
24 time, not unlike what's been happening in the last
25 couple of years here in New York.

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2 And in response to that crises, the
3 city changed the rules and required that the
4 Commissioner be a professional to deal with those
5 issues. And I think that we're in a situation now
6 with the Building department under past
7 Commissioner Lancaster, has gone to great lengths
8 to modernize itself and has hired new people. I
9 have been going to the Building Department for the
10 last 30 years and I have to say that the new
11 people that are coming into the Department that
12 I've dealt with recently are intelligent, user
13 friendly people. I have a lot of respect for the
14 changes that are taking place.

15 Their new procedures that have been
16 put in motion July 1 with the new building code
17 coming in to make professionals and contractors
18 and owners be more responsible to the construction
19 site. So I think that at this stage, it would
20 behoove the City to have a Commissioner who comes
21 in who knows exactly what to do.

22 I think an analogy could be that
23 with all the horrific problems in Iraq, the Army
24 picked General Patreus who knew exactly what to
25 do. He went and did it; turned around a very

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2 difficult situation there. And I think we're in a
3 situation now where if the Building department
4 were running smoothly, had no issues, no crises,
5 then it would be a manager to come in and stay on
6 top of that. But I think we're now in a situation
7 whereby there are enough problems going on and
8 enough progress being made where the Commissioner
9 should be someone who comes in, knows the culture,
10 knows the construction industry, knows the code,
11 knows the zoning, who can immediately make
12 judgments to put things back on track.

13 I think we should not turn back the
14 clock to 1970s to the end of the Lindsay
15 administration and go back before that.

16 MR. FISHER: Council Member,
17 briefly just a couple of things. First of all,
18 it's an unfortunate sort of confluence of events
19 that the opening happened at the end. Whereas we
20 go to the countdown clock on the Bloomberg
21 administration for a decision that's going to have
22 consequences long afterward. I know that Council
23 staff believes that the next Council after the
24 next series of accidents could put the requirement
25 back in. I have some doubts about that. But even

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so it will happen after some other crisis.

Here, unfortunately what happened is the administration announced it couldn't find anyone qualified but if you wanted to apply go ahead. They'd already made up their minds that they weren't going to do that. They announced the surge after they announced the bill. I think that if you repeal the requirement, it's going to send a terrible message to the design community to discourage qualified people from applying.

I also think we all have a tendency to defer to the Mayor's good judgment on managers. WE may not like some of the policies, but by and large he's appointed good people. But I can't help but remember when Mayor Guiliani was here an nobody was bigger on anti corruption stuff than he was. He appointed a high school graduate to be the head of Housing Development Corporation, vouched for him. That person sadly turned out to be corrupt and is in jail now. Very sadly for a family.

But the point is that the consequences of that were that that agency maybe didn't function that well or wasted some taxpayers

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2 money. It wasn't about interpreting the building
3 code or the zoning resolution or things that
4 involve public safety, which is the definition of
5 engineering and architecture under the state law.

6 Now we're in a situation where the
7 next mayor's going to come along. It's not going
8 to be Michael Bloomberg, that's one thing we know
9 for certain. The next mayor's going to come along
10 and that person is going to have the flexibility
11 to make a political appointment to interpret the
12 zoning resolution, the building code and all of
13 the other things. So while the prospect of
14 finding this extraordinary manager who's going to
15 do as good a job reorganizing buildings as, say,
16 Joe Kline as done at the Department of Education.
17 That person is going to be making some really
18 critical decisions that require a level of
19 technical expertise that we don't think you can
20 get and relying on the Deputy. As talented as
21 that Deputy may be, just means that the
22 Commissioner is not going to be accountable for
23 the consequences of his or her actions.

24 CHAIRPERSON FELDER: I have to
25 apologize, there are a number of members who have

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2 conflicting hearings as well as appointments,
3 that's the nature of the day of a stated meeting.
4 So I'm sure all my colleagues like to be here for
5 all the testimony but some of them have to vote
6 now and attend their other hearings. So I'd like
7 the clerk to call the vote. No, only on the two
8 that have to leave. Yeah. Please.

9 CLERK: Intro 755-A.

10 COUNCIL MEMBER DOMINIC M. RECCHIA,
11 JR.: Council Member Recchia. Aye.

12 CLERK: Vallone.

13 COUNCIL MEMBER PETER J. VALLONE,
14 JR: Let me just say I completely understand any
15 concerns. I've spoken to architects about this.
16 This is a very close call for me but I am going to
17 vote aye. But thank you for coming out today.

18 CLERK: Council Member Dickens.

19 COUNCIL MEMBER INEZ E. DICKENS:
20 Thank you Mr. Chair. And I vote aye.

21 CHAIRPERSON FELDER: Are there any
22 other questions for the panel? So the next panel
23 we have--I thank you. I'd ask Mr. Fisher, if you
24 could stay. After the compliments that Council
25 Member Brewer gave you, you seem to be a part of

1 every panel, that's all. Michael J. Macaluso.

2 You're not being put in the corner. John

3 Hennessy, Laura Gallo. Can I ask the Sergeant at

4 Arms for a favor? If you could add one more chair

5 because we're going to have one more chair. And

6 Tom, help me Tom, Tom Szekely. See, I know how to

7 say it. Can we bring one more chair over? We're

8 getting you a chair. In the meanwhile, we can

9 start the testimony.

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11 MICHAEL J. MACALUSO: I'd like to
12 start to say it's the first inning and it's 3-0
13 and we're not winning. So I want to try to hit a
14 long ball here. Rather than repeat all that's
15 been said so far; it's a waste of time. I would
16 just go into some of the points that I think are
17 important to be made.

18 Number one, I'm the president of
19 the Architects Council of New York. I represent
20 4,300 registered architects around the city and we
21 unanimously ask that the section 641 of the City
22 Charter remain unchanged.

23 To continue, while the version of
24 the amended legislation would appear to be a
25 compromise and would appear to be something that

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2 would work for both the city and ourselves. We
3 find that while this version has a requirement
4 that the Commissioner must now appoint two
5 deputies, one of which can be a licensed
6 professional. It continues to avoid demanding
7 that the head of the agency be a licensed
8 professional.

9 The briefing paper prepared by your
10 Council clearly outlines that the duties of the
11 Commissioner involve those responsibilities
12 specifically in requiring a license by the New
13 York State Department of Education. It's by your
14 own hand that you're defining what requires a
15 license. It would therefore appear contrary to
16 state law to allow that these modification in
17 leadership could possibly reside in the hands of a
18 n unlicensed professional.

19 Secondly in the briefing paper it
20 attempts to make the case that eliminating the
21 need for licensure enlarges the pool of candidates
22 that can be considered for this position. The
23 record will show that during our testimony of May
24 7th, 23 names were presented by the Council. My
25 organization itself had dozens and dozens and

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2 others were submitted to the Mayor's office on or
3 about the time of the original introduction.

4 We polled many of those that were
5 noted and identified on that list. And I can tell
6 you without doubt that no one was ever contacted.
7 So while there is the want or seemingly thought
8 that there are not qualified people out there.
9 There are qualified people and they haven't even
10 been contacted. Names and addresses and phone
11 numbers and emails were all included.

12 Lastly, the amended version in its
13 next to last sentence, paragraph three under
14 section 648 indicates that nothing in this local
15 law, the amended, shall be construed to affect the
16 power of the Commission of Buildings under Section
17 1101 of this chapter. You will note that Section
18 1101 allows the head of any city department, that
19 at their pleasure to remove so many deputies as
20 may be provided by law. This leads to the problem
21 that if the deputy that is so removed is the First
22 Deputy.

23 The powers are granted to the
24 Commissioner by subdivision B or D of Section 645
25 of this chapter end of reverting to an unlicensed

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2 Commissioner. The very situation we find
3 ourselves in now. This is problematic because the
4 subdivisions include the practice of architecture
5 and engineering as defined by 7201 of New York
6 State Education law. Wherein the safe guarding of
7 life, health and property is concerned when such
8 service or work requires the application of
9 engineering principles and data.

10 In closing, this amended version
11 amounts to a bit more than a subterfuge of the
12 original Intro 755 as the license requirement for
13 any deputy can be vanquished at the whim of the
14 Commissioner. The record is simply clear that the
15 expertise necessary to head this very complex
16 department must reside within the education,
17 experience, moral and ethical standards mandating
18 by-state license leaving the very difficult
19 managerial aspects of running this agency to
20 professional managers, they're not necessarily
21 requires licenses but business management
22 expertise. For this we're absolutely all for.

23 It would therefore appear
24 unnecessary to modify 641 of the City Charter.
25 And focus attention on creating Deputy

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2 Commissioners with business expertise while never
3 diminishing the higher standards to head an agency
4 of such complexity and importance. Thank you very
5 much.

6 JOHN HENNESSY: I'm John Hennessy.
7 I'm the national chairman of the American Council
8 of Engineering Companies. And respect of Council
9 Members times I will not read all of what I've got
10 here. I'd just like to make a couple of points.

11 The Buildings Commissioner is the
12 chief executive of the Buildings Department. And
13 I think just as the chief executive of the health
14 department and the Corporation Council have to be
15 licensed and have certain professional
16 requirements, why shouldn't this group. I
17 understand that generally speaking people look
18 upon engineers as not good managers. There's an
19 old story of how do you know an extroverted
20 engineer? He's staring at your shoes. But we
21 have very, very competent managers. There are
22 engineers who run corporations with hundreds of
23 thousands of people.

24 I'd also like to point out that
25 we're not talking about--I understand the recent

1
2 spade of accidents that have brought this to the
3 foray. As candidates have talked about. But the
4 Commissioner makes decisions on what is acceptable
5 in the building that can last 30 and 40 years;'
6 they can be a time bomb. As I said earlier at one
7 of these meetings in May, the Commissioner has to
8 make decisions, for example on the World Trade
9 Center, which was a new structural system. If
10 that system would have been wrong, those buildings
11 would have come down right away and not in a
12 couple of hours and saved tens of thousands of
13 lives.

14 And you're going to invest that in
15 somebody who doesn't understand what they're
16 talking about? And a chief executive can always
17 overrule his deputy. So I think it's a mistake to
18 put somebody in there who doesn't have the
19 technical knowledge of what they're actually
20 making a decision on. Thank you.

21 LAURA GALLO: Good morning. My
22 name is Laura Gallo and I'm Vice President of the
23 New York Building Congress. The Building Congress
24 has previously testified on this issue, urging the
25 City Council to retain their requirement of

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2 section 641 of the New York City Charter, that the
3 Commissioner of the Department of Buildings be a
4 registered architect or a licensed professional
5 engineer in good standing under the state
6 education law.

7 As we previously explained in that
8 testimony, this requirement is critically
9 important, not only to the building industry but
10 to all New Yorkers. We express grave concern
11 about the potential elimination of the requirement
12 as was initially proposed. And we remain
13 concerned about the current proposal to modify it.

14 As the final authority on the
15 evaluation and approval of construction plans and
16 the interpretation of the building codes, the
17 Commissioner must exercise judgment on highly
18 technical matters. The expertise needed to make
19 the close calls and set important department
20 policy affecting public health and safety requires
21 the kind of specific training and experience that
22 only the rigors of professional licensure, through
23 its standards and testing can provide.

24 That requirement should be
25 maintained at the highest level of leadership at

1
2 the Department, the Commissioner. While we
3 understand the mayor's predicament in trying to
4 fill this important post in and for a short period
5 of time, we believe a temporary waiver of the
6 licensure requirement should be considered instead
7 of a permanent change to the City Charter which
8 would be best addressed by the Charter Revision
9 Commission, if at all.

10 Please leave the existing
11 requirement intact. Thank you.

12 TOM SKEKELY: Good morning. My
13 name is Tom Szekely. I'm New York City region
14 Vice President for the New York State Society of
15 Professional Engineers. I represent the
16 professional engineers of all five boroughs in
17 this city. I'm going to kind of repeat what Mr.
18 Macaluso and Mr. Hennessy said but a little bit
19 different.

20 Not only does the ultimate lines
21 say that the Commissioner can remove the deputy at
22 whim. If you look at 1101, it says he can
23 determine the relative ranks of his Deputy
24 Commissioners, which means he can put another
25 Deputy Commissioner about that Deputy

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2 Commissioner. He can appoint any other Deputy
3 Commissioner. Or the 1101 will allow any other
4 deputy Commissioner to garner responsibilities.
5 Why is this important?

6 We talked about state education
7 law. City Charter Article 645B, Powers of the
8 Commissioner Personally. The World Trade Center,
9 remember that? One of his powers, personally is
10 to permit in specific cases experimental or
11 demonstration construction not in compliance with
12 building codes. Excuse my French, how the heck is
13 a non licensed Commissioner supposed to have a
14 clue as to what he's doing here or go back before
15 that?

16 Personally, he's going to approve
17 or disapprove my plans? Right. And what else he
18 can do, where equally safe and proper materials or
19 forms of construction may be employed in a
20 specific case, he may permit the use of such
21 materials when they don't meet code. These are
22 things that he can personally do.

23 Now there's another section about
24 Certificates of Occupancy, which if you want to
25 rescind them you just can't do it. You have to

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2 either have the Board of Standards and Appeals or
3 what? A court of competent jurisdiction deal with
4 it. So we're going to take some MBA, let him run
5 the agency and everything's going to be cool
6 because he's got a First deputy who can fire any
7 time he wants. I don't think so.

8 CHAIRPERSON FELDER: Do any of my
9 colleagues have any questions or comments? Okay.
10 I thank you very, very much. Councilman Avella.

11 COUNCIL MEMBER TONY AVELLA: Thank
12 you Mr. Chair for allowing me to speak. I'm not a
13 member of this Committee. Before I make my
14 comments on the legislation, I have to tell you
15 and this is no reflection on you Mr. Chair. But
16 the fact that council members voted before the
17 public testimony was concluded, I find offensive.
18 There's a lot of criticism about the City Council
19 that when we do legislation, the fix is in. I
20 think having council members vote before public
21 testimony is concluded only reinforces that.

22 I'm going to look into the Council
23 rules but I think that should be prohibited, if it
24 isn't, under any circumstances. We should never
25 vote before the public has had a full opportunity

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2 to comment on legislation. Again, this is no
3 reflection on you but I'm surprised to see that
4 happen.

5 In terms of the legislation, I
6 think there's maybe only one or two people on the
7 Council in the city who's been more a vocal critic
8 of the Department of Buildings and some of the
9 mistakes that architects have made. And there's
10 actually a few architects I'm going after to
11 revoke their license for deliberately falsifying
12 plans. But having said that, I think this
13 legislation is inappropriate and actually takes a
14 step backward. It is extremely important that we
15 have licensed professionals in charge of the
16 Department of Buildings.

17 Although I heard the comments of my
18 colleagues about managerial experience, I think we
19 can find an architect or an engineer that can
20 manage the agency. One of the things that
21 concerns me most, and this is the scenario that
22 scares the heck out of me in a city where the real
23 estate industry controls the agenda more so than
24 we even as the Council. I can see a situation in
25 the near future, maybe not in the immediate future

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2 but in the near future where a developer is
3 appointed as Commissioner of the Department of
4 Buildings. And then it will be the fox watching
5 the chicken eggs.

6 I am totally against this bill. I
7 would urge my colleagues not to vote for it. This
8 is not the way to go to improve the agency. We
9 all know it needs improvement but this is not the
10 way to go. Thank you Mr. Chair.

11 MS. SEARS: Just for clarification
12 for the record, I think that the city needs good
13 developers, bad developers we do not need. To
14 have the insinuation that if a developer was in
15 there it would be a bad developer, I would like to
16 think whoever is the mayor of this city would have
17 better sense than to put somebody in that is the
18 fox watching the chickens. Thank you Mr. Chair.

19 MS. BREWER: Thank you. The panel
20 raised the question about the state licensing. I
21 don't know the answer to that. Is there an answer
22 to that?

23 CLERK: We don't have an answer.

24 CHAIRPERSON FELDER: I just want to
25 make one comment before we call for a full vote

1 that there were two arguments made about this.

2 One argument was related to the fact of difficulty

3 of finding a qualified architect or engineer that

4 would be a good manager. I agree with the

5 testimony that was given that I don't believe that

6 at all. - - but that doesn't make any sense.

7 Despite the self deprecating remarks about

8 engineers, I just don't believe that.

9 I do, on the other hand want to say

10 that the other argument that has been made about -

11 - corporation not necessarily having to have the

12 health specific skills. I have a bias because I

13 have an MBA in management. So that wasn't nice.

14 But it's true. What you said is true. And I do

15 believe that it's not only at Buildings. If

16 someone were to argue at almost I think any

17 agency, I would have the same feelings, that it's

18 okay to have anybody who is a very good manager.

19 So I'm not disagreeing with you in

20 principle but I think the debate has nothing to

21 with whether we can find extraordinary people who

22 are engineers or architects to manage the

23 Department. I think that's ludicrous. I think

24 the debate actually is a philosophical one as to

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2 whether you believe in any particular field that
3 the top person in that field should be someone who
4 has even any knowledge at all about that field.

5 And yeah. Despite your raising your eyebrows,
6 we're having a discussion. I'm sorry Ken, we left
7 you out.

8 MR. FISHER: You asked the
9 question.

10 CHAIRPERSON FELDER: No, I don't
11 want to ask you because I know what you're going
12 to say. [Laughter] I know what you're going to
13 say. So all I want to say is that some of the
14 points that were brought up. We had a three hour
15 hearing on this matter and I would say all of our
16 members, for the most part, I think were here for
17 a very, very long time at that hearing, not at
18 this one. And during that hearing the sum of the
19 people who testified brought up the issues as well.

20 In the Health Department or in the
21 Police Department or some other place that you
22 believe that's so. I would say for the most part--
23 -I didn't ask you a question. For the most part,
24 that is so, that I believe that it's so. So I
25 don't think Buildings should be any different.

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2 But since we all respect--I was going to say
3 Councilman Fisher tremendously, if there's
4 anything you would like to say before we vote, we
5 give you that courtesy.

6 MR. FISHER: Just in one sentence
7 Mr. Chairman. Health Department, the Law
8 Department have the charter requirements because
9 the practice of the profession requires you to
10 have the license in order to perform the
11 responsibilities of the job. The Police
12 Commissioner, there's no license to be a
13 Commissioner. You're sworn in as a police man,
14 you may be taking a test but you can be a lawyer
15 or a non-lawyer or somebody else to be the Police
16 Commissioner.

17 So what we're saying to you, and I
18 think it's very significant about the full state
19 issue, is the practice, the actual duties under
20 the zoning code and the building code. And there
21 are dozens of them, that the actual act that the
22 Commissioner performs is the practice of a
23 profession and that's why it requires a license.
24 It's my understanding and while I haven't seen the
25 documents that there is a formal investigation of

1 this underway by the state Education Department.

2 I would, again, respectfully
3 suggest that if you don't have something in
4 writing from the State Education Department then
5 you ought not to move forward with the legislation
6 until you do. Because you're not only putting the
7 city at risk but everything that that acting
8 Commissioner does is at risk until that matter is
9 resolved.
10

11 But that's the differences, it's
12 the function of what they do when they wave a
13 materials requirement, when they approve a
14 demonstration technique, that is the practice of a
15 design professional as defined by the state law.

16 CHAIRPERSON FELDER: I thank you
17 very much but I am not foolish enough to debate
18 you. And are we going to call it for a vote now?

19 CLERK: Introduction 755-A, Council
20 Member Felder.

21 CHAIRPERSON FELDER: Yes.

22 CLERK: Dilan.

23 COUNCIL MEMBER ERIK MARTIN DILAN:
24 Yeah. I'm going to vote for this measure. It's
25 sitting here listening to the debate even today

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2 hasn't been, it's never been an easy decision for
3 me to make. I think I've changed my position on
4 this particular issue several times. I think if
5 it dragged out another week my position might
6 change several times over again. But as it
7 stands, the Buildings Department needs to move
8 forward. I sincerely hope that the mayor does
9 appoint an architect or an engineer to run the
10 agency. This statute won't prohibit him from
11 doing that.

12 So I'm going to vote for this. I
13 can't say this is one of the more comfortable
14 votes I've ever taken. And I just hope to God
15 that the faith that we put in this mayor today.
16 Because that's what this is, this is a vote of
17 faith on this mayor. I hope that he doesn't make
18 one, this Council look bad. Two, this city look
19 bad and three, that he understands that the
20 appointment that he has to make had better keep
21 this city safe because there's a lot of our
22 reputations riding on it with this so.

23 So with that, I vote yes.

24 CLERK: Seabrook. Sears.

25 MS. SEARS: I vote yes for this

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2 bill but I also would like to just have a comment
3 that I respect very much all of the testimony that
4 I've heard today. But I do believe it's necessary
5 to have the - - and maybe I'm being too optimistic
6 but I'd like to think government can correct its
7 wrongs. And if this turns out not to be that way,
8 I think we have shown that we're able to do that.
9 I want to thank everybody [No audio]

10 CLERK: Seabrook.

11 COUNCIL MEMBER LARRY B. SEABROOK:

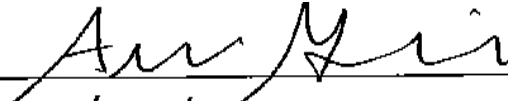
12 I vote aye on this for now.

13 CLERK: By a vote of seven in the
14 affirmative, zero in the negative, no abstentions,
15 the item is adopted. Members please sign the
16 Committee report. Thank you.

C E R T I F I C A T E

I, Amber Gibson, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A handwritten signature in cursive script, appearing to read "Amber Gibson", written over a horizontal line.Date September 3, 2008