GAMING THE TAX CODE: THE NEW YORK YANKEES AND THE CITY OF NEW YORK RESPOND TO QUESTIONS ABOUT THE NEW YANKEE STADIUM

HEARING

BEFORE THE

SUBCOMMITTEE ON DOMESTIC POLICY

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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GAMING THE TAX CODE: THE NEW YORK YANKEES AND THE CITY OF NEW YORK RESPOND TO QUESTIONS ABOUT THE NEW YANKEE STADIUM

FRIDAY, OCTOBER 24, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC POLICY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2154, Rayburn House Office Building, Hon. Dennis J. Kucinich (chairman of the subcommittee) presiding.

Present: Representatives Kucinich, Cummings, and Cannon.

Staff present: Jaron R. Bourke, staff director; Charles Honig, counsel; Jean Gosa, clerk; Charisma Williams, staff assistant; Leneal Scott, information officer; Howie Denis, minority senior professional staff member; and William O'Neill, minority professional staff member.

Mr. KUCINICH. The committee will come to order.

The Domestic Policy Subcommittee of the Committee on Oversight and Government Reform is now in order. Today's hearing will examine whether the city of New York and the New York Yankees have gamed the Federal Tax Code to receive Federal subsidies for construction of the new Yankee Stadium.

Without objection, the Chair and the ranking minority member will have such time as they need to make opening statements followed by opening statements not to exceed 3 minutes by any other Member who seeks recognition. Without objection, Members and witnesses may have 5 legislative days to submit a written statement or extraneous materials for the record.

This is the Domestic Policy Subcommittee's fourth hearing in the last year and a half on the Federal Government's subsidization of the construction of professional sports stadiums through the Federal Tax Code and our second hearing focusing on whether the New York Yankees have gamed the Tax Code to receive Federal subsidies for construction of a new Yankee Stadium.

In our hearings, we have shown that the practice of providing taxpayer subsidies to the building of sports stadiums is a transfer of wealth from the many taxpayers to the few wealthy owners. The new Yankee Stadium is no exception to this rule. Just like the current financial crisis, the story is similar: Businesses and government actors who by, law and practice, are not accountable to the public are free to conduct deals to the public's detriment. Here not only are the city and taxpayers on the hook for expensive infrastructure improvements provided for the Yankees, but also Federal taxpayers are deprived of hundreds of millions of dollars of tax revenues because the bondholders will pay no Federal taxes on the $950 million of bonds issued to construct the Stadium.

In our September hearing, we heard testimony from experts about how the funding mechanism of the new Yankee Stadium, the use of payments in lieu of taxes [PILOTs], as they are called, was neither transparent nor democratically accountable. We also learned that the Yankees could only extract the deal because they operate as a monopoly, as do all professional sports teams. Thus, their owners are threatening to leave unless they receive from the city and State officials the use of more and more taxpayer dollars. At the same time, they charge higher and higher ticket prices to the fans.

Indeed, Mr. Levine, in his written testimony explicitly states that without payment-in-lieu-of-taxes financing, the Yankees would have left the Bronx. The Yankees and the city declined to testify at the September hearing because they argued it was unfair to proceed before the subcommittee could complete its investigation with the benefit of documents on the issue. No matter that the Yankees and the city had withheld precisely these documents from the subcommittee for 2 months.

The timing and apparent coordination of the Yankees' and the city's actions seem aimed to facilitate a favorable decision from the Treasury Department on their request to have city projects grandfathered from new regulation that proposed to close with the Treasury, termed the payment-in-lieu-of-taxes loophole.

They got their wish. Today, regulations go into effect that allow only in three New York City projects—Yankee Stadium, the new stadium for the Mets, and a new arena for the Nets—to continue to benefit from this loophole, which has now been partially closed for everyone else.

The Yankees' and the city's continued attempts to stymie this investigation is evidence that they don't want the truth to come out. The Yankees and the city waited until Wednesday evening to provide many of the documents first requested on July 26th. Moreover, the city development agency continues to withhold 70 percent of responsive agency communications by asserting attorney/client privilege, a privilege, I might add, that has never been binding on Congress. By waiting to the last minute to raise this meritless objection, the city has delayed the subcommittee's review of these documents until after this hearing.

Even though the city has withheld many key documents from this subcommittee, we have reviewed enough correspondence to raise serious questions about how the city assessed the Stadium. Yankee-great Yogi Berra once said, "A nickel isn't worth a dime today." Well, the city of New York has turned Yogi Berra's maxim on its head. What they say is, "A dime today may be worth closer to a nickel."

As outlined in a letter that I sent last week to Mayor Bloomberg, our staff has uncovered a litany of serious questions about all aspects of the $1.2 billion Stadium assessment, including the accuracy of the inclusion of certain costs in the $1 billion valuation of the Stadium itself and the accuracy of the $204 million Stadium site assessment.

Here I am going to focus on what appears to be the most clear and egregious inaccuracies in the assessment, the possible inflation of the Stadium site assessment. From evidence that subcommittee staff has reviewed, it has become clear that from the very beginning of the assessment process, top city officials made it known to the Department of Finance, that they should be mindful of the Yankees' interest, "in seeing that the assessed valuation would be high enough to generate as much payment in lieu of taxes for tax-exempt debt as is lawful and appropriate." And the Department of Finance buckled.

In an e-mail from Mr. Seth Pinsky to Mr. Josh Sirefman, an official in the mayor's office, we learned that there was concern about how the tax assessment would match up against the requirements of the Yankees. Mr. Pinsky writes, "As I think you know, on the Yankees and Mets, their financing structures rely on payment in lieu of taxes, which are limited by what real estate taxes would be, which, in turn, are limited by the assessments of the new stadia. Apparently DOF, Department of Finance, is close to finalizing their preliminary assessment, and I'd like to understand what it is before it is released publicly to make sure it conforms to our assumptions. Do you know the proper person at DOF"—Department of Finance—to talk to about this?"

This is an e-mail from Mr. Pinsky to Mr. Sirefman.

Later that afternoon, Mr. Pinsky sent another e-mail to the executive director of his agency, "I think that Josh Sirefman," that's the City Hall official—"is contacting Martha Stark directly. It would be helpful to have a directive from the top that we should be cooperated with."

Knowledge of the estimated Stadium assessment before its public release would provide City Hall and the IDA a further opportunity to pressure the Department of Finance to adjust the assessment in the direction that conformed to the city's and the IDA's assumption, provided Department of Finance would cooperate.

On March 21, 2006, the Department of Finance had arrived at a valuation of the 17-acre Stadium site, $26.5 million. The Department of Finance reached this valuation by comparing the South Bronx Stadium site to land parcels in comparable Bronx neighborhoods and other comparably low-value areas in Staten Island and Brooklyn. At about $32 per square foot, this valuation was roughly in accord with two roughly contemporaneous city-commissioned appraisals of substantial portions of the Stadium site, a $21-million or $45-per-square-foot May 2006 appraisal of an 11-acre portion of the Stadium site that was commissioned by the New York State Office of Parks and submitted to the National Park Service and a July 2006 $40-million lease appraisal or $63 per square feet on the 14.5 acres of the Stadium site commissioned in conjunction with State law requirements to proceed with the Stadium project.

The next afternoon, May 22nd, Mr. Pinsky made plans to call the assistant commissioner of the Property Division, Ms. Dara Ottley-Brown. We do not know the details of their conversation, either because the details do not exist or because the city has withheld those documents from the subcommittee. We welcome the opportunity to hear directly from Mr. Pinsky and Ms. Stark today.

But one thing we do know is the result: The Department of Finance revised its valuation of the Stadium site upwards of 600 percent from $26.8 million to $204 million or $275 per square foot. Did the city and the IDA pressure the Department of Finance to increase dramatically the land assessment for the benefit of the Yankees? Was it necessary to have a higher land assessment to support the amount of bonds that the Yankees wanted to finance the construction of their new stadium? We hope to get to the answers to these questions today.

In her written testimony, Ms. Stark attempts to explain the Department of Finance's sudden methodological about face which led to the adoption of the inflated Stadium site valuation. I look forward to asking Ms. Stark how these methodologies square with accepted principles of cost-based land assessment and Department of Finance practice. One thing is already clear: To justify the inflated Stadium assessment, the Department of Finance had to abandon the comparables in The Bronx that it had previously used and resorted to comparables for property in comparatively high-value neighborhoods in Manhattan. That is the basis for the $204-million land valuation that the city reported to the IRS.

Now, why did this happen? The Yankees were happy to pay more payments in lieu of taxes to finance the construction bonds as long as the Federal Government and the Federal taxpayers would provide them with cheap tax-exempt bonds: Each additional dollar of tax-exempt bonds that IDA was willing and able to issue to finance the Stadium's construction saved the Yankees from having to issue a correspondingly high amount of higher-interest-rate taxable bonds. For its part, the city's investment in the Stadium was almost entirely the sunk costs of paying for infrastructure improvements, and they wouldn't pay more if the bonds—if the amount of the bonds was $600 million or $950 million.

As Professor Clayton Gillette testified at our previous hearing, this is a problem with the incentive structures of payment in lieu of taxes itself. In typical municipal finance arrangement for stadium constructions, a city raises taxes to pay the debt service on bonds. If the city wants a more grandiose stadium built with tax-exempt funds, its taxpayers would have to share the burden with Federal taxpayers. With payments in lieu of taxes, the city reaps the benefits of tax exemption while shouldering none of the burden. Artificially inflating the Stadium assessment would be the next step, albeit a more grave step and an illegal step down this path.

So where do we go from here? Well, it is not over. The Yankees are seeking IRS approval of about $360 million of additional payment-in-lieu-of-taxes-backed tax-exempt bonds. It appears that the city has already increased the Stadium assessment in conjunction with this request. The Mets may also be requesting a more modest sum to complete Citifield and Forest City Enterprises, the developer of the Atlantic Yards project in Brooklyn, seeks IRS approval of $800 million of payment-in-lieu-of-taxes-backed bonds for the construction of a new arena for the Nets.

I want to thank the city of New York and the New York Yankees for coming here today to respond to questions about how the Department of Finance arrived at the Stadium assessment, including addressing the circumstances of the Department of Finance inflating the Stadium site assessment 600 percent in 1 day and helping us determine if the inflation was a result of pressure exerted by IDA or city officials. In general, we hope to shed some light on whether the Department of Finance calculated the Stadium assessment pursuant to proper assessment methods designed to determine what the property was actually worth or reverse-engineered the assessment to ensure that the IDA could issue the amount of tax-exempt bonds sought by the Yankees to fulfill their vision of a new stadium in The Bronx.

The answers to these and other questions will be helpful to Federal policymakers and help us understand whether the regulations for the use of tax-exempt bonds work properly or whether they invite manipulation.

At this time, I'm going to yield to the distinguished ranking person for this hearing, Mr. Cannon, for such time as he may need to deliver his opening statement; and then I will move to other members of the committee.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Opening Statement
of
Dennis J. Kucinich, Chairman
Domestic Policy Subcommittee
Oversight and Government Reform Committee
Friday, October 24, 2008
2154 Rayburn HOB
10:00 a.m.

"Gaming the Tax Code: the New York Yankees and the City of New York Respond to Questions about the New Yankee Stadium"

This is the Domestic Policy Subcommittee's fourth hearing in the last year and a half on the federal government's subsidization of the construction of professional sports stadiums through the federal tax code, and our second hearing focusing on whether the New York Yankees have gamed the tax code to receive federal subsidies for construction of the new Yankee Stadium.

In our hearings, we have shown that the practice of providing taxpayer subsidies to the building of sports stadiums is a transfer of wealth from the many taxpayers to the few wealthy owners. The new Yankee Stadium is no exception to the rule. Just like the current financial crisis, the story is similar: businesses and government actors, who, by law and practice, are not accountable to the public, are free to conduct deals to the public's detriment. Here, not only are city and state taxpayers are on the hook for expensive infrastructure improvements provided for the Yankees, but also federal taxpayers are deprived of hundreds of millions of dollars of tax revenues because the bondholders will pay no federal taxes on the $950 million of bonds issued to construct the stadium.

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In our September hearing, we heard testimony from experts about how the funding mechanism for the new Yankee Stadium, the use of payments in lieu of taxes (or PILOTs), was neither transparent nor democratically accountable. We also learned that the Yankees could only extract the deal because they operate as a monopoly, as do all professional sports teams. Thus, their owners can threaten to leave unless they receive from City and State officials the use of more and more taxpayer dollars, while at the same time they charge higher and higher ticket prices to fans. Indeed, Mr. Levine, in his written testimony, explicitly states that without PILOT financing, the Yankees would have left the Bronx.

The Yankees and City declined to testify at the September hearing because they argued it was unfair to proceed before the Subcommittee could complete its investigation with the benefit of documents on the issue. No matter that the Yankees and City had withheld precisely these documents from the Subcommittee for two months.

The timing and apparent coordination of the Yankees' and City's actions seem aimed to facilitate a favorable decision from the Treasury Department on their request to have City projects grandfathered from new regulation that proposed to close what the Treasury termed the PILOT "loophole." They got their wish; today regulations go into effect that allow only in the three New York City projects—Yankee Stadium, the new stadium for the Mets, and a new arena for the Nets—to continue to benefit from this loophole, which has now been partially closed for everyone else. The Yankees' and City's continued attempts to stymie this investigation is evidence that they don't want to the truth to come out. The Yankees and City waited until Wednesday evening to provide many of the documents first requested on July 26. Moreover, the City development agency continues to withhold 70% of responsive agency communications by asserting attorney-client privilege, a privilege that has never been binding on Congress. By waiting to the last minute to raise this meritless objection, the City has delayed the Subcommittee's review of these documents until after this hearing.

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From evidence that Subcommittee staff has reviewed, it has become clear that from the very beginning of the assessment process top City officials made it known to the Department of Finance (DOF) that they should be mindful of the Yankees' interest "in seeing that the assessed valuation [would] be high enough to generate as much PILOT for tax-exempt debt as is lawful and appropriate." And DOF buckled.

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Deleted: more grave

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The answers to these and other questions will help to federal policy makers understand whether the regulations for the use of tax-exempt bonds work properly, or whether they invite manipulation.

Mr. CANNON. Thank you, Mr. Chairman. I appreciate the hearing. Is this speaker on? Can you hear me? It's on but—hello. No. OK.

Thank you, Mr. Chairman, for holding the hearing. If you have another baseball hearing, I think the American people are going to start worrying about whether Congress hates America's favorite pastime. In all seriousness, I think there are two questions here to be asked. Can the New York stadiums be subsidized under current law legally? And second, was there any misconduct in the way these deals were done? I suspect that the panel will be able to give us the details in such a way that the answers to those two questions become direct and simple.

Can New York stadiums be subsidized under current tax law? Yes, of course they can. And now we have the ability to tighten regulations; the IRS has the ability to tighten regulations. But when the negotiations of these stadiums were done, the tax law was clear. In fact, Federal tax officials have ruled time and again in favor of this and similar projects. Nothing illegal took place here.

Now, if we change the law in the middle of the deal, that would be unfair to those who put the deal together. The IRS agrees; otherwise, they wouldn't have OKed so many similar projects.

It is ludicrous that we are targeting New York City for entering into an illegal deal. While the majority may have their opinions on whether stadiums should be subsidized, that is different. Demonizing the city of New York for deciding to spur economic development in one of the poorest congressional districts in the country seems to me to be a decision that is appropriate for them to make.

Now the only question that remains is, was there any misconduct in the way these deals were done? This project has gone through more vetting than any other project in recent memory. This project has undergone scrutiny from literally every level of government; no substantial evidence of impropriety has been found.

I'm looking forward to giving the folks from the good State of New York the opportunity to explain what has happened here to clarify the record. I've read personally a number of articles and relatively wild allegations on this. I suspect that as we shine the light of the truth on this, or have the opportunity to express the truth on this, we're going to find out that some of those extraordinary statements are unfounded. I am certainly not referring to the chairman's concerns, which are quite technical, but which I think also have clear technical explanations.

So with that as an introduction, Mr. Chairman, first of all, I'd like to thank you for keeping your opening statement shorter than some of the statements we have had in the past on the floor of the House and even here. And I appreciate the fact that we join the issue, and I look forward to getting some answers to some questions and some clear explanations. Thank you, and I yield back the balance of my time.

Mr. KUCINICH. I thank the gentleman.

The Chair recognizes Mr. Cummings.

Mr. CUMMINGS. I want to thank you, Mr. Chairman, for holding this hearing. And I want to thank our guests for being here this morning.

As I was listening to Mr. Cannon, I couldn't help say to myself that, you know, when it comes to things that are unbelievable and wondering whether people are telling—making statements that are just way out of bounds. If somebody had told me before the last 2 days of hearings that we had with regard to this worldwide financial fiasco, that we would hear some of those things, I would have never believed it. And I think we are at a time and a place where the taxpayers, in many instances unfairly and unfortunately, are being taken to the cleaners. And I think it is very, very important that we look into this.

We may come up with and find—discover that there are no problems. And I would like to be frank with you, after what I have seen in the last 2 days, I hope they are not. But the fact still remains that there are questions to be answered, and we are the committee that has been given the duty of looking into these matters.

I—you know, I enjoy baseball. As a matter of fact, I enjoy it very, very much, and although the Baltimore Orioles aren't doing too well now, I try to give advice, as much advice I can, to Peter Angelos, the owner, but he doesn't seem to take it.

But when seven-time Cy Young Winner Roger Clemens came before our committee to answer questions about his alleged steroid use, I told him that he was one of my heroes, and I truly meant that. I also told him that—when he met me in my office prior to the hearing, that I am not one of those politicians who believes that athletes do not deserve the millions of dollars that they receive. Baseball is big business. And for the entertainment, joy and pride that the game brings to so many families across our Nation, I think it is worth every dime of it. But, again, American taxpayers should not be forced to pay.

What we are seeing in New York with the development of the new Mets and Yankees stadia, is a situation where I believe the Federal Government was simply taken to the bank. We are essentially offering these teams interest-free loans by issuing tax-exempt Federal bonds for the construction of stadia and allowing them to pay them back in place of taxes. The IRS and the Treasury Department, after approving the deals, recognized that this practice is highly problematic; and they have revised their regulations effective today to ensure that future deals are not similarly made. That says something in and of itself.

My problem with the whole situation is that the IRS probably should not have approved the tax-exempt status in the first place, given that the stadia projects present a clear concern. However, we are here this morning to discuss, among other issues, the alleged misrepresentations made to the IRS and investors regarding the assessment value of the new Yankee Stadium and whether these alleged misrepresentations are an outgrowth of insufficient independence, transparency and accountability at the New York City Department of Finance and other city agencies.

And I must say, Ms. Stark, I read your testimony this morning, and I too have some questions—I'm sure, just as the chairman does—with regard to how these assessments are done, because it is a little confusing. But I look forward to all of your testimony.

Mr. Chairman, there is only one thing that bothers me. And I know you're trying to get to the bottom of all of this, and I'm hoping that we'll be able to get to the bottom. I think that when you're talking about an issue of pressure, a lot of times that kind of information is hard to get out. But we'll see.

And with that, Mr. Chairman, I yield back.

Mr. KUCINICH. I thank the gentleman. I would just like to respond to his direct statement by saying that this subcommittee is going to continue to require the production of documents.

So thank you. If there are no other additional opening statements, the subcommittee will now receive testimony from the witnesses before us today.

I would like to start by introducing our first panel. First, Mr. Randy Levine, welcome. Mr. Levine was named president of the New York Yankees in January 2000. Before joining the Yankees, Mr. Levine served as New York City's deputy mayor for Economic Development, Planning and Administration. Mr. Levine also served as New York City's labor commissioner, and prior to joining the Mayor's Office was the chief labor negotiator for Major League Baseball.

Mr. Seth Pinsky—Mr. Pinsky, welcome—was appointed president of the New York City Economic Development Corp. in 2008. Prior to his appointment, Mr. Pinsky served as executive vice president at the NYCEDC where he co-led the Financial Services Division. Before joining the NYCEDC, Mr. Pinsky was an associate at the law firm of Cleary, Gottlieb, Steen & Hamilton in the real estate practice.

Ms. Martha Stark—Ms. Stark, welcome—was appointed in 2002 as New York City's finance commissioner. She also serves as Chair of the New York City Employee's Retirement System and Teacher's Retirement System. Ms. Stark has held several senior management positions at the Department of Finance and has served as the acting director of the Conciliations Bureau and assistant commissioner at Finance.

Prior to her appointment as commissioner, Ms. Stark was a portfolio manager at the Edna McConnell Clark Foundation.

Mr. Richard Brodsky, welcome. Mr. Brodsky represents the 92nd Assembly District of the State of New York. Assemblyman Brodsky serves as chairman of the Committee on Corporations, Authorities and Commissions of New York State—of the New York State Assembly, which oversees the State's public and private corporations.

From 1993 to 2002, Assemblyman Brodsky served as chairman of the Committee on Environmental Conservation, and prior to this, as chairman of the Committee on Oversight Analysis and Investigation.

I want to thank each and every witness for appearing before this subcommittee today. It is the policy of the Committee on Oversight and Government Reform to swear in all witnesses before they testify. And I would ask if now you would rise and raise your right hands.

[Witnesses sworn.]

Mr. KUCINICH. Thank you very much.

Let the record reflect that all of the witnesses answered in the affirmative. I'm going to ask that each witness here give a brief summary of their testimony and to keep this summary under 5 minutes in duration.

Your complete written statement is going to be included in the record of the hearing. So we'll make—you know, everything that you have on record will get in there.

Mr. Levine, I would like to start with you if we may. And again we are pleased that you're here. Thank you.

Mr. LEVINE. I just want to check—everybody hear me?

Mr. KUCINICH. Yes, sir. We are OK.

STATEMENTS OF RANDY LEVINE, PRESIDENT, NEW YORK YANKEES; MARTHA STARK, COMMISSIONER, NEW YORK CITY DEPARTMENT OF FINANCE; SETH PINSKY, PRESIDENT, NEW YORK CITY ECONOMIC DEVELOPMENT CORP.; AND RICHARD L. BRODSKY, ASSEMBLYMAN, 92ND ASSEMBLY DISTRICT NEW YORK STATE

STATEMENT OF RANDY LEVINE

Mr. LEVINE. Thank you, Mr. Chairman. My name is Randy Levine, and I'm the President of the New York Yankees. While the Yankees hope to be as helpful as possible in connection with this committee's study of stadium financing and the issuance of payment-in-lieu-of-taxes bonds. The specific government bond issuer, the New York City Industrial Development Agency, and not the Yankees, is best qualified to respond to the subcommittee's questions regarding tax law, tax policy or the Department of Treasury or Internal Revenue Service regulations.

As I will describe today, had this PILOT financing mechanism not been in place, a new Yankee Stadium would not have been built, and without any new stadium, regrettably, the Yankees would have been forced to leave The Bronx. This would have been a significant loss for the local community and its economy, not to mention the Yankees.

Before attempting to give the Yankees' perspectives on these issues, I'd like to take a few minutes to discuss the number of many, many misstatements and mischaracterizations of Assemblyman Brodsky, who is sitting here.

It is important to note that Mr. Brodsky voted twice for this project and never raised any objections until well after the financing was closed. Even today, as he protests that he is against subsidies for sports, in the last year he voted to give a taxpayer cash bailout of over $100 million to the New York Racing Association and just a few months ago decided to provide tax breaks to Monticello Racetrack. That is not consistent. In a moment worthy of the Grandstanding Hall of Fame, he released his report the day before the historic final day of Yankee Stadium.

First, it is critical to note—as was mentioned by the ranking member—the tremendous transparency that has been the hallmark of this project from the outset. Since the inception of the project in 2005, it has been one of the most transparent transactions undertaken, and the details have been recorded in voluminous, publicly available documents. The project has been subjected to extensive scrutiny by Federal, State and local officials. There have been 16 public hearings, 20 separate governmental approvals, two lawsuits and a plethora of media coverage. The New York State Legislature approved this twice, the New York City Council, on three occasions, and numerous other government agencies as well. This project has been supported by three New York Governors on both sides of the aisle and the mayor of the city of New York.

To truly understand what the Yankee Stadium project means to the South Bronx, one of the poorest areas, I think it is instructive to look at an example. I'm sure you're familiar with the city of Cleveland, Mr. Chairman, because in 1978, while you were the mayor and on your watch, Cleveland became the first American city to default on its bonds since the Great Depression. As a result, the great city of Cleveland, where my owner comes from, experienced severe economic hardship throughout much of the 1980's. Through subsequent actions and policies, which include implementing tax incentives to spur economic growth, Cleveland ultimately recovered, prospered, and is today a great city.

And, Mr. Cummings, Congressman Cummings, I think we would all agree that the building of Camden Yards in Baltimore, which was done on public subsidies, transformed that city.

In fact, Mr. Chairman, many commentators on that period believe that the building and opening of Jacobs Field, the home of the Cleveland Indians, in 1994, was a key component of the city's economic revival. It is critical to note that Jacobs Field was built with the assistance of public funds.

As a New Yorker, I've heard promises to invest in the South Bronx for decades. I remember President Carter visiting it in 1977 to promise its revival. It took decades. But in recent years, thanks in large part to the leadership of New York's elected officials, including Mayor Bloomberg, who is widely applauded as a leader in creating jobs and managing tough economies, you see the South Bronx pulling together as a community.

If you visit the area today, especially around the Stadium, you see promising growth. The new Yankee Stadium is a key component of it. At a cost exceeding well over a billion dollars, it is one of the largest economic development projects in the history of The Bronx, and the benefits have flowed to local concerns. To date, approximately $440 million has been awarded to New York firms, $305 million to New York City firms and $132 million specifically to Bronx-based companies.

Construction of the Stadium has employed approximately 6,000 persons. We create jobs; we don't just talk about it. The project is using union labor and operates under a project labor agreement.

Pursuant to our community benefits agreement, one of the most innovative, approximately 25 percent of all employees in The Bronx are residents and 39 percent of those are minorities and women. The Yankees have provided a million dollars in job training to very respected institutions.

I want to emphasize that we believe when the new stadium is built, approximately—at least over 1,000 new jobs will be created. This is a much larger number, of course, that Mr. Brodsky—despite being told his number isn't true—continues to refer to. These jobs, which are largely union jobs, include additional restaurant concessions, security, construction trades, ticketing, marketing, front office and maintenance positions.

Given the tremendous job creation the Stadium project has generated and will continue to generate, it has the unequivocal support of the leading unions, including the Service Employees International Union, New York building trades, UNITE HERE and OPEIU. The project has allowed these union members who are the hardest hit during an economic downturn, when jobs dry up, to continue their employment and put food on their tables. In fact, Mr. Chairman, just last evening, Bruce Rainer, the International President of UNITE, told me to convey to you that this project is exactly the type that is good for working people.

New investment is coming all over to the South Bronx. The Hard Rock Cafe has opened at the new stadium. The new Gateway Mall is just a few blocks away. New York Yankees steak restaurant, a business center and museum.

The Stadium will be kept open 365 days a year. And only because of the Stadium, a Metro North train station that had been sought for 50, 60, 80 years is being built.

Without the project being made possible, without the issuance of these tax-exempt PILOT bonds, none of the millions of dollars that I have talked about would have happened. None of that 443, 300 or 132 would have gone to those companies who employ people, hire people and drive the economy. None of the thousands of jobs would be awarded.

The 2008 All Star Game came to New York. It was a celebration of The Bronx, brought tremendous economic activity to the city and left over a million dollars in grants to Bronx and New York City community-based organizations, hospitals and education programs. In addition, we, the Yankees, provide over $2 million a year in cash grants and commitment to community organizations in The Bronx and provide over 30,000 free tickets.

Any concerns regarding affordability of tickets at the new stadium that have been presented are not accurate. Approximately 35 percent of all the tickets will be priced at $25 or less, approximately 50 percent will be priced at $45 or less, and approximately 80 percent at $100 or less. In fact, we expect that 25,000 seats out of the little over 50,000 in the Stadium will have no ticket increase at all, including the 5,000 bleacher seats, which will remain priced at $12.

With regards to PILOTs generally, although I'm not an accountant or a tax attorney, and though it is New York City's Industrial Development Agency that issued the bonds, I will do my best to address quickly some of the concerns you have raised.

It is important to note that it was the city's Industrial Development Agency that sought and received the private letter ruling from the IRS that the interest on these bonds would be exempt from Federal taxes; the purchases of these bonds relied on this ruling.

It is important to note that when the project was approved and the initial bond financing closed, additional tax-exempt bond funding for the project was contemplated and disclosed in the official statement—the disclosure document delivered in connection with the sale of the bonds. So everybody understood the project was going to change, and I will be glad to discuss with you the reasons for the change that there was going to be an effort to get more.

Second, contrary to the assertions that service on the bonds to finance the cost of the new stadium will be paid entirely from

PILOT payments made by the Yankees: What I'm trying to say here is, neither the full faith and credit of the State of New York nor New York City has been pledged to the repayment of the project findings. It is the New York Yankee's PILOT payment that is paying for it.

We don't pay taxes in the present Yankee Stadium. If this agreement wasn't put in place, there would be no new taxes, and as a result, the payment in lieu of taxes services the debt. There is no money coming from New York City or New York State. It is the money that we are paying in payment in lieu of taxes.

And as I have mentioned, without any stadium, the Yankees would have been forced to leave The Bronx.

Similarly, by doing this, Mr. Chairman and members of the committee, the Yankees are taking the responsibility for the maintenance and costs and expenses of the new Yankee Stadium. If there was a new stadium, the city would be responsible for paying $40 million to maintain the old stadium, which is not in good shape.

Finally, with regard to all of the questions concerning assessments, it is the New York City Department of Finance and not the Yankees that determines the values of real properties and the assessments, including the land and improvements compromising the new Yankee Stadium and the methodology used for those. It is then the City Council that fixes the tax rate applied to those values in order to calculate the real estate taxes which are levied against properties. Or in the case of the Stadium, the maximum amount of PILOTs which can be paid under the PILOT agreement.

As normally occurs in the course of a Department of Finance assessment, the Yankees provided the department all of the information that they needed and everything that we had about the new stadium. And I think you have most of it.

As I've outlined today, the Yankee Stadium project has created jobs, has spurred economic development in the community, has spurred growth, and guarantees the Yankees will be a continual—will continue to be an invaluable fixture in The Bronx and in New York.

One last thing, Mr. Chairman. I just want to correct the record, unless there is something I don't know. I don't recall ever declining an invitation on all of the previous scheduled matters to attend here. I know the hearings had been postponed. I don't recall ever saying I couldn't attend. I know there were scheduling issues being worked out between your staff and my counsel. And I want to pledge to you that I am here and the Yankees are here to try to cooperate with you in moving forward.

Thank you.

[The prepared statement of Mr. Levine follows:]

TESTIMONY OF RANDY LEVINE
PRESIDENT, NEW YORK YANKEES
BEFORE THE DOMESTIC POLICY SUBCOMMITTEE
OCTOBER 24, 2008

Thank you, Mr. Chairman. My name is Randy Levine, and I am the President of the New York Yankees. I have a brief opening statement and will then be happy to answer any questions you or other Subcommittee members may have.

While the Yankees hope to be as helpful as possible in connection with the Domestic Policy Subcommittee's study of stadium financing and the issuance of payment in lieu of taxes ("PILOTs") bonds, the specific governmental bond issuer - the New York City Industrial Development Agency, and not the New York Yankees - is best qualified to respond to the Subcommittee's questions regarding tax law, tax policy, or Department of Treasury or Internal Revenue Service regulations. As I will describe today, had this PILOT financing mechanism not been in place, a new Yankee Stadium would not have been built. And, without a new stadium, the Yankees regrettably would have been forced to leave the Bronx. This would have been a significant loss for the local community and its economy, not to mention for the Yankees. Before attempting to give the Yankees' perspective on these issues, however, I'd like to take a few minutes to discuss a number of misstatements and mischaracterizations that New York Assemblyman Brodsky has made over the last few months, including before this Subcommittee, regarding the Yankee Stadium Project. It is important that any discussion of the policy issues related to PILOTs begin with an accurate understanding of the record.

First, it is critical to note the tremendous transparency that has been a hallmark of this Project from the outset. Since the inception of the Project in 2005 to date, it has been one of the most transparent transactions undertaken, and the details have been recorded in voluminous, publicly-available documents. The Project has been subjected to extensive scrutiny by various Federal, state, and local governmental agencies and authorities, as well as the general public. In this regard, the Project has resulted in twenty separate governmental approvals and actions, at least sixteen public hearings and meetings, two unsuccessful opposition lawsuits, and a plethora of media coverage. By way of illustration, various aspects of the Project were approved by the New York State Legislature on two occasions, by the New York City Council on three occasions, and by numerous other governmental agencies as well. Having received such approvals, in addition to the support of three New York State governors - on both sides of the aisle - and the Mayor of New York City, it is clear that the Yankee Stadium Project was thoroughly vetted by New York's elected officials.

Contrary to certain public statements, a number of which have been made in front of this very Subcommittee, there are vast public benefits and economic opportunities that this Project has produced and will continue to produce for New York State, New York City, and the Bronx.

To truly understand what the Yankee Stadium Project means to the South Bronx, one of the nation's poorest areas, I think it is instructive to look at an example I am sure you are familiar with, the City of Cleveland. In 1978, Mr. Chairman, the City of Cleveland became the first major American city to default on its bonds since the Great Depression. As a result, the great City of Cleveland experienced severe economic hardship throughout much of the 1980s. Through subsequent actions and policies, which included implementing tax incentives to spur economic growth, Cleveland was ultimately able to recover and prosper. In fact, Mr. Chairman, many commentators on that period believe that the building and opening of Jacobs Field, the home of the Cleveland Indians, in 1994, was a key component of the City's economic revival. It is critical to note that Jacobs Field was built with the assistance of public funds.

Mr. Chairman, as a New Yorker I have heard promises to invest in the South Bronx for decades. I remember President Carter visiting the South Bronx in 1977 to promise its revival. It took decades, but in recent years, thanks in large part to the leadership of New York's elected officials, including Mayor Michael Bloomberg, who is widely applauded as a leader in creating jobs and managing tough economies, you see the pulling together of the South Bronx community. If you visit the area today, especially around the Stadium, you see promise and growth. As I will describe, the Yankee Stadium Project is a key component of this promise and growth.

The new Yankee Stadium, at a cost exceeding $1 billion, is one of the largest economic development projects in the history of the Bronx, and the benefits of this tremendous Project have flowed to local firms. To date, approximately $440 million has been awarded to New York State firms, approximately $305 million has been awarded to New York City firms, and approximately $132 million has been awarded specifically to Bronx-based companies. Construction of the new Stadium has employed approximately 6,000 persons. The Project is using union labor and operates under a project labor agreement. Pursuant to our Community Benefits Agreement, approximately 25% of the employees are Bronx residents and approximately 39% of these employees are minorities and women. The Yankees have provided approximately $1 million in job training grants to institutions such as Project Hire, Helmets to Hardhats, and Non-Traditional Employment for Women. Over 300 graduates have passed through the programs run by such institutions and are now working at the Yankee Stadium site and other construction job sites in New York City.

I want to emphasize that we believe the new Yankee Stadium will generate approximately 1,000 additional jobs when compared with the present Stadium. This is a much larger number than the fifteen that Mr. Brodsky referred to. These jobs, which are largely union jobs, include additional restaurant, concession, security, construction trades, ticketing, marketing, front office, and maintenance positions. Given the tremendous job creation the Stadium Project has generated and will continue to generate, it has the unequivocal support of the leading unions, including the SEIU, New York Building Trades, UNITE HERE, and OPEIU. The Project has allowed these union members – who are the hardest hit during an economic downturn when jobs dry up – to continue their employment and to put food on the table for their families.

New investment is coming to our neighborhood in the South Bronx, as demonstrated by the Hard Rock Cafe's decision to open in the new Stadium and the new Gateway Mall a few blocks away. In addition, the NYY Steak Restaurant, the museum, the retail stores, and the banquet, conference, and business center, will all be open year-round. Having the stadium available 365 days a year as both a tourist and business destination will pull more traffic into the area, which in turn will provide local establishments with stronger year-round business than they've enjoyed in the past. Further, it is because of the Yankee Stadium Project that local residents and other commuters and passengers will now be able to benefit from the addition of a new Metro-North train station.

Without the Project, made possible by the issuance of tax-exempt PILOT bonds, none of the millions of dollars I have discussed would have flowed into local businesses located in New York State, New York City, and the Bronx, and none of the thousands of jobs associated with the Project would have been created. In addition, because of the new Stadium, New York was awarded the 2008 All Star Game, which led to a celebration of the Bronx, millions of dollars in economic activity for the City, and over one million dollars in grants to Bronx and New York City community based organizations, hospitals, and educational and recreational programs. In addition to these contributions, the Yankees continue to provide approximately two million dollars in grants and equipment per year to community organizations in the Bronx, as well as providing 30,000 free tickets per year to Bronx community groups.

As to any concerns regarding affordability of tickets at the new Yankee Stadium, contrary to what you may have heard regarding ticket price increases, approximately 35% of the tickets will be priced at $25 or less, approximately 50% of the tickets will be priced at $45 or less, and approximately 80% of the tickets will be priced at $100 or less. In fact, we expect that approximately 25,000 seats will have no price increase from the present Stadium and, in addition, 5,000 bleacher seats will remain priced at $12 each.

With regard to the PILOTs generally, though I am not an accountant or a tax attorney, and though it is the New York City Industrial Development Agency that issued the bonds for the Project, I will do my best to address some of the issues you have raised.

First, it is important to note that it was the New York City Industrial Development Agency that sought and received a letter ruling from the Internal Revenue Service that interest on these bonds would be exempt from federal income taxes. The purchasers of these bonds relied on this ruling. It is also important to mention that when the Project was approved and the initial bond financing closed, additional tax-exempt bond financing for the Project was clearly contemplated and disclosed in the Official Statement, the disclosure document delivered in connection with the sale of the bonds.

Second, contrary to some assertions, debt service on the bonds to finance the costs of constructing the new Yankee Stadium will be paid entirely from PILOT payments made by the Yankees. Neither the full faith and credit of the State of New York nor New York City has been pledged to the repayment of the Project financing; it is only the PILOT payments. Simply stated, had the financing mechanism not been in place, no new stadium would have been built. And, as I've mentioned, without a new stadium the Yankees would have been forced to leave the Bronx. The Yankees also bear responsibility for the maintenance costs and expenses associated with the new Yankee Stadium. If there were no new Stadium, the City would have been responsible for paying millions of dollars per year for such maintenance costs.

Finally, with regard to the questions you have raised concerning assessments, it is the New York City Department of Finance, and not the Yankees, that determines the assessed values of real property, including the land and improvements comprising the new Yankee Stadium, as well as the methodology used to reach those assessments. It is then the City Council that fixes the tax rate applied to those assessed values in order to calculate the real estate taxes which are levied against properties, or, in the case of the new Yankee Stadium, the maximum amount of PILOTs which can be paid under the PILOT agreement. As normally occurs in the course of a Department of Finance assessment, the Yankees provided certain requested information to the Department about the new Stadium Project.

As I've outlined today, the Yankee Stadium Project has created numerous jobs, spurred economic development and growth, and guarantees that the Yankees will continue to be an invaluable fixture in the New York community and economy for many years to come.

Thank you, I will be glad to answer your questions.

Mr. KUCINICH. I thank the gentleman for his testimony.

I want to point out that I indicated at the beginning that witnesses would have 5 minutes. I like being gentle with witnesses, particularly since you said you wanted to be here. Your testimony ran 12 minutes. I would ask the remaining witnesses to try to stay within the remaining 5-minute period if you could. Thank you very much.

Mr. Pinsky, you may proceed.

STATEMENT OF SETH PINSKY

Mr. PINSKY. Thank you, Chairman Kucinich and members of the subcommittee. I'm Seth Pinsky; and on behalf of the New York City Economic Development Corp. and the New York City Industrial Development Agency, I thank you very much for the opportunity to testify. I have been invited today to discuss the use of tax-exempt bonds in connection with the financing and construction of the new Yankee Stadium.

Across the street from "The House That Ruth Built," a great new monument is nearing completion. The Yankees report that the new stadium will officially open on April 16th with a game against the Cleveland Indians. The new stadium will allow millions of people to enjoy the Nation's pastime for decades to come. More importantly, by the first pitch, this project will have pumped hundreds of millions of dollars into the city's economy, employed thousands of unionized construction workers and spurred substantial investments in new parkland, transportation and other infrastructure in the South Bronx.

Recently, you have heard from opponents of the project, claiming that it would not deliver on the public benefits promised, that its cost to taxpayers was greater than disclosed, that it improperly accessed tax-exempt financing, that the assessments that it used are somehow incorrect, and that the process itself was somehow incomplete or opaque. Today, I am pleased to have the opportunity to counter these assertions. Let me take a moment, though, for a little history.

One of Mayor Bloomberg's first acts upon taking office was to terminate previously negotiated deals between the city and the Yankees, deals that would have provided for a new stadium funded almost entirely out of the city's capital funds. Immediately following this, the parties entered into nearly 4 years of difficult, sometimes contentious negotiations before reaching an agreement in 2006 calling for a modified stadium project funded out of proceeds from tax-exempt bonds backed by payments in lieu of taxes or PILOTs. Though some opponents of this project have implied that structure is sinister or novel, the fact is, it is consistent with nearly 100 years of Federal tax policy.

In 1913, when the Federal income tax was introduced and thereafter, it has been recognized that interest income earned on bonds issued by State and municipal governments and secured by State and municipal tax receipts, including payments in lieu of those taxes, would be exempt from Federal taxation provided that the proceeds were devoted to a valid governmental or public purpose.

It is worth noting that both Congress and the courts have consistently recognized that the determination of what constitutes such a purpose has always been in the discretion of the applicable jurisdiction. In the words of the Joint Congressional Committee on Taxation in March 2006, "present law does not define the governmental or public purposes for which governmental bonds may be issued."

Over the years, the governmental or public purposes to which municipal tax-exempt bond proceeds have been devoted have run the gamut from parks, roads and bridges to sewers and, yes, to economic development. In fact, our very cursory research indicates that tax-exempt bond deals devoted to economic development projects have run into the billions of dollars in the last few years.

For example, in the last decade, more than 1 billion dollars in tax-exempt bonds backed by sales taxes have been initiated in Ohio for a new stadium for the Cincinnati Bengals and Reds. In Indiana, since 2005, more than $650 million in tax-exempt appropriations-backed debt has been issued to construct a new stadium for the Indianapolis Colts. And here in Washington, more than half a billion dollars in tax-exempt debt has been issued since 2002 for a number of projects, including a home for the Washington Nationals, three hotels and two shopping malls.

In fairness to the opponents of this project, there is one difference between these projects and Yankee Stadium, namely, unlike in these other cases, the Yankee Stadium project succeeded in deploying this federally created tool to encourage economic development in what the 2000 Census determined was the single poorest congressional district in the United States. And we are not just proud of the project's end; we are also proud of the means employed to get there.

As has been pointed out, the benefits of this project have been validated in one of the most thorough and transparent approval processes in history. It was vetted at nearly 20 public hearings and has received approvals at virtually every level of government. And I'm not going to go through the list again, because you've heard it before, but it included the City Council of the city of New York, the City Planning Commission, the Borough president of The Bronx, the mayor, the Industrial Development Agency of the city of New York, the State legislature, the New York Governor and the Internal Revenue Service.

Speaking of the Internal Revenue Service, in 2006, the IRS issued a letter ruling affirming the tax-exempt status of the bonds contemplated to be issued in connection with this project. Subsequently, the IRS proposed regulations that would make technical changes to how the payments backing similar bonds could be structured in the future. However, we are pleased that this week the IRS revised these regulations to permit the use of this structure for projects already in the pipeline including, from our perspective most importantly, the Atlantic Yards project in Brooklyn.

Here one fact needs to be emphasized. At no time has the IRS or anyone else with appropriate authority said or implied that tax-exempt bonds could not be backed by PILOT payment, could not be used for economic development projects, or even could not be used for stadium projects. And speaking of PILOT payment, in this transaction, notwithstanding allegations to the contrary, these payments are properly being calibrated based on assessments of the

Stadium property that followed precisely the methodology described in the IDA's letter to the IRS, a methodology that, as Commissioner Martha Stark will attest, is both standard and appropriate.

Moreover, there should be nothing surprising to any observer about the fact that these assessments are higher than earlier appraisals undertaken for totally different purposes and based appropriately on entirely different sets of assumptions, including different permitted uses, different levels of investment in the surrounding area, different-sized lots and even leased versus owned interests. Claiming that a market disparity between these valuations is a sign of malfeasance is no more logical than drawing the same conclusion from an assertion that the canvas on which a work of art is painted by a great master would be worth less if it, instead, contained a work by an artist with far lesser talent.

The bottom-line is this: The new Yankee Stadium represents a $1-billion-plus investment in the South Bronx, backed entirely by payments from a private organization. The Yankees currently project that it will catalyze many hundreds of new full-time and part-time permanent jobs and more than 6,000 new unionized construction jobs. In addition, as President Levine indicated, to date it has resulted in approximately $132 million in construction contracts let to Bronx-based companies and $305 million let to New York City-based companies, sums that cannot be taken lightly in this era of economic uncertainty. And to know that this era is one that is serious, all we need to do is look at what the stock market is doing today.

As importantly, the project has spurred complimentary public investment in parkland, open space, waterfront access, a modernized sewer system and a new transit system.

Finally, the taxpayers of New York City will be served by the new stadium project because the city will get out from under the projected $40-plus-million net maintenance liability for which it was responsible at the existing 85-year-old deteriorating facility.

In conclusion, I want to emphasize that the Yankee Stadium project is a landmark accomplishment. Projects like this are the reason that this type of financing exists. Absent the use of this tool, this project would either have created substantially fewer public benefits, not have happened in the South Bronx or simply not have happened at all. We are, therefore, proud of this project, as well as the process leading up to its construction; and I look forward eagerly to answering any questions that you may have. Thank you.

Mr. KUCINICH. I thank the gentleman.

[The prepared statement of Mr. Pinsky follows:]

Seth W. Pinsky
Testimony
Washington, D.C.
October 24, 2008

Thank you, Chairman Kucinich and members of the Subcommittee. On behalf of New York City Economic Development Corporation and New York City Industrial Development Agency, I thank you for the opportunity to testify.

I have been invited today to discuss the use of tax-exempt bonds in connection with the financing and construction of the new Yankee Stadium.

Across the street from the House that Ruth Built, a great new monument is nearing completion. The Yankees report that the new stadium will officially open on April 16th with a game against the Cleveland Indians.

The new stadium will allow millions of people to enjoy the nation's pastime for decades to come. More importantly, by the first pitch, this project will have pumped hundreds of millions of dollars into the City's economy, employed thousands of unionized construction workers and spurred substantial investment in new parkland, transportation and other infrastructure in the South Bronx.

Recently, you have heard from opponents of the project claiming that it would not deliver on the public benefits promised; that its cost to taxpayers was greater than disclosed; that it improperly accessed tax-exempt financing; that the assessments that it used are somehow incorrect; and that the process itself was somehow incomplete or opaque.

Today, I am pleased to have the opportunity to counter these assertions. Let me take a moment, though, for a little history.

One of Mayor Bloomberg's first acts upon taking office was to terminate previously-negotiated deals between the City and the Yankees -- deals that would have provided for a new stadium funded almost entirely out of City capital funds.

Immediately following this, the parties entered into nearly 4 years of difficult, sometimes contentious, negotiations before reaching an agreement in 2006 calling for a modified Stadium project, funded out of proceeds from tax-exempt bonds backed by payments in lieu of real estate taxes, or "PILOTs," from the Yankees.

Though some opponents of this project have implied that this structure is somehow sinister or novel, the fact is that it is consistent with nearly 100 years of federal tax policy, starting with the first federal income tax in 1913.

From that point on, it has been recognized that interest income earned on bonds issued by state and municipal governments and secured by state and municipal tax receipts – including payments in lieu of those taxes – would be exempt from federal taxation provided that the proceeds were devoted to a valid governmental or public purpose.

It is worth noting that both Congress and the Courts have consistently recognized that the determination of what constitutes such a purpose has always been in the discretion of the applicable state or municipal government. In the words of the Joint Congressional Committee on Taxation in March 2006: "Present law does not define the governmental or public purposes for which governmental bonds may be issued."

Over the years, the governmental or public purposes to which municipal tax-backed, tax-exempt bond proceeds have been devoted have run the gamut from parks, roads and bridges, to sewers, and yes, economic development.

In fact, our very cursory research indicates that tax-exempt bond deals devoted to economic development projects have run into the billions of dollars in the last few years. For example:

- In the last decade, more than $1 billion in tax-exempt bonds backed by sales taxes have been issued in Ohio to construct new stadiums for the Cincinnati Bengals and Reds.

- In Indiana, since 2005, more than $650 million in tax-exempt, appropriation-backed debt has been issued to construct a new stadium for the Indianapolis Colts.
- And here in Washington more than a half a billion dollars in tax-exempt debt has been issued since 2002 to build a number of projects, including a home for the Washington Nationals, three hotels and two shopping malls.

In fairness to the opponents of this project, though, there is one difference between all of these projects and the Yankee Stadium project. Namely, unlike in the cases cited above, the Yankee Stadium project succeeded in deploying this federally-created tool to encourage economic development in what the 2000 census determined to be the single, poorest Congressional district in the United States.

And we are not just proud of the project's ends. We are also proud of the means employed to get there. The benefits of this project have been validated in one of the most thorough and transparent approval processes in the history of New York City, New York State, and likely the nation, including vetting at nearly 20 public hearings and approvals occurring at virtually every level of government. Just to name a few examples:

- This project was subject to public hearings prior to receiving approvals from the Bronx Borough President, the City Planning Commission, and City Council – which approved the project by a margin of 42 to 2, and approved the repayment structure of the bonds by a margin of 46 to 3.

- Meanwhile, The City's Industrial Development Agency conducted its own review process, including a rigorous cost-benefit analysis that projected that the City would net approximately $41.3 million from the project. This culminated in a lengthy public hearing and approval by the IDA's Board of Directors, which was appointed by both Republican and Democratic elected officials.

- At the State level, the legislature authorized the alienation of 13.5 acres of parkland to the Yankees by a vote of 61 to 0 in the Senate and 146 to 0 in the Assembly. The State also contributed approximately $75 million to the project, requiring approvals from the Governor and Legislature.

- Finally, at the federal level, in 2006, the IRS issued a letter ruling affirming the tax-exempt status of the bonds contemplated to be issued in connection with this project. Subsequently, the IRS proposed regulations that would make technical changes to how the payments backing similar bonds could be structured in the future. However, we are pleased that, this week, the IRS revised these regulations to permit the structure used for the Yankees financing to be used for projects already in the pipeline, including most importantly from the City's perspective, the Atlantic Yards project in Brooklyn.

And here, one fact needs to be emphasized: At no time has the IRS – or anyone else with appropriate authority – said or implied that tax-exempt bonds could not be backed by PILOT payments, could not be used for economic development projects, or could not be used for stadium projects.

And speaking of PILOT payments, in this transaction, notwithstanding allegations to the contrary, these payments are properly being calibrated based on assessments of the stadium property that follow precisely the methodology described in the IDA's letters to the IRS – a methodology that, as Commissioner Martha Stark can attest, is both standard and appropriate.

Moreover, there should be nothing surprising to any observer about the fact that these assessments are higher than earlier appraisals undertaken for totally different purposes and based appropriately on entirely different sets of assumptions – including different permitted uses, different levels of investment in the surrounding area, different sized lots, and even leased versus owned interests in the land. Claiming that a marked disparity between these valuations is a sign of malfeasance is no more logical than drawing the same conclusion from an assertion that the canvas on which a work of art is painted would be worth less if it instead contained a portrait by an artist with far lesser talents.

The bottom line is this: the new Yankee Stadium represents a $1 billion plus investment in the South Bronx, backed entirely by payments from a private organization.

The Yankees currently project that it will catalyze 1,000 new, full-time and part-time, permanent jobs and more than 6,000 new, unionized construction jobs. In addition, to date, it has resulted in approximately an additional $132 million in construction contracts let to Bronx-based companies, and $305 million let to New York City-based companies – sums that cannot be taken lightly in this era of economic uncertainty.

As importantly, the project has spurred complementary public investment in parkland, open space, waterfront access, a modernized sewer system and a new transit station.

Finally, the taxpayers of New York City will be served by the new Stadium project because the City will get out from under the projected $40+ million net maintenance liability for which it was responsible at the existing 85-year old, deteriorating facility.

In conclusion, I want to emphasize that the new Yankee Stadium project is a landmark accomplishment. Projects like this are the reason that this type of financing exists. Absent the use of this tool, this project would have either created substantially fewer public benefits, not have happened in the South Bronx, or simply not have happened at all.

We are, therefore, proud of this project, as well as the process leading up to its construction.

We look forward to answering any questions that you may have.

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Mr. KUCINICH. Ms. Stark, we're going to go to you. And given the seriousness of this matter, I think what we're going to do is—even though we have this 5-minute rule that we try to enforce, if you need more time, just go for it. OK? Thank you.

STATEMENT OF MARTHA STARK

Ms. STARK. Thank you, Chairman.

Good morning, Chairman Kucinich, and members of the Domestic Policy Subcommittee. My name is Martha Stark, and I am the commissioner of the New York City Department of Finance. I want to thank you very, very much for inviting me to testify today. It is an honor to be back in Washington where I was privileged to spend a year as a White House fellow in 1993 working in the U.S. Department of State.

I have another connection to the District as well. I consulted on a study published by the Brookings Institution called The Orphan Capital, about this city's fiscal challenges.

As I stated, I oversee the Department of Finance, and it is a 2,400-person agency. One of the functions is to value the city's more than 1 million properties every year, including Yankee Stadium. I am hopeful that my testimony will answer any questions that still remain, so today I am going to do three things:

First, I will provide an overview of what my agency does as it relates to valuing 1 million properties each year. Second, I am going to explain how we arrived at the value of the new Yankee Stadium. And, finally, I will be happy to answer any of your questions, privileged. Unlike most jurisdictions including parts of Westchester County in New York, where properties have not been reassessed since the 1960's.

New York City values each of its 1 million properties every year, from small homes to cooperative apartments to utility companies to churches to major office buildings. We use one of three universally accepted methods of valuation, depending on the property type: The sales approach, the income approach, or the cost approach. I am going to focus on the cost approach, because that is the one that we use to value the Stadium.

We use the cost approach to value new construction, especially for specialty properties such as stadia, utility properties, museums, courthouses, and churches, to name a few. Owners, unlike when we do the income approach, are not required by law to submit cost information to our agency; however, we do often receive it when asked, and especially in connection with exemption application.

Finance assessors rely on information, actual costs submitted by owners, and verify that information against industry cost guidelines.

The last point that I want to make about cost and appraisals is that I think it is important for the subcommittee to understand that Finance determines the value of a property regardless of whether it will be exempt from taxes. Our estimated value does not change because a property might receive a full or a partial exemption or tax exempt bond financing.

In late 2005, financiers asked to estimate the value for what would become the newly constructed Yankee Stadium adjacent to the current ballpark, if the Stadium were completed as of January

2006. I cannot emphasize this point enough. We did not estimate the value of the property in its current condition, but rather as it would be once the Stadium was built.

As we do for other new construction and specialty property, we used a cost approach. It required us to estimate the cost of constructing the Stadium as well as the value of the land that would be part of the Stadium site.

In order to provide the estimated market value, Finance asked for detailed information about the cost. My assessment team reviewed the data that was provided, and independently validated the cost in two ways: First, by comparing those submitted costs to industry published cost guidelines, and by comparing the cost to other stadia that had been built in other cities, including Minneapolis, and the District. In these cases, we adjusted the reported cost by two factors: When the Stadium was completed, time, as well as the add-on cost of construction in New York City; location. Labor, transportation, and overall construction costs are about 40 percent higher in New York City on average than in other cities.

This concept of adjusting for location is well recognized, including by the Federal Government, as evidenced by the different locality payments. For example, Federal workers in the New York region earn almost 12 percent more than Federal workers in the rest of the United States or in those States that are detailed on the pay scales.

Our assessment team concluded that the reported costs were reasonable and comparable to the cost of new stadia in other cities when adjusted for time and location, and we estimated the value of the new Stadium at 1.025 billion if the Stadium were completed in January 2006.

Next, as required, we estimated the value of the land under the new Yankee Stadium. And when our assessors initially did that, they looked at it as a vacant parcel. However, when Finance values a developed property, the overall land value is actually arrived at by taking a percent of the overall property values, and the land is typically between 15 and 25 percent of the overall value. This is consistent with appraisal practices around the country. For example, in Oakland, the land under the Stadium that was constructed represented 30 percent of the overall value. As a result, the Finance team realized that they had not actually done the value correctly. 26.8 million was wrong. The percentage that it would have represented of the total cost was too low. Remember, again, Finance had been asked to value the property, including the land, as it would exist if the Stadium was fully completed. The assessors identified lots that were more appropriate comparables because they reflected land in similar neighborhoods, including Harlem, which are less than a half a mile away, and where the land value had been enhanced because of significant government investment like the investment that would be made here. The average sales prices for these properties was 304 per square foot, and the median was 275 per square foot. We used the median figure, as we do when we value properties, throwing out the kind of highs and the lows, and that fact with the properties, and we multiply that by the 17-acre site lot that was under consideration at the time, arriving at a land value of $204 million.

When we added those two numbers together, the total Stadium value was 1.229 billion. I just would note that in 2007, the configuration of the lot for the new Yankee Stadium was finalized, and Finance's responsible for maintaining the city's tax maps. In the last year, the Finance Department fulfilled 21,810 requests for tax map changes. Tax map changes for us are a regular occurrence.

The final acreage for the site was established and penned in late 2006 at 14.56 acres, and as a result, we lowered our market value to reflect the new size and the finalized size of the stadium's site.

Since our original estimate of the value for Yankee Stadium as of January 10, 2006, we have revised the value each year, as we do for all New York City properties. We estimated a new market value for all property in 2007, and 2008, and we will do so again in January 2009, 2010, and so on. It is important to keep in mind, because New York City is unique in reassessing properties.

For us, the textbooks are clear. The cost method is the most appropriate method for valuing sports facilities. In fact, I provided a study that concludes that cost is the only accurate way to value a new Stadium.

I just would note that the Finance Department has an unmatched record of accurately valuing more than 1 million properties each year. In 2007, only 31,320 properties were granted assessment reductions by the New York City Tax Commission, an independent agency. That record is a testament to the more than 100 years of assessing experience, not including my own, that the team who reviewed the Yankee Stadium value bring to their job.

This concludes my testimony, sir. The estimated value for Yankee Stadium is accurate, it is consistent with standard appraisal procedures.

I do want to say just again, it is an absolute honor for me to be here. I do feel very much like Ms. Stark Comes to Washington, and I can only say I wish my parents were alive to see this day, their daughter from the housing projects, testifying before you.

Thank you. And I very much look forward to answering your questions and making sure you understand how seriously we took this job, and that we did it with the utmost sense of the right thing to do in terms of valuing this property, and that there was no misconduct here. Thank you.

Mr. KUCINICH. Thank you very much, Ms. Stark. This subcommittee appreciates your attendance as well.

[The prepared statement of Ms. Stark follows:]

Finance
Martha E. Stark
Commissioner

Testimony of Martha E. Stark
Commissioner
New York City Department of Finance

Before the

Domestic Policy Subcommittee
Oversight and Government Reform Committee
Friday, October 24, 2008
2154 Rayburn HOB
10:00 A.M.

Good Morning, Chairman Kucinich and members of the Domestic Policy Subcommittee of the Committee on Oversight and Government Reform. My name is Martha Stark, and I am the Commissioner of the New York City Department of Finance. Thank you for inviting me to testify today. I oversee the Department of Finance, a 2,400-person agency responsible for collecting almost $23 billion a year in revenue for New York City. One of the functions of the agency is to value the city's more than one million properties every year, including Yankee Stadium. My office has supplied the subcommittee with information about how we arrived at the value for the new stadium. I am hopeful that my testimony will answer any questions that still remain.

So today I will do three things. First, I will provide an overview of what my agency does as it relates to valuing one million properties each year. Second, I will explain how we arrived at the value of the new Yankee Stadium. Finally, I will be happy to answer any other questions.

I. Overview of Property Values in New York City

Unlike most jurisdictions, including parts of Westchester County in New York, where properties have not been reassessed since the 1960s, New York City values each of its one million properties every year, from small homes to cooperative apartments to utility property to churches to major office buildings. We use one of the three universally accepted methods of valuation, depending on the property type - the sales approach, the income approach, or the cost approach.

Sales Approach: Finance uses the sales approach for properties when there have been a sufficient number of sales. Because Finance also records all deeds and mortgages in New York City except those in the Borough of Staten Island, the agency receives up-to-date information about sales prices. This approach is used to value most small homes.

Income Approach: To value properties such as office buildings and residential apartment buildings, owners are required to submit income and expense information about their properties. Finance's assessors validate the information the owners provide by comparing it to the income information submitted by owners of similar properties as well as market data.

Cost Approach: Finance uses the cost approach to value new construction especially for specialty properties such as stadia, utility property, museums, court houses, and churches to name a few. While owners are not required by law to submit cost information, our agency often receives the cost information in connection with exemption applications. Finance's assessors rely on the information of actual costs submitted by owners and verify that information against industry cost guidelines.

The last point that I think it is important for the subcommittee to understand is that Finance determines the value of a property regardless of whether it will be exempt from taxes. Our estimated value does not change because a property might receive a full or partial exemption of tax-exempt bond financing.

II. How Finance Estimated the Value for the New Yankee Stadium

In late 2005, Finance was asked to estimate the value for what would become the newly constructed Yankee Stadium adjacent to the current ballpark if the stadium were completed as of January 2006. I cannot emphasize this point enough. We did not estimate the value of the property in its current condition, but rather as it would be once the stadium was built.

As we do for other new construction and specialty property, Finance used the cost approach. The cost approach required Finance to estimate the cost of constructing the stadium as well as the value of the land that would be part of the stadium site.

In order to provide the estimated market value, Finance asked for detailed information about the costs to build the stadium. The Finance assessment team reviewed the data that was provided and independently validated the costs in two ways: by comparing the submitted costs to industry-published cost guidelines, and by comparing the costs to other stadia that had been built in other cities, including Minneapolis and the District. In these cases, we adjusted the reported costs by two factors: when the stadium was completed (time) as well as the add-on cost of construction in New York City (location). Labor, transportation and overall construction costs are about 40 percent higher in New York City, on average, than in the other cities. This concept of adjusting for location is well recognized by the federal government as evidenced by the different locality payments. For example, federal workers in the New York region earn almost 12 percent more than federal workers in the rest of the United States.

Our assessment team concluded that the reported costs were reasonable and comparable to the costs of new stadia in other cities when adjusted for time and location. Our estimated value for the new stadium was $1.025 billion if the stadium were completed in January 2006.

Next, we estimated the value of the land under the new Yankee Stadium. When our assessors initially estimated the land value, they valued the land as it was -- a vacant parcel. However, when Finance values a developed property, the overall land value is arrived at by taking a percent of the overall property value. The land is typically between 15 and 25 percent of the overall value. This is consistent with appraisal practices around the country. For example, in Oakland, the land under the stadium that was constructed represented 30 percent of the overall value.

As a result, the Finance team realized that the $26.8 million value was wrong and that they used vacant land rather than land that had benefitted from government infrastructure improvements and investments. Remember, Finance had been asked to value the property, including the land, as it would exist if fully completed. This value did not reflect that.

The assessors identified 11 lots that were more appropriate comparables because they reflected land in similar neighborhoods, including Harlem, which are less than a half a mile away and where the land value had been enhanced because of significant government investment. The average sales price for these properties was $304 per square foot, and the median was $275 per square foot. The assessors used the median sales figure of $275 per square foot and multiplied by the 17-acre size lot that was under consideration at the time, arriving at a land value of $204 million.

Adding the building and land values together, we arrived at a total estimated market value for the new Yankee Stadium of $1.229 billion if the stadium were built in 2006 as it was conceived of at that time.

In 2007, the configuration of the lot for the new Yankee Stadium was finalized. Finance is responsible for maintaining the city's tax maps. Tax map changes are a regular occurrence in New York City. In fact, in the last year the Finance Department fulfilled 21,810 requests for tax map changes. The final acreage for the site was established at 14.56 acres instead of the originally planned 17 acres. As a result, Finance lowered the market value for the land from $204 million to $175 million, reducing the overall value of the property by $29 million to $1.2 billion.

Since our original estimate of the value for Yankee Stadium as of January 2006, we have revised the value each year as we do for all New York City properties. We estimated a new market value for all property in 2007 and 2008, and we will do so again in January of 2009. This is important to keep in mind, because New York City is unique in reassessing properties annually.

The appraisal textbooks are clear. The cost method is the most appropriate method for valuing sports facilities. In fact, I have provided a study that concludes that cost is the *only* accurate way to value a new stadium. Moreover, the Finance Department has an unmatched record of accurately valuing more than one million properties each year. In 2007, only 31,702 properties - about 3 percent of all of properties in New York City - were granted assessment reductions by the New York City Tax Commission, an independent agency. That record is a testament to the more than 100 years of assessing experience, not including my own, that the team who reviewed the Yankee Stadium value bring to the job.

Conclusion

This concludes my testimony. The estimated value for Yankee Stadium is accurate and consistent with standard appraisal procedures. Thank you. I am happy to answer your questions.

Mr. KUCINICH. Mr. Brodsky.

STATEMENT OF RICHARD L. BRODSKY

Mr. BRODSKY. Thank you, Chairman Kucinich, Mr. Cannon, Mr. Cummings. I am pleased to be again with you to share my views on the Federal Government's role on the new Yankee Stadium. I acknowledge and appreciate the work of this new subcommittee, as——

Mr. KUCINICH. First of all, is the mic on? There seems to be an interest in having the mic on.

Mr. BRODSKY. Is that better? Thank you.

Mr. KUCINICH. Why don't you just start over.

Mr. BRODSKY. I appreciate the opportunity to be back with you. I acknowledge and appreciate the work of the subcommittee in inquiring into the facts as they surround the decision to subsidize the construction of the Yankee Stadium. My committee is continuing its inquiry. We have received, since I appeared before you last, additional information from the city of New York, which I will discuss briefly.

The New York Yankees, after initially agreeing to provide information to the committee, have flatly refused to do so. We are examining that refusal, and will make decisions about that shortly and we will issue a final report.

Based on the evidence then available and the evidence that we subsequently received, the interim report of the committee concluded that there was no measurable economic benefit to the region or the community resulting from the massive public subsidies of the new Stadium, that the public not the Yankees were paying for the new Stadium, that the actions of the New York City IBA were at variance with the requirements and purposes of State law, that binding promises made to the IRS were broken; these promises being a condition of receiving the tax exemption, that the assessment of the land and the Stadium were knowingly inflated, and, that the public interest and affordable ticket prices as a consequence of the public subsidy were simply ignored. That fundamental decisions about these subsidies were made in secret and without effective participation by elected officials; that the securitization of PILOTS is a dangerous practice, which has resulted in an explosion of public debt; and, that the provision of a luxury suite and tickets to the city of New York was done in secret.

After reviewing whatever new data has come before us, we can stand by those conclusions in every respect.

With respect to the additional information received, I wonder whether it is best to defer discussions of the specific areas in which the law and the promises were violated and perhaps in ways which can answer Mr. Cannon's questions as presented in his opening statement, two questions that might be directed at me.

With respect to the question about cost methodology, I would point out, however, that there are two kinds. There is reproduction costs, and replacement costs. Reproduction costs, the standards used by the city of New York, is not the preferred way because it inflates value.

Consider, for example, if, God forbid, St. Patrick's Cathedral were to be destroyed and had to be rebuilt. To rebuild it in a reproduction method would inflate the cost over a replacement method. The city of New York asked that a replacement method be used. The Department of Finance asked for that. The Yankees and the city refused. And the Department of Finance agreed, under stress, saying, don't hold me to a firm—I want to get the exact term.

Mr. KUCINICH. Take your time.

Mr. BRODSKY. As long as we are not held to a strict interpretation. My point being that the Department of Finance knew about this unusual and unacceptable practice, it argued against it, it then accepted it in writing. And we have the document to prove it.

With respect to the square footage value of the Stadium land, much of what I heard from my distinguished colleagues from the IBA and the Department of Finance, I would simply characterize as flat wrong. That is an argument we can get into as testimony permits.

But with respect to the value of the land, let us just say that if the value of Yankee Stadium were to increase the value of the underlying land at the Stadium, it would have a similar impact in the neighborhood. If a percentage of value was the way you measured underlying land, then the nearby developments, the Bronx Terminal Market, would have a similar land value. The problem here, of course, is Yankee's Stadium land is $275 a foot, while under the Bronx Terminal Market, a few blocks away, it is $9 a square foot.

May I point out that the use of land in Manhattan as a comparable for land in the Bronx is unheard of. And although I appreciate the reference to the community of Harlem, which the Commissioner just made, they chose parcels on the Lower East Side. You also heard the Commissioner mention that there were adjustments made for time and other elements in that appraisal. Those are appropriate adjustments as a matter of practice. They didn't make them when it came time to do that for the Yankee Stadium parcels; they did not make adjustments for the size of the parcel or the location to the parcel. I know that, because I met with the people who did the appraisal, and they assured me they had made no such adjustments.

In the end, the evidence that the assessment of the Yankee Stadium is cooked is overwhelming. There may be good policy reasons to subsidize stadiums; I don't think so, but I can understand an argument for that. There can be no argument that when the city of New York swears to the IRS that it will use the methodologies appropriate for every other property of a similar class and then it does not do that, there is an issue of interest to the Congress and, I would hope, to the IRS. The evidence is overwhelming, and how it is to be treated is a matter for this committee and for the IRS.

Let me return finally to the fundamental question of the use of Federal subsidies for these kinds of projects.

New York City has no way—and the region and the State, I might add—of funding its mass transit system or schools, especially with respect to capital needs. You have $3 billion of tax exempt financing, plus close to half a billion to a billion, depending on how you want to measure, of direct taxpayer money is going to the creation of sports facilities.

While that is a local decision, I wish you would stop incentivizing us to make those decisions. I wish you would stop incentivizing us with your tax policies to compete with other states to giveaways that in the end benefit nobody but the private corporations who get those giveaways.

We have seen a national collapse of financial markets based upon a set of unchallenged assumptions about what constitutes economic growth and development. We cannot afford everything; yet, you enable us or enable some people to prioritize sports facilities, when schools and mass transit systems go unfunded. We need your leadership to end that.

Mr. Chairman, in my final 30 seconds, I want to just take a moment to acknowledge the personal comments made by Mr. Levine about me. Our committee will continue with our investigation in a fair way. We will continue to pursue information from the Yankees, which they have so far refused to provide. Mr. Levine is entitled to his views of me. That is not going to change the fairness of our inquiry or the thoroughness of the inquiry. The bullying and blustering tactics of the Yankees and Mr. Levine are well known, and it will be irrelevant to the work we do, but I have never found it useful to allow personal attacks go to unanswered. Thank you very much.

Mr. KUCINICH. I thank you, the gentleman, and all the witnesses.

[The prepared statement of Mr. Brodsky follows:]

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

RICHARD L. BRODSKY
Assemblyman 92ND District
Westchester County

CHAIRMAN
Committee on
Corporations, Authorities
and Commissions

Dear Mr. Chairman and Members of the Sub-Committee:

Thank you for this opportunity to again share with you my views on the Federal role in the construction of the new Yankee Stadium. I acknowledge and appreciate the work done by the Subcommittee as it independently inquires into the facts and decisions made, as did my own Committee in its Interim Report, which was submitted to you earlier. Our investigation is by no means concluded. We have received additional information from New York City agencies, some of which I will discuss here. The Yankees, after initially agreeing to provide information, have flatly refused to do so.[1] We are examining this refusal and will make decisions about it shortly. We will conduct additional inquires and issue a Final Report.

Based on the evidence then available, the Interim Report concluded that there was no measurable economic benefit to the region or the community resulting from massive public subsidies of the new Stadium, that the public not the Yankees were paying for the new Stadium, that the actions of the New York City IDA were at variance with the requirements and purposes of State law, that the binding promises made to the IRS as a condition of receiving the tax exemption were broken, that the assessments of the land and Stadium were knowingly inflated, that the public interest in affordable ticket prices had been ignored, that fundamental decisions about these subsidies were made in secret and without effective participation by elected officials, that the securitization of PILOTs was a dangerous practice which was part of an explosion of public debt, that the provision of a luxury suite and preferred tickets were done in secret, and that there was a need for independent review of these circumstances. After reviewing our original data, and the new materials provided, we stand by those conclusions, and can offer additional evidence in support of them.

Additional information has been obtained with respect to the following concerns:

The assessment done by New York City substantially inflated the value of both the land and the Stadium itself, in violation of New York City's own standards and requirements and in violation of sworn promises to the IRS. There is no dispute over whether the New York City IDA swore to the IRS that it would use standard and appropriate assessment practices to set the value of the PILOTs used to pay for the Stadium. The Interim Report

[1] The entire correspondence between the Yankees and the Committee is included in Appendix A.

set forth at length the unusual, inappropriate, and indefensible practices of the Department of Finance. These included the use of "comparable" parcels in Manhattan, the failure to make required adjustments, unusual and unexamined categories of value, and the use of uncertified representations of value by an investment banker. We can now add to that list the use of valuation methodologies that artificially inflated the value of the new Stadium itself. While this is somewhat a technical matter, it again establishes that the Yankees received special treatment in defiance of the sworn promise to the IRS. This is the issue of "Reproduction" cost vs. "Replacement" cost for determining the value of the Stadium over time. To understand the difference, picture what might happen if, God forbid, St. Patrick's Cathedral was destroyed and was to be replaced. If the "Reproduction" methodology is used the cost of rebuilding is the cost of exactly rebuilding the structure as it now stands. Modern building materials and techniques are substantially more cost-efficient than those used over a century ago. These efficiencies would not be part of the calculation for "Reproduction " cost, which therefore inflates the value of the rebuild. If "Replacement" methodologies were used, then a building which looks and functions exactly like the existing Cathedral would arise, but with the economies available, thereby lowering the assessed value. The City knows this, and asserted repeatedly that they used "Replacement" cost methodology: "Finance uses the replacement cost."[2] In spite of these assurances by the City, sworn documents provided to the IRS admitted that, "Reproduction" methodologies were used: "...the Stadium would continue to be assessed based on its reproduction cost."[3]

The Committee sought clarification of this conflicting evidence. The DOF again reiterated that it was unaware of this practice: "Finance was not aware of the City's representation to the IRS."[4] This again is not true. DOF was aware of this unfair and special treatment given the Yankees, at first protested that decision, and then agreed to it. NYC DOF Assistant Commissioner Dara Ottley-Brown wrote in an e-mail to Peter White of Nixon Peabody, the lawyer for the City, that DOF "would like to substitute reproduction with replacement cost everywhere reproduction cost is mentioned." Mr. White responded asking "would it be okay to proceed without changing the language?" to which Ms. Ottley-Brown responded "As long as we are not held to a strict interpretation of reproduction cost new."[5] The documents showing DOF's knowledge of this practice are included in Appendix E. Rather than dwell on the technical aspects of this decision, suffice it to say that the Yankees were given special treatment, that DOF knew of and agreed to that special treatment its denials notwithstanding, and the consequence of that special treatment is an inflated value for the new Stadium.

The second piece of new information comes from a letter to me from New York State Commissioner of Parks Carol Ash, who in response to my inquiries about the City's use

[2] October 10, 2008 letter from NYC DOF Assisstant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix B.
[3] February 1, 2006 letter to IRS from Mitchell Rapaport and Bruce Serchuk (Nixon Peabody LLP). Page 41. Please see Appendix C.
[4] October 21, 2008 letter from NYC DOF Assistant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix D.
[5] A series of January 31, 2006 and February 1, 2006 e-mails between NYC DOF Asisstant Commissioner Dara Ottley-Brown and Peter White (Nixon Peabody LLP). Please see Appendix E.

of competing appraisals for competing purposes said that they believed the parkland appraisal used to satisfy the parkland replacement requirements of state and federal law was a professional and acceptable valuation: "...[the assessment] represented reasonable estimates of fair market value."[6] This Subcommittee will recall that the value of the parkland in this appraisal was $21 million, compared to the value of $204 million set by DOF.

The Subcommittee may further recall that the square foot value of the Stadium land was $275 million while neighboring properties range from $9 to $40 per square foot. There has been no explanation from the City over these discrepancies. Assessment professionals have advised the Committee that there is no basis for disparities of this magnitude. We are continuing our inquiries.

The Interim Report also disclosed that property within the footprint of the Stadium, but not part of the ownership of the parcel had been included in the valuation. This was inconsistent with professional practice and should not have occurred. The City first denied any knowledge of this property (the Police Substation): "The cost estimates we received did not mention a substation, and our valuation did not take into account a substation."[7] and then said that its' inclusion was appropriate: "...[the police substation] is appropriately included in the stadium value."[8]

The Committee also inquired of the City's assertion in its valuation letter of April 10, 2006 that the per seat cost of Yankee Stadium was comparable to those in other cities. The Interim Report included information taken from the web sites of those other facilities, which showed that the per seat cost was dramatically lower. The City has responded by admitting that: "The cost numbers from other locations were adjusted by 56.88%, 49.44%, and 19.35%, respectively..."[9] No explanation of how that adjustment was arrived at was included. The City's use of these figures again establishes the artificially and illegally high values used, and the sheer disregard for accuracy and intellectual honesty that permeates the entire valuation proceeding.

The Committee is proceeding with its inquiry into the decisions made with respect to depreciation and to the role of private counsel in certifying and permitting these and other assertions.

We are convinced that there is overwhelming, rigorous evidence that the assessment of Yankee Stadium was artificially and illegally inflated. We are pursuing a number of additional related matters. Suffice it to say that if they are capable of manipulating

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[6] October 2, 2008 letter from NYS OPRHP Commissioner Carol Ash to Chairman Brodsky. Please see Appendix F.

[7] September 15, 2008 letter from NYC DOF Assistant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix G.

[8] October 10, 2008 letter from NYC DOF Assistant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix B.

[9] October 10, 2008 letter from NYC DOF Assistant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix B.

assessments for sports facilities, they are capable of doing so for hotels, or retail projects, or other favored beneficiaries. Approximately 18 assessors were indicted by the Manhattan District Attorney and convicted of manipulating assessments, largely for the benefit of relatively small property owners, and have been severely punished, as the law requires. The question of whether similar behavior is also of interest to the IRS is a matter for the IRS and the relevant Committees of the Congress. But the evidence is there for any fair-minded person to see.

Finally, I return to the fundamental question of the use of federal, state, and local resources to subsidize sports facilities. We again conclude that there is no commensurate public value, that these are giveaways not investments, and that the Federal Government should cease its subsidies of any project where the public subsidy is not met with a public benefit of at least equal value. As a nation we have chosen to bail out huge financial institutions, but leave individual homeowners to suffer consequences with little government help. We socialize risk for the wealthy, and privatize profits. New York itself has much to answer for with respect to these deals. Our statutes are inadequate, even those that were violated. We have embraced the giveaway philosophy in the name of "economic development." But we are beginning to correct those failures. We ask only that the federal government cease to incentivize these wrong-headed decisions, not only in the area of sports facilities, but with respect to the genteel blackmail that has us offering billions to private interests across the country to protect our state's economic interests. We are as a nation, broke and embarrassed about our economic failures. Surely the first step towards recovery is prioritizing our expenditures. In a city that can't fund its mass transit system, or its schools, please assist us first by ending the gilded-age practice of providing billions of dollars of public subsidy to wealthy private corporations whose influence or political popularity is rewarded with tax free bonds and cash gifts.

ALBANY OFFICE: Room 422, Legislative Office Building, Albany, New York 12248, (518) 455-5753

DISTRICT OFFICE: 5 West Main Street, Suite 205, Elmsford, New York 10523, (914) 345-0432

Mr. KUCINICH. At this point we are going to move to a round of questions, and I ask unanimous consent that each Member here, including the Chair, have for this first round of questioning 10 minutes to proceed with questions. Without objection.

I would like to start the questioning with questions of Ms. Stark.

Ms. Stark, are you aware of any instance in which IDA officials, city officials, or representatives of the Yankees, put pressure on you or any other member of your staff to inflate the value of the Stadium or the Stadium site?

Ms. STARK. No, Chairman. There were no such instances.

Mr. KUCINICH. On July 15, 2005, you received an e-mail from your Deputy Commissioner, Robert Lee, reporting a conversation he had with Joe Gunn from the city's law department. Mr. Lee said, that an attorney for the Yankees wanted to know how the Department of Finance was planning to assess the Stadium site, because the assessment would be the basis for calculating the payments in lieu of taxes. Later, Mr. Gunn, the city's lawyer, e-mailed many Department of Finance staffers requesting a meeting with the Department of Finance and the Yankees to discuss the assessment of Yankee Stadium for purposes of the payments in lieu of taxes. He stated that the Yankees had, "an interest in seeing the assessed valuation will be high enough to generate as much payments in lieu of taxes for tax exempt debt as is lawful and appropriate." And said that the deal was "on the fast track."

Ms. Stark, as the Commissioner, do you think it is appropriate for your tax assessors to be factoring, "an interest in seeing the assessed valuation will be high enough to generate as much payments in lieu of taxes for tax exempt debt?" And is that one of the typical considerations your tax assessors use in determining property assessment?

Ms. STARK. Mr. Chairman, as I said in my testimony and as even in the e-mail that you quoted, we were asked to do what was lawful and appropriate, and lawful and appropriate for us means we value the property how we would value it regardless of whether or not there was an exemption, and regardless of whether or not there was any tax exempt bond financing. That is what my team did. And the fact that they wrote that in the e-mail has no bearing at all on how the team approached valuing this property. None, sir.

Mr. KUCINICH. Is it typical for the city attorneys to convey to the Department of Finance officials that a property owner has an interest in a certain Department of Finance assessment? I mean, it is one thing if the taxpayer himself expresses an interest through his attorney. But in this case, the advocacy for the desired assessment was coming from City Hall. Is that typical?

Ms. STARK. I wouldn't say that it was coming from City Hall at all, sir. What was going on is that because I believe the city was preparing an application to put in, they needed to understand how we would value the Stadium if it was completed. That is not atypical for people to ask us how will we value property when it is completed and when it is done. So, again, there was no pressure on us.

I just sort of note, I would note for the record here that our assessors take this very, very seriously. They do not feel any influence about how to value property.

I should just—again for the record, my first day in office as the Finance Commissioner, 18 of our assessors were arrested. They were arrested for charges of manipulating assessments. And since the time that I have been in office, we have done everything to be as transparent as possible, more information on our Web site, telling owners how we value property, and we have insulated ourselves, in fact, from any influence.

We did not value this property because it was exempt. We don't do that. Nor would we respond to anyone telling us how the value should be high or low. That is just not what our assessors have done. And I am pleased to say that they have done a fantastic job trying to restore both the public's confidence in how they do their work by making clear how transparent it is that we did this. And we shared our values and, again, more than 100 years of experience that the assessors who value this property has. I think their reputation here is on the line, and they did a fantastic job.

Mr. KUCINICH. Thank you. Let me ask you this: We talked about the people who were arrested just before you started. Did any of those cases involve contact between assessors and City Hall?

Ms. STARK. They were actually being contacted individually by owners, and actually accepting money for reducing the value of properties in the city of New York.

Mr. KUCINICH. Can you tell me about any other cases that you remember where the city attorneys conveyed to the Department of Finance that a property owner has an interest in a certain assessment? Does that happen on a routine basis?

Ms. STARK. Again, a lot of times that we are contacted to let us know if there is something going on. Again, the Stadium was a big deal for the city of New York. We needed to know what the value is going to be. But in no way did that contact lead to our assessors doing anything out of the ordinary or anything different from what they would have done.

Mr. KUCINICH. I am just interested, though. Is this kind of the way business is done in the Department where City Hall picks up a phone on a regular basis and tells you that they have an interest in this particular case? Does that happen often?

Ms. STARK. Well, we are——

Mr. KUCINICH. Can you answer yes or no?

Ms. STARK. We value a million properties a year. And if there is a property, sure, we will get a call that just says: We need to know what the value is going to be, free and clear, again, of any wrongdoing or pressure. Just what will the value be on this property? And when we get those inquiries, we will respond with what is lawful and appropriate and what is the value that might——

Mr. KUCINICH. Can you cite any other time that you have done that? Does any come to mind at this moment, where the city contacted you concerning an interest, property owner interest in a certain Department of Finance assessment?

Ms. STARK. Sure. Actually, I can think of one off the top of my head in Brooklyn, New York. This town where I grew up in and still live, the Board of Education building was moved from Downtown Brooklyn into Manhattan. And at that time, we were contacted because the building was hopefully going to be redeveloped, and we were asked what will be the value of that building if it were redeveloped. That is one instance that I can think of off the top of my head. I can come up with several others as well during the course of this.

Mr. KUCINICH. I think it would be useful if you could prepare a list of those for this subcommittee. Don't most taxpayers want a lower assessment because they want to pay lower taxes? Isn't that usually the case?

Ms. STARK. Yes. Most taxpayers do want a lower assessment. Absolutely.

Mr. KUCINICH. Didn't it seem strange to you that a higher assessment was being sought rather than a lower one?

Ms. STARK. No. It seemed to me that the appropriate assessment was being requested, and that is what we provided. We provided what was the value of this property based on, again, our 100 years of experience in valuing property. So it didn't seem odd to me that it would be high or low. I mean, you know, owners—sure, everyone would love to have their taxes be a dollar a year, if given. And what my point is that we are not influenced by whether or not an owner wants their taxes low or high; what we did here was come up with a value that we both believed was lawful and appropriate and consistent with widely accepted appraisal methodology.

Mr. KUCINICH. Were you aware that the reason the Yankees had an interest in a higher assessment was to support a higher amount of PILOT-backed bonds?

Ms. STARK. No, sir, I was not. I must confess that people on the finance team do not at all get involved with how PILOT is calculated. We leave that to the economic development corporation people. Our business, for these purposes, are actually twofold: One is that we value real estate. That is what we are asked to do; that is what we do for a million properties. We are not at all involved with how the PILOT is calculated. And then, once the PILOT amount is determined, we are also the billing agency.

Mr. KUCINICH. Before my time expires, are you saying that no one in the Department of Finance was aware of the underlying connection between PILOTs and the assessment, that no one knew that? Do you know that for a fact?

Ms. STARK. That is correct, sir. We were not aware of how the PILOT would be calculated. Our task was to value the property, and do that free and clear all sort of exemptions, as well as otherwise. We did not know how the PILOT was going to be calculated.

Mr. KUCINICH. OK. I thank the gentlelady for the responses.

We are going to move to questions, 10-minute rounds, to Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

Let me just say that although you all went over time, I think this is probably the best set of opening statements I have heard from panel. You guys were right on. You were very clear about your positions. And Mr. Levine, you took some shots at Mr. Brodsky, but Mr. Brodsky is pretty tough and made his responses.

May I just suggest, or hope, that you will accept our adoption of you as America's Daughter, because we are proud of you getting here. There has never been a country like this where anybody from any circumstances can rise to the top of any field, whether it is academics or business or public service, like we are allowed to do in

America. So on behalf of America, welcome. I have been on the other side where you are. I much prefer being here. With all due respect.

Mr. Brodsky, you are from the 92nd District.

Mr. BRODSKY. That is correct.

Mr. CANNON. Does that include The Bronx?

Mr. BRODSKY. It does not. Westchester County. As you heard Commissioner Stark discuss, the assessment practices, it is not in The Bronx.

Mr. CANNON. The reason I ask is, Westchester County is a wonderful place. I have this sort of warm feeling for the Congressman in the area that is from The Bronx, Jose Serrano. He and I were subject to a front-page article on USA Today comparing our districts and our voting records. And we vote very differently; our districts are very, very different. And he has the highest number of out-of-wedlock births and I have the lowest number, and also comparing, the fewest number of children, I have the largest number of children by far. So where we are and who we represent makes a huge difference on how we do our job as elected officials.

And there are a number of questions that I would really like to ask. As I understand your testimony, you were very clear on the positions Mr. Brodsky, including, you talk about incentivizing on a Federal level, certain activities, mass transit, education versus sports facilities. That is a perfectly reasonable distinction. But the Federal Government creates the context for States to use untaxed bonds. Isn't it up to the State how to choose to use those bonds?

Mr. BRODSKY. It is. And my plea, Congressman, is that you put some commonsense restrictions on that. There is no value to the economy of the United States when the State of New York buys off a corporation to move from Pennsylvania. There is no—and I think this has been attested to quite powerfully—overall economic value of these sports facilities that justify the subsidies.

Mr. CANNON. We have the, what we are calling subsidy, which is a tax exempt process, and we limit that at the Federal level because the Federal Tax Code is the underlying context. But don't localities, doesn't New York have the right to choose, or the municipalities, based on an allocation to the State, have a right to choose what projects they want to focus on?

Mr. BRODSKY. Within the Federal standards, yes. The Federal standards, which were just changed to eliminate these deals, except in New York, New York City projects.

Mr. CANNON. Why should the Federal Government limit what the States want to do?

Mr. BRODSKY. Well, because once in a while States would choose to do things that are not a good use of national resources.

Mr. CANNON. But good use implies something or somebody is much wiser than somebody else and can decide what is right.

Mr. BRODSKY. But that happens all the time. That is your job, that is my job. And what has happened now is that the IRS has said that these kinds of PILOT securitization deals will not be allowed in the form that would normally have been allowed previously.

So I am not suggesting anything exceptional. I am just suggesting that where you can see a good value investment of public dollars, do it. Where there is no public return, I would urge you not to do it.

Mr. CANNON. I suppose that is a difference between our views and philosophies. I think that we ought to have an open system of where the choices are made at the lowest level of the governance, as opposed to setting standards at the highest levels, because I'm not sure we have human beings who have the wisdom to make those kinds of decisions. So I suspect that is——

Mr. BRODSKY. Respectfully, Congressman, the Congress sets standards for the expenditure of Federal dollars all the time.

Mr. CANNON. But these are not expenditures of Federal dollars; these are tax exemptions that are applied for. And the only Federal purpose you have here is to limit the number. They ought to be able to do it without Federal interference or Federal caps, but that is because I believe that local bodies make better decisions than national bodies or State bodies compared to the city bodies.

Now, Ms. Stark, you have been under attack. I am not sure you did anything wrong, but Mr. Brodsky talked about a new direction versus replacement cost. Would you like to address that?

Ms. STARK. Sure. Just the cost approach requires that you calculate how much it would cost to rebuild a property, except you don't have to do that when it is new. When it is a new property, you use the actual cost. So reproduction and replacement cost, as you just say, the difference in what Mr. Brodsky sort of suggested is pretty odd to me. The e-mails that he referred to, the person was commenting on: We use replacement costs 10, 15 years down the road if we had to value the Stadium as it is.

When you use reproduction costs, you have to take a calculation off for depreciation, depreciation including economic obsolescence, functional obsolescence. And what the assistant commissioner at the time was saying, replacement cost is simpler. It is easy to say if you were going to rebuild the U.S. Supreme Court building, would you reproduce it in its current structure? And if you did, to value it, you have to take off—its obsolete. It might not have enough bathrooms; those bathrooms might not be wheelchair accessible and the like. Whereas, replacement costs is, what would it take to build a new Supreme Courthouse with the same utility and function?

The distinction is irrelevant for the purposes of this Stadium, and the reason is because we had actual cost numbers that we could use to estimate the value. Reproduction, replacement costs, it is really absolutely the same as it relates to value for Yankee's Stadium. And, in all honesty, we have been having trouble trying to understand why the assemblyman feels this distinction is so important. But the key thing is the assessor in charge was trying to say, with reproduction there is a whole lot of additional calculations that have to be made that we would not be making for this Stadium which was being based on actual costs replacement cost.

When you are doing assessments for a million properties a year, is it an easier approach to use, and is more typical for what we would do.

Mr. CANNON. Your use of the Supreme Court in comparison is great, because that is one of the Federal projects that are way over budget, way over, and short of time.

Mr. Brodsky talked about the quota used in his statement that was in the event of, as long as you are not held to a strict interpretation. Do you know what that quote came from?

Ms. STARK. Yes. Again, the e-mail that he cited was the head of the assessing unit, who was saying: A strict interpretation of reproduction costs would require us to calculate depreciation, including economic and functional obsolescence. And, that when we are doing mass values, we use replacement costs, because you don't have to make those adjustments. That is what she meant. And, again, that was because the term "reproduction costs" was used. And my understanding is, reproduction and replacement costs are interchangeable in the IRS regulations. No distinction.

Mr. CANNON. You don't see anything in that e-mail——

Ms. STARK. Absolutely not.

Mr. CANNON. Mr. Brodsky said that the value is $275, in your analysis, and that the area around it is $9 a square foot. Can you explain that?

Ms. STARK. Sure. Again, The Bronx Terminal Market value, which is what Mr. Brodsky cited, is not valued by the cost approach; it is valued by the one of the two other appraisal approaches, income and sales.

I just sort of would note for the record that, depending on what kind of property it is, we value those properties using different approaches. The $9 a foot essentially, again, when we are valuing property not via the cost approach, we take the overall value of the property. And then what we do is estimate a land value as a percent of that. That is typically done.

Mr. CANNON. In the remaining moments I have, I focused on you because I want you to have the opportunity to respond. Mr. Lipinski or Mr. Levine maybe want to respond to that as well. My time has expired; but subject to being allowed. Thank you.

Mr. PINSKY. I would like to take an opportunity to respond to a quote of mine cited by you, Chairman Kucinich. It is a great opportunity to be able to just——

Mr. KUCINICH. Speak closer to the mic.

Mr. PINSKY. I want to respond to a quote from an e-mail, just to give you a sense for the context in which the e-mail was sent. It is a great opportunity to have a chance to sit here before you and respond to some of the accusations that have been made.

Just by way of background, my personal involvement in the question of the assessment only began around March 2006, which is on the e-mail that you cited came from. And at the time, what we were looking for was the projected assessment for the Stadium. Just to be clear, this was not the actual assessment. This is not the assessment on which the PILOTs are actually based. This was a number that we were looking for so that we could underwrite the deal, and also knew the IRS was seeking this. At the time, I was asked to get involved in this solely because we needed to have this number, and we were having trouble getting contact from the Department of Finance telling us when the number would be coming out.

A number of time-sensitive issues. There was an April 7, 2006 city council hearing in which this number would be required. We also needed the number for the IRS. We had submitted a private ruling request in February 2006, and they had asked us to give us the projection—had to give them the projection. And we were also moving forward with structuring the bonds based on certain assumptions, and we needed to know if those assumptions, in fact, needed to be changed.

Mr. KUCINICH. Would the gentleman yield?

Mr. CANNON. Certainly.

Mr. KUCINICH. I just want to ask you, you talked about the time sensitive issue. And are you saying you needed a number, or you needed the number?

Mr. PINSKY. We needed a number.

Mr. KUCINICH. A number.

Mr. PINSKY. Yes. Thank you.

My involvement was to contact City Hall to find out whom at the Department of Finance was the proper person to speak to about the matter. And what I was looking to do was to explain the number—sorry, to explain why we needed a number given that this was obviously not the Department of Finance's top priority. Their top priority is actually the collection of taxes. We needed to find out the timing of when a number would be produced. And I also wanted to make sure that we were coordinating on a public announcement of the number so we weren't blind-sided by whatever the number turned out to be.

And is this—is where it is crucial to point out something which I think was an error on your part, but you left out the last piece of that e-mail. What you read was: I would like to understand what DOFs projected assessment is before it is released publicly to make sure it conforms to our assumption. Which may sounds suspicious to some.

But what it says is: I would like to understand what DOFs projected assessment is before it is released publicly to make sure it conforms to our assumption; and if it doesn't, to understand what the implications are. With the idea here being that I simply needed to know if there were implications to a number.

Mr. KUCINICH. Let me ask you, as a followup, what would the implications be?

Mr. PINSKY. The implications would have been that the PILOT may have been lower than what we were projecting, and that would have created an issue with the underwriting. Fortunately, the number that came out of the Department of Finance, through no pressure on our part but through the calculations that Commissioner Stark has described would comport specifically and entirely with their normal procedure, was a number that was not that far off from what we had projected.

Mr. KUCINICH. Did you—continuing the request of the gentleman to yield. Did you or anyone working with you or at your behest have any contact with anyone who was instructed to contact the Department of Finance relative to the number that was needed to correspond to the specific PILOT?

Mr. PINSKY. I am not aware of that. No. As I mentioned, there was—let me be clear. There was contact with the Department of Finance, absolutely.

Mr. KUCINICH. Would you describe that contact?

Mr. PINSKY. Sure. The contact, generally speaking—and I don't remember the specific phone calls, but I remember generally what the conversations were. It was, again, to explain what it was that we were looking for, which was that we needed a number for purposes of this financing to provide to the IRS and to the underwriters. It was to ask about the timing. It was to coordinate on the roll-out of the announcement by the Department of Finance. It was to provide certain information that was requested by the Department of Finance so that they could do their assessment. And that was the extent of it.

Mr. KUCINICH. I would just say, luckily everything worked out.

Mr. PINSKY. I wouldn't say call it——

Mr. KUCINICH. Mr. Cummings.

Mr. PINSKY. If I could respond to that.

Mr. KUCINICH. Mr. Cummings.

Mr. CANNON. Before I yield back, I would make one comment. That is I am thrilled you have so many tickets at $25, having sat in that section a lot.

Mr. KUCINICH. If I may say this to my colleague, this is about baseball. Mr. Cummings.

Mr. LEVINE. Excuse me.

Mr. KUCINICH. The Chair recognizes Mr. Cummings.

Mr. CUMMINGS. I am listening to all this, and I just—do you have any comments about what you have heard?

Mr. BRODSKY. Yeah. I am just a——

Mr. CUMMINGS. Give me the things that seem to be—that concern you the most about what has been said. Maybe that will help me. I only have 10 minutes. I want to just I am just curious.

Mr. BRODSKY. Sure. I can go down in detail any one of these individual matters with respect to the extraordinary deviance from accepted assessment practice that the Department engaged in. And to the extent you want to know about the adjustments or the use of comparables or the myriad of other elements, I can do that. But at a certain point, you step back and you look, and this is what happened today.

The documents the chairman has read into the record are a smoking gun, and what they establish is that using the normal methods of assessment, the Department came up with a value for the land under the Stadium at around 26 million. That got reversed, and it got reversed by the use of extraordinary and, I believe, illegal methodologies, which include the use of land on the Lower East Side to measure the value of land in the South Bronx. At some point, if we are in an evidentiary hearing where there is cross-examination, I am confident that we can carry the day as to exactly what happened.

But in stepping back and looking at the big picture, they could not generate enough money to pay the PILOTs with the assessment that was coming, so they changed it. That is a violation of the sworn promise of the city to the IRS by the city IDA. And the evidentiary basis for that—if you would like, sir, I will prepare a brief.

Mr. CUMMINGS. Let me—no, you don't have to prepare a brief. You made some very strong statements. Do you realize what you just said? Very strong.

Mr. BRODSKY. I am——

Mr. CUMMINGS. Let me finish. What you have basically done—and maybe you have done this before, I don't know, in other hearings in New York—is you basically said that somebody did something that was illegal. Is that—did I hear you wrong? Do you believe that?

Mr. BRODSKY. I said precisely, Congressman, what I said.

Mr. CUMMINGS. Was I accurate?

Mr. BRODSKY. And my committee is not charged with making determinations of legality. We investigate matters to determine the need for additional legislation in the State of New York. I am not a criminal investigator.

Mr. CUMMINGS. I understand.

Mr. BRODSKY. But——

Mr. CUMMINGS. I used to be a criminal lawyer.

Mr. BRODSKY. What we saw and what our inquiry showed, and what the sworn document showed, is that the promise to use the same processes to assess the Yankee Stadium project as were used for other projects—other properties in the same class were not used. Those facts, I am absolutely certain of.

Mr. CUMMINGS. Now, Ms. Stark, Commissioner Stark, as I listened to your answers, one of the things that you said which really sparked my interest tremendously is, I think you said that the day you came into your office, there had been some people who had been arrested. Is that what you said?

Ms. STARK. Yes.

Mr. CUMMINGS. And they were arrested for? They were charged with? Just generally.

Ms. STARK. Sure. Just for taking bribes to lower people's assessments.

Mr. CUMMINGS. And so have they gone to court? Do you know?

Ms. STARK. They have.

Mr. CUMMINGS. And do you know whether they were convicted?

Ms. STARK. They were.

Mr. CUMMINGS. Now, so you came in and you—what day did you come in?

Ms. STARK. I started February 25, 2002.

Mr. CUMMINGS. So you basically, I guess you walked in the door, you had I guess a staff that was minus some people. Am I right?

Ms. STARK. Yes.

Mr. CUMMINGS. So you had to replace those people. Is that right?

Ms. STARK. Yes. Replace them as needed. Yes.

Mr. CUMMINGS. And so—and I take it that, did anything happen with regard to—it seems to me that if you have a situation like that, and you are coming in, does—did anybody come and say, look, we have to tighten up here. This is not going to work the way it has been working? And you talked about, you used the word transparency a number of times with the chairman. Was that—was there a new order established that we are going to have this transparency, we are going to do things differently?

Ms. STARK. Absolutely, sir. And I would say, I had been at the Department in the early 1990's, and came back to Finance in large part because I am a corporate tax lawyer who has expertise in the property tax and was hired by the mayor to come in and actually change the way that we did business. And so there were a number of things that we did, sir, right away, again, with the goal of restoring the confidence for the public and how it is we did those values. And one of the most important things that we wanted to do was to make sure that everything that we did was open and transparent. So now, available on our Web site are all of the sales figures that are generated. So every sale is published. It used to be in New York City that sales information was secret. In addition, every property owner now gets a notice of value that details for them how we arrived at their value. It doesn't matter if they are an income producing company, a regular homeowner. And we tried to break it down into English. But lots of things that we did, we organized how we structured the assessor's office in terms of the values that they were producing and put in lots of quality control measures.

Mr. CUMMINGS. Got you. Now, you are sitting beside Assemblyman Brodsky. He just said something that was—basically, he said that your office—correct me if I am wrong—did something different with this assessment than, to his knowledge, would be normally done with others. Is that a fair statement?

Mr. BRODSKY. That is a fair statement.

Mr. CUMMINGS. And you heard what he said. Didn't you?

Ms. STARK. I did.

Mr. CUMMINGS. I want you to respond to that. And that, and that—and when I get down to the nitty-gritty, when the rubber meets the road, it seems that is where I want to get to. It seems like that is where we need to be figuring out, was there a difference with regard to the way you, to your knowledge, the way you all addressed this issue as opposed to others?

But let me ask you another question, too, before I get—hold that one. I want you to answer them. How deeply are you involved in the day-to-day assessing of things of that nature? And I understand that this one has gotten a lot of spotlight placed on it. But—and maybe you found out some things later on. But how much were you involved in this process, and, this process right here, for this. And if you can answer it, can you tell us, was there any difference, to your knowledge—and if you don't know, I want you to tell us that, because he makes some very serious accusations, and I want to see if we can't get to the bottom. Was there anything different? I want you to answer what he said.

Ms. STARK. Sir, let me answer the questions in reverse order. So the first, you asked how involved was I in the process. That is the last question.

I was involved to the extent that I let them know who on the team would be able to answer the question about what the value for the Stadium would be if it were completed as of January 2006. I let them know that. I am an expert in the property tax. I let the people who had called from the economic development corporation know who was the proper contact at Finance to discuss how it is we would value the property. So that was sort of my involvement during the process.

Mr. CUMMINGS. So you told them.

Ms. STARK. I told them to contact my assistant commissioner for the property division so that she could have her team estimate for them what the value of Yankee Stadium would be, if completed.

Mr. CUMMINGS. Hold on. Let's back up.

Ms. STARK. Sure.

Mr. CUMMINGS. So basically, what you said to him—who were you talking to?

Ms. STARK. It was an e-mail exchange, who is responsible for valuing.

Mr. CUMMINGS. Between Mr.?

Ms. STARK. It wasn't actually me and Mr. Pinsky. It came through my head of Treasury, a gentleman by the name of Bobby Lee. I said, Dara Brown is going to be the person who you should contact as it relates to valuing Yankee Stadium.

Mr. CUMMINGS. Could you just——

Mr. KUCINICH. The Chair provided Mr. Cannon with some extra time. You could have 2 more minutes.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Ms. STARK. And then, just again to the allocations that Assemblyman Brodsky has made about the use of comparables. He talked about the Lower East Side. I am not certain he is as familiar with the Lower East Side as he might be. The Lower East Side is not a very wealthy part of the city. And, as a matter of fact, only two of the sales came from there. The majority of the sales came half a mile away from Harlem, right a half a mile away from the Yankee Stadium site. And that is absolutely consistent with, when you are looking for values, you look first and foremost in proximation to where the site of that property is.

He talked a little bit about adjustments that were and were not made. Again, I can only assume that this somehow is borne out of in Westchester County, where they make few to no adjustments and have since 1960 made few to no adjustments to their values.

Every single year, my staff is revaluing property, taking into account any new information that is provided as a result of those, the information that they gain. New sales prices, new cost information, and adjusting those properties accordingly.

Mr. CUMMINGS. Let me ask you this, because you just said something. This will be my last question, and hopefully we will have another round. Just one question. You just said something that was very interesting. You said that you talked about—you questioned Mr. Brodsky's—Assemblyman Brodsky's knowledge of the Lower East Side, and you said that prices are not that high there. So that means that—and he's saying to you, you used some of those properties. Is that accurate?

Ms. STARK. What he said was he was trying to make the point it seems that Manhattan, because we used Manhattan properties—everyone, when they think of Manhattan they think of Midtown Manhattan, the high-rise buildings, very high-value buildings. He specifically noted the Lower East Side. The Lower East Side in this regard is much more analogous to Harlem and the South Bronx. The reasons being that in order to generate any kind of investment in those communities, the city had to step in and do infrastructure improvements, whether it was by investing in housing, taking over abandoned buildings, and the like. The Lower East Side is not one of the better neighborhoods in New York City. That was the point that I was making.

It is more analogous to Harlem, more analogous to the South Bronx, and, as a result, those were the sales prices that we used, again, trying to come up with a land value that had been affected by significant government improvement and enhancement in those values. And, as a result of that, just like the metro north investment that the city was making and others, we felt those comparables were appropriate, nothing at all inappropriate about using those comparables, and I would dare say, sir, nothing illegal.

And I believe that the assembly member is just mistaken when he thinks about the issue this way. And, again, I don't know, when his own district doesn't revalue property on a regular basis and we do, and we have experts on every aspect of this. And that is how we do this.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. KUCINICH. I thank the gentleman.

We are going to have another round of 10-minute questions; and, Ms. Stark, it is your testimony to this committee that these assessments were made without any knowledge of the PILOTs within your organization; is that correct?

Ms. STARK. What I said was about the calculation of this PILOT. We had no information about how that was going to be done.

Mr. KUCINICH. About how it was going to be done. But did you have knowledge of the PILOTs themselves and the role the PILOTs were playing in this?

Ms. STARK. We did not, sir. Again, we were asked to value the property based on how we thought it would—what it would be worth regardless of the PILOT. So we were not—again, if people were told, oh, you know, the PILOT is going to be calculated, but that is not what was relevant in terms of valuing the property. We had no idea what part of it, you know, was going to be—the e-mail that said, well, you know, what is going to be relevant for the PILOT did not at all affect how we valued the property.

Mr. KUCINICH. And did anyone have any communication with you, either Mr. Pinsky or Mr. Sirefman, relative to these financing structures that rely on the PILOTs?

Ms. STARK. No, sir.

Mr. KUCINICH. OK. I'd like to give you a chance to reconsider your answer in light of an e-mail that the—excuse me, Ms. Stark——

Ms. STARK. Sorry, sir.

Mr. KUCINICH. What did Mr. Pinsky just say to you?

Mr. PINSKY. Excuse me?

Mr. KUCINICH. Are you her counsel?

Mr. PINSKY. No, I'm her colleague.

Mr. KUCINICH. What did Mr. Pinsky just say to you?

Ms. STARK. He was saying he thought there might be an e-mail wherein they said that the PILOT was going to be calculated based on something. But I'm assuming, Chairman, you're going to read to me what is the relevant portion of the e-mail; and I'll look through my files to see if I have it as well.

Mr. KUCINICH. We have an e-mail here from Josh Sirefman to you, Ms. Stark, dated Monday, March 20, 2006; and the subject line is Quick Stadium Question. And it says, "Commissioner, not sure who Seth should speak to about this, thanks."

And we have another e-mail from Seth Pinsky to Josh Sirefman which says, "Josh, as you know, on the Yankees and Mets, their financing structures rely on PILOTs, which are limited by what real estate taxes would be, which in turn are limited by the assessments of the new Stadia. Apparently, the Department of Finance is close to—DOF—Department of Finance is close to finalizing their preliminary assessment, and I'd like to understand what it is before it is released publicly to make sure it conforms to our assumptions and, if it doesn't, to understand what the implications are. Do you know the proper person at DOF to whom to talk to about this? I imagine that what we learn will also impact the teams' schedules with the council."

Now that you're aware of this e-mail exchange and the one that was sent to you, is there anything that you'd like to add to elaborate to this subcommittee about the nature of this e-mail and the exchange? And were there any other contacts between you and Mr. Sirefman or any contacts between you and Mr. Sirefman through Mr. Pinsky or Mr. Pinsky directly?

Ms. STARK. Again, you read the full text of the e-mail and nothing in there tells us other than it relies on PILOTs which are limited to what the real estate taxes would be. That is absolutely what, you know, we would assume. We valued the real estate how we would value it typically, and this doesn't change anything that I said.

As to the full calculation and how the PILOT is done, my staff does not know how that is done. What they said here is that we were close to finalizing the preliminary assessment, understand what it is like. And, again, as I think my colleague indicated to you, and if it doesn't, what the implications are.

And what I did was, as you connote, if you look at the rest of that e-mail, as I said, the person, my assistant commissioner for the property division and her staff had been working on the Stadium values and that Seth could at that time contact her directly to find out where she was in terms of finalizing those.

Mr. KUCINICH. Ms. Stark, you know, essentially, there was a communication where you learned that something was at stake with the assessment.

Ms. STARK. Sir, I don't agree with you. What it seemed to me was at stake was they needed to know how we would value the property and when we would be finished valuing the property. That is all that was at stake, and that was all that was relevant to us. They needed to know when we would have an estimate of the assessment. And, you know, that was all. I don't really—I don't see from this e-mail anything to suggest that we knew what was at stake. All we knew was that they were waiting to hear from us how the property would be valued.

Mr. KUCINICH. I think it is important to clarify whether there is any contact with an e-mail. I just want you to make sure for the record that you did that.

Now, the Department of Finance provided the subcommittee with five versions of a document entitled, "Estimated Market Value for a Proposed Yankee Stadium," prepared between March 10th and

April 10, 2006. In the March 21st estimate, the Department of Finance valued the Stadium site at $26.8 million.

Now we have reproduced the relevant page of the March 21st estimate on the overhead, and some of the text has been enlarged for clarity. While it is a little difficult to make out, the March 21st estimate uses as comparables for the Stadium site land sales in The Bronx, Staten Island and Brooklyn. These properties are valued between $24 and $52 per square foot. For the purpose of the Stadium estimate, the Department of Finance chose a value of $33.50 cents, right in the middle of the range.

Now, the document at the right—and we have—the next slide, please. This document on the overhead is the Department of Finance estimate of the land value from March 22nd, just 1 day later. The estimated land valuation is now $204 million, or $275 per square foot.

This is the estimate that the IDA reported to the IRS in May 2006. The comparable land sales in Bronx, Staten Island and Brooklyn have been replaced with land parcels located solely in the borough of Manhattan listed at a range of $231 to $430 per square foot, much higher than the previous comparables.

Ms. Stark, can you tell this subcommittee what accounts for the sudden dramatic increase in the site assessment? Around the time of the change, there was a flurry of e-mail traffic among the city, IDA and DOF. Could you explain this?

[The information referred to follows:]

March 21, 2006 Draft Estimated Market Value for Proposed Yankee Stadium

LAND SALES

BLOCK	LOT	ZONING	SALE DATE	CONSIDERATION	LOT SIZE	SP.PSF	BORO	AREA
6765 6729	100 1	R3X	1/2005	$19,300,000	541,015	$35.67	SL	Pleasant Plains
6944	480	C3	12/2004	$10,650,000	441,450	$24	BK	Gravesend
6977	200	R3X	5/2002	$19,782,365	378,864	$52	SL	Princess
8393	75	R3-1	12/2001	$7,019,185	199,135	$35.25	BK	Bergen Beach
2887	100	R7-1	1/2005	$1,000,000	24,736	$40	BX	Melrose/Concourse
3244	130	M3-1	6/2004	$1,250,000	43,278	$29	BX	Kingsbridge
2880	9	R7-1	6/2003	$900,000	25,360	$35.49	BX	Highbridge

March 22, 2006 Draft Estimated Market Value for Proposed Yankee Stadium

LAND SALES

BLOCK	LOT	ZONING	SALE DATE	CONSIDERATION	LOT SIZE	ADJUSTED SP.PSF	BORO/LOCATION
2122	144	R7-2	6/2005	$1,200,000	4,413	$288	M/WASH.HTS
2039	63	R7-2	5/2005	$1,100,000	4,000	$294	M/HARLEM
1754	40	C8-3	7/2004	$1,825,000	8,993	$244	M/HARLEM
1789	1	C4-4	6/2004	$2,100,000	6,574	$387	M/HARLEM
378	40	R7-2	10/2003	$1,150,000	4,324	$383	M/ALPHABET CITY
1988	111	R7-1	4/2005	$1,600,000	7,494	$231	M/HARLEM
1845	9	R7-2	6/2003	$5,250,000	16,237	$430	M/MANH.VALLEY

The Yankee Stadium site has 742,300 square feet and its estimated value is $204,000.000.

After the proposed amities are put in place, they will enhance the value at Yankee stadium site.

Ms. STARK. I can. Sir, as I indicated to you, that typically when the finance department is doing its land values, there are two ways in which you verify the accuracy of your land value over your sort of building value. One way is that you look at your overall value and you take a percent of that to arrive at land. That is what we do for the approaches that we kind of use to value. And, again, if you look in Oakland, 30 percent of the overall cost is ascribable to land.

The second thing is, again, we were asked to value the property as if it were completed on January 1, 2006. If that value of that land was going to be vacant, there is a different value for it as vacant. Once it is constructed, the value of the Stadium actually enhances the value of the land.

We wanted to also look at properties that were enhanced by government investment and improvement; and these properties, most of them, again, in Washington Heights, in Harlem, in Manhattan Valley, which is basically the eastern part of Harlem, these sales prices actually were more consistent with what we were asked to value here for Yankee Stadium. Again, significant government improvement and investment as well as being asked to value the property once the site was completed.

And we verified it two ways. One was, what is the overall land as a percent of the total value? And typically for our agency that number is between 15 and 25 percent, as well as looking at sales of land that were enhanced by government improvement and investment.

Mr. KUCINICH. I thank the gentlelady.

I have a series of questions which derive from these documents that we have and what we are going to do—my time has expired. We'll have a third round of questions.

We are going to go to Mr. Cannon now for 10 minutes. Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

Mr. Pinsky, can I ask some questions about this project of you? How many different bodies of government approved this project? Do you know?

Mr. PINSKY. The project was brought before the borough president, the borough of The Bronx, before the city planning commission, before the City Council, the city twice. I think it was approved 46 to 2 and 47 to 3 or something like that. It has been brought in several different forms to the New York State legislature. It was approved unanimously with respect to the most important part, which was the alienation of the park land for the new Stadium. It was brought to the IRS for a private letter ruling as well.

Mr. CANNON. You are an employee of the city of New York, are you not?

Mr. PINSKY. No. Actually, I'm an employee of the New York City Economic Development Corp., which is technically a separate 501(c)(3). But we work very closely with the city. We are the economic development arm of the city.

Mr. CANNON. Does the city fund the 501(c)(3)?

Mr. PINSKY. No. The 501(c)(3) funds its operations through management contracts that it has with the city, and then excess amounts are paid back to the city.

Mr. CANNON. Could you explain that? In other words, you manage the process of economic development. You have a contract. That contract is paid for by the city?

Mr. PINSKY. There is a contract that we have with the city to manage certain properties and operations on behalf of the city. For all intents and purposes, we act like an agency of the city in that I'm appointed by the mayor. Our board is majority appointed by the mayor. We have an ongoing contract to perform certain operations on behalf of the city. But we are technically a separate 501(c)(3).

Mr. CANNON. Thank you. How many jobs would be created by the project?

Mr. PINSKY. By this project? This project has created 6,000 plus construction jobs at last count and is estimated to create over 1,000 permanent jobs part time and full time, which are above and beyond what currently exists at the Stadium.

Mr. CANNON. You know, we—stadiums have changed over time. I was just last night down near the Wizard Stadium here in town. It is a great, robust area. I like going down there. It is better now than it was before. Do you have a reason to believe that this Stadium is going to spur economic growth in the area?

Mr. PINSKY. Absolutely. It has had a number of very positive impacts on the area.

First of all, it has pumped over $130 million into companies that are based in The Bronx. It has pumped more than $300 million into companies that are based in New York just during construction. It has created, as I mentioned, the 6,000 unionized construction jobs, 1,000 new incremental permanent jobs.

It has also caused the city to invest in infrastructure in the area. We are building 20 plus acres of newer, improved park land. We are improving the sewer system in the area. We've created new garages which are going to take traffic off of the street. And we have also built, most importantly, a new metro north commuter train station in the area, which will be very useful for the people of the area.

Mr. CANNON. And how will that affect the vibrancy of the economy in that area, do you think?

Mr. PINSKY. The largest single investment I believe in the history of The Bronx. And we're talking here about the single poorest congressional district in this country. And what we are talking about is a billion dollar private sector investment in this district, something that I bet is unprecedented in the entirety of the Nation.

Mr. CANNON. I take it The Bronx City Council approved the project as well?

Mr. PINSKY. Yes.

Mr. CANNON. Was there anything about the financing of this project that wasn't consistent with current tax policy?

Mr. PINSKY. No. It was—there was a private letter ruling sent to the IRS, and the IRS sent us back a letter saying that it was properly structured.

Mr. CANNON. Thank you. I appreciate that, Mr. Pinsky.

It seems to me there is a compelling local and city interest in this project. Mr. Brodsky, have you ever voted in favor of this project?

Mr. BRODSKY. I think the references being made, Congressman, to alienation of parkland, that is a requirement of State law.

Mr. CANNON. Alienation of what?

Mr. BRODSKY. Parkland. The new Stadium was built on an existing park used by the residents of that community.

Mr. CANNON. And I take it you voted for the alienation of the parkland?

Mr. BRODSKY. Yes, sir. And I'm going to explain the circumstances as to whether I voted for the project——

Mr. CANNON. Were there other votes that related to this project in addition to the alienation of the parkland?

Mr. BRODSKY. There were no other direct votes related to the project. But, if I may, Congressman, when we vote to alienate parkland, we explicitly do not vote on the merits of the use of the land. It is an opportunity for a local government to make decisions as long as equal parkland is replaced in the system, which is a matter of great controversy in this case.

Mr. CANNON. But you did know this was in advance of a Stadium. And I note Mr. Levine is thinking or indicating by his facial expression that there were more votes. Were there some that I'm missing here?

Mr. BRODSKY. There were budget votes that went to general appropriations. But there was not a vote yes or no on Yankee Stadium, except for the parkland vote, which was not a vote on the merits of the project.

If I had to do it again, I would vote yes in spite of the disastrous consequences for both the economy and communities affected. Because it is not the legislature's job to substitute its judgment for the judgment of the local government as long as parkland is restored in equal measure to the community that loses parkland.

Mr. CANNON. One of the issues here is the transparency of the process. Can you talk to us a moment about why you think this was not a transparent process?

Mr. BRODSKY. Yeah. It is a fair question. It was a busy process, and there were—all the meetings that Mr. Pinsky and Mr. Levine refer to did occur. They were framed by public announcements that were not true, and the vigilance that the community would have normally applied because they accepted some of these at the beginning was not what it should have been.

But many of the elements of this—the PILOTs, the assessment, the luxury suite, the ticket policy where the city chose to ignore the fact that the Yankees were dramatically increasing ticket revenues so that we were building a Stadium that the people whose tax money was going to could not afford to attend——

The bottom line of this was, Congressman, that the processes were formal and in many cases manipulated. I can go into detail with respect to the IDA process. A deviation letter was signed. An inducement letter was signed. There was no disclosure of the matters I have just raised with you in that process of any credible kind.

Mr. CANNON. Do you think The Bronx would be better off without the Stadium?

Mr. BRODSKY. No, I don't.

Mr. CANNON. Sir, you think it is actually a benefit to the area?

Mr. BRODSKY. Is a net benefit to the area, yes. It is not, however, a requirement to pour probably close to $2 billion of public money into that to rebuild it when the primary issue was could the Yankees have afforded to do this without taxpayer money. This is socialism, Congressman, of a kind which you described in your district doesn't strike me as they would easily take to. There has to be a public return. There is no public return.

Mr. CANNON. If you start talking about public returns, that is socialism. That is when an individual substitutes his judgment for what people want.

Mr. BRODSKY. No. Socialism is when the community pays for private enterprise.

Mr. CANNON. That is not. Socialism is actually a well-defined concept that starts with the—what is that—the public contract—what's——

Anyway, the short of it is that the issue here is tax policy. And tax policy gets used and brutalized, and we don't disagree on some of the points there. The question is, at what level do you allow that tax policy to take place? Have you ever been opposed to public assistance to sports activities?

Mr. BRODSKY. Yup.

Mr. CANNON. Could you talk about that a little bit?

Mr. BRODSKY. Well, my first fight with the Yankees took place 15 years ago when drunkenness at public sports facilities was a major problem. And I introduced legislation to restrict that at Yankee and Shay Stadium and was greeted with enormous hostility by Mr. Steinbrenner and others who were resisting our attempts to make the atmosphere at Yankee Stadium more family friendly.

I also became involved in matters dealing with subsidies using electricity for Madison Square Garden and for other——

Mr. CANNON. Pardon. My time is about to expire.

Did you try to amend the bill that had as a budget item this issue?

Mr. BRODSKY. No, I did not.

Mr. CANNON. Thank you.

Let me turn to Mr. Levine who did not have a chance to respond last time I had control of some time. You've heard some things that Mr. Brodsky said. You had some reaction in your seat there. You have contained yourself well. Now if you'd like to express yourself, we would love to have you respond to Mr. Brodsky and his history with sports or other issues that were raised earlier in the discussion.

Mr. LEVINE. Thank you, Congressman Cannon.

The only thing I wanted to make sure you knew, because you raised it, is that Congressman Serrano, whose district the Stadium is in, is a very strong supporter of this entire project and has been from the day and as are all of Mr. Brodsky's colleagues from The Bronx. All of them are strong supporters of the Stadium. Thank you.

Mr. CANNON. Thank you, Mr. Chairman. I recognize my time has expired and yield back.

Mr. KUCINICH. I thank the gentleman.

The Chair recognizes Mr. Cummings.

Mr. CUMMINGS. Mr. Chairman, I'm going to yield to you just for 5 minutes and a second. But, you know, there has been a lot of discussion here about all the wonderful things that the Stadium is doing, and that is nice, but that ain't the issue, not for me, anyway. What I want to make sure is that there has been integrity in the process.

This Stadium could be raining million dollar bills, as far as I'm concerned, from the sky. That is not the issue. That is nice, but that's not the issue. The issue is integrity of the process.

And so, Mr. Chairman, I'm going to yield to you for a few minutes; and then I'm going to wrap it up.

Mr. KUCINICH. I thank my colleague. And when you were out of the room, we had announced there was going to be a third round of questions. I just want you to be aware of that. Do you still yield?

Mr. CUMMINGS. Yeah.

Mr. KUCINICH. OK. I thank the gentleman.

On March 20th, Mr. Pinsky e-mailed to Mr. Sirefman at city hall and explained, "as I think you know, on the Yankees and Mets their financing structures rely on PILOTs which are limited by what real estate taxes would be which in turn are limited by the assessments of the new Stadium. Apparently, Department of Finance is close to finalizing their preliminary assessment; and I'd like to understand what it is before it is released publicly to make sure it conforms to our assumptions and that—it is in parentheses—and if it doesn't to understand what the implications are."

Mr. Pinsky then asks Mr. Sirefman if he knew, "the proper person at the Department of Finance to whom to talk about this?"

Mr. Pinsky's e-mail set a chain of events in motion. Mr. Pinsky learned from Commissioner Stark, who had been e-mailed by Mr. Sirefman, that Dara Ottley-Brown, the Assistant Commissioner, was primarily responsible for the Stadium assessment. Mr. Pinsky told Maureen Babis of his staff that he believed, "it would be helpful to have a directive from the top that we should be cooperated with."

Mr. Sirefman asked Mr. Pinsky whether he was, "getting what you need from," Department of Finance. Mr. Pinsky assured the city official that the Department of—DOF, Department of Finance had been, "helpful."

It appears that Mr. Pinsky called Ms. Ottley-Brown at least once, the afternoon of March 22nd. That same afternoon, Maurice Kelman, a Department of Finance assessor, forwarded Ms. Ottley-Brown a list of land sales selected from sales north of 100th Street in Manhattan and from Alphabet City. That evening, the estimated land assessment was increased from 26.8 million to 204 million using the new comparables compiled only hours earlier.

Now, Mr. Pinsky, do you remember speaking to Ms. Ottley-Brown on March 22nd?

Mr. PINSKY. I have a recollection of the phone call, yes.

Mr. KUCINICH. OK. And what did you speak about?

Could you pull that mic a little closer?

Mr. PINSKY. Sure. Happy to, Congressman.

What we discussed was, one, the need for us to receive this number because it was a part of the Yankee Stadium transaction; two was to ask about the timing of the issue and to explain what our timing concerns were; and, three, to make sure that we were coordinated on the announcement of the figure that was provided by Department of Finance so that in the event that it was a number that was different from what we had expected that we could react accordingly.

Mr. KUCINICH. Do you have any explanation for the fact that the estimate went up so substantially, that the land assessment was increased from 26.8 million to 204 million using new comparables compiled only hours earlier?

Mr. PINSKY. The two explanations, the two responses I would give to that are, one, I think we heard an explanation from Commissioner Stark, mainly that the Department of Finance independently looked at the numbers that were coming out of its analysis and realized that they didn't make sense; and, two, I can also say that the change had nothing to do with the conversation that we had.

Mr. KUCINICH. When you were speaking to Ms. Ottley-Brown, did you explain to her that to support the planned PILOT paid by the Yankees and the planned bond issuance that the assessment had to be revised upwards?

Mr. PINSKY. I have no recollection of the specific, but what I can tell you for certain is that in no event would I have ever told her or anyone else from the Department of Finance—let me just finish.

Mr. KUCINICH. I want to make sure I understand your response because, on one hand, you said you had no recollection——

Mr. PINSKY. You asked a very specific question about how I might have phrased something, And what I'm saying is I don't recall exactly how I phrased it.

Mr. KUCINICH. That is fine.

Mr. PINSKY. I appreciate you asking that followup question.

Mr. KUCINICH. I just want to put that on the record.

Ms. Stark, do you have any knowledge of the phone conversation between Mr. Pinsky and Ms. Ottley-Brown?

Ms. STARK. I don't have any specific knowledge, sir.

Mr. KUCINICH. Other than the e-mail you received from Mr. Sirefman, did you have any other communications with the city, IDA or other participants in the deal in this time period where the subject of the amount of tax assessment was raised or are you aware of any such communications with Ms. Ottley-Brown or any other member of your staff?

Ms. STARK. Sir, other than a communication again where we were asked to coordinate on the announcement of the number because of the upcoming City Council hearing, I know of no other conversations between my staff and Mr. Pinsky's staff.

I also would like to note that we never financed—never released the number that you cite, the $26.8 million land value. That number was not shared with anyone outside the agency. It was being reviewed internally as we were finalizing the assessment number, but there was no release of the $26.8 million land value figure. In fact, that has been, you know, responded or provided to this committee based on your request. But that was not released publicly to anyone else.

Mr. KUCINICH. Thank you.

The time reverts back to Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

I'm just listening to all of this, and this is what I want to know. You had a figure in mind, didn't you? Mr. Pinsky, you had a figure in mind?

Mr. PINSKY. To be honest, I was not really working on the financing side. I knew that there was a figure that needed—that we had projected would be the figure.

Mr. CUMMINGS. Well, that is the figure I'm talking about. The one that you projected. You had a figure in mind.

Mr. PINSKY. We absolutely——

Mr. CUMMINGS. How did you come up with that figure?

Mr. PINSKY. I believe that it was projected by the underwriters for the bonds.

Mr. CUMMINGS. OK. I see. And this is the question. Was that figure communicated to anybody in Ms. Stark's office?

Mr. PINSKY. I don't remember having communicated that.

Mr. CUMMINGS. Well, what about the conversation you had? You apparently—this e-mail situation here, there was a figure that you had in mind. You may have gotten it—wherever you got it from, you had it. And, obviously, it was not this 28—26.8 figure. And, as a matter of fact, whatever figure you had—by the way, did it match up with the final figure that you got?

Mr. PINSKY. I don't believe it was exactly the same, but it was in the same——

Mr. CUMMINGS. How close was it?

Mr. PINSKY. I don't remember. But I will say it shouldn't be strange to anyone that if we—if our underwriters were applying the Department of Finance's standard methodology to try to estimate what the value would be and then Department of Finance went and applied that same methodology and came up with a number that was relatively close, that shouldn't be all that unusual.

Mr. CUMMINGS. I understand. I hate to tell you this, but I was also on a bond council.

So I'm trying to figure out—I guess what I'm trying to get to is the chairman was asking some questions about the e-mail. And the pieces that bother me—and I believe, Ms. Stark, and I don't know—you told me how deep you go with your staff, but there were other people doing things. So I want to make sure there is nothing where somebody says, you know, we are going to come up with a 26.8 figure and then somebody from your shop says, wait a minute, that is just not going to work. It should be 10 times that. And because that—if it got to that, then that to me goes against the integrity piece that I said. Because then it sounds like there is almost a negotiation.

At least let me finish. I think, based upon everything that I have heard, that these are supposed to be independent types of situations, right?

Mr. PINSKY. Yes.

Mr. CUMMINGS. In other words, you have a figure, so you all keep that in your head, and then when you find out—and you all come up independently, based upon everything you said, Ms. Stark, and I guess you would have been very upset if you knew that there was some discussion, is that right, like the one I just described?

Ms. STARK. Yes, sir.

Mr. CUMMINGS. So, to your knowledge, nothing like that happened?

Ms. STARK. That's correct, sir.

Mr. CUMMINGS. So—let me go back to another thing. We talk about this Lower East Side. Talk about that a little bit more because I'm still confused. You've got Lower East Side, and the prices of this housing is not as expensive; is that right?

Ms. STARK. What I would say, the Lower East Side——

Mr. CUMMINGS. Not all of us are from New York.

Ms. STARK. It is a neighborhood in Manhattan outside the central business district. If you're in downtown Manhattan and you go east sort of toward the water, it is a part of town that has not done as well as other parts of central Manhattan. Again, more analogous in some respects to Harlem and the South Bronx, sort of area. So a lot of times it is an area actually that gets overlooked because it is in Manhattan and everyone thinks the Lower East Side is similar to the, you know, rest of Manhattan.

Again, I'm responding because Assemblyman Brodsky mentioned specifically the Lower East Side sales and the Manhattan Valley sales. But it is a part of Manhattan. It is called Alphabet City. It is east. It is kind of more of our bohemian sort of neighborhood. It has kind of come back in large part because of the city's investment in making sure that all of the abandonment of housing that was happening down there has been much improved.

And just again for the record, we absolutely were not told what was the number or any number. We had no idea what was being asked for here in terms of the land value.

Mr. CUMMINGS. Are you referring to a particular part of Lower East Side?

Ms. STARK. It is actually the part of Lower East Side down in the sort of Sixth Street area and east, over in that district.

Mr. CUMMINGS. Assemblyman Brodsky, you look like you're getting ready to fall over in your chair. So before you fall, why don't you tell us what is causing you to look that way?

Mr. BRODSKY. Well, you found me out, Congressman.

Mr. CUMMINGS. Oh, I can see.

Mr. BRODSKY. Look, I want to explain once for the record what we found as to why the practices the city used were inconsistent with the promises made and inconsistent with standard practice.

I will give you, first, the location of the comparables. The notion that the Lower East Side of Manhattan Valley is comparable to the area around the Stadium which you just heard referred to as the poorest community in New York is laughable. It is not. It was chosen specifically for a reason and that reason is that the values were higher.

Second of all——

Mr. CUMMINGS. The values are high?

Mr. BRODSKY. Much higher.

Second of all, if you look at that screen, you'll see that the size of the parcel, the lot size, are 4,000, 4,000, 8,000 feet, while the size of the parcel of Yankee Stadium is 742,000. It is customary practice to adjust for parcel size when doing this kind of assessment. When they did not do that—and I know that because I asked Mr. Kelman if they had done that, Ms. Stark's employee, and he said they had not. And it is also customary and required that they adjust for location. OK, you're going to take the Lower East Side, but you adjust for location.

I asked Mr. Kelman, did you adjust for location? He said, no, they did not.

It is also customary to adjust for time. That is, over time, until recently, values have been going up. So if a sale was from 2004, you adjust for time. That raises the value of the assessment.

I asked Mr. Kelman if they had adjusted for time. He said, yes, they had.

So that the evidence before our committee is that where an adjustment required by standard practice raised the assessment, they did it. Where an adjustment required by standard practice would have lowered the value, they did not do it.

And if you want any other form of smoking gun with respect to the reproduction cost and replacement cost issue with respect to the use of uncertified numbers provided by Goldman Sachs as to the actual value of the Stadium, with respect to cost categories in the assessment of the Stadium and not the land and the published statements by some assessors that they were pressured and the other appraisals done by the city, one came in at 21, one came in at 28, this one came in at 26. Bang, we are at 204.

Mr. CUMMINGS. Thank you, Mr. Chairman. I see my time is up.

Mr. KUCINICH. The gentleman's time has expired.

I feel compelled here to make an announcement so members of the committee can be aware of the limitations that this subcommittee has been working under. The city has asserted attorney/client privilege from what the staff has told us, Mr. Cummings, Mr. Cannon. And the city further has contended that the scope of attorney/client privilege in this investigation extends to communications between the city's counsel and the New York City IDA, even though the latter is not a government agency.

Now the result of this broad assertion of privilege is that, by city estimates, the city will claim attorney/client privilege on and not produce about 70 percent of the remaining responsive documents. The documents withheld for privilege are the categories of documents that would most likely reveal if any improper inflation of the assessment occurred and who directed or pushed for the inflation.

I just want to make that a matter of record so we know how we are proceeding here.

I want to at this time start my—the last round of questions and begin with questions again of Ms. Stark. I want to ask you about the set of seemingly mutually contradictory explanations provided in your written testimony about why the Department of Finance increased the land value from $26.8 million to $204 million on March 22, 2006.

First, you contend, Ms. Stark, that the $26.8 million assessment was incorrect because it was based on the value of the vacant parcel but that instead it was proper to value the land differently because the Department of Finance values developed property differently, typically at 15 and 25 percent of the overall property value. But this begs a number of questions.

The Department of Finance has repeatedly indicated to the IRS and bondholders that it is following the cost approach for the Stadium assessment. Pursuant to the cost approach, is it appropriate to value property as a percentage of overall property value or does it instead require that land value be derived from comparable sales?

Ms. STARK. Sir, I just want to say we did not certify anything to the IRS or the bondholders. Finance did not make any such assertions. The IRS ruling letter was made and requested by the New York City IDA and Economic Development Corp.

Mr. KUCINICH. You're saying that no one in Department of Finance made any representations to the IRS in any way or to bondholders in any way, shape or form relative to the conduct of your office?

Ms. STARK. Finance was not responsible for sending anything to the IRS.

Mr. KUCINICH. Didn't you make it to the IDA and the IDA accepted it?

Ms. STARK. Sorry. We valued the property and then did send to the IDA our estimated value of the property. However, we did not make any assertions to the IRS or to the bondholder, but we did let the IDA know what we thought and what we estimated the value of the property to be as of 2006. That is what we did.

Second question that you asked was whether or not we valued the property using standard appraisal practices which is to value the land separate from the cost number. I was asked whether or not—how do we validate that number. Again, we wanted to make sure we had checks and balances in place to make sure that land value as a percent of the overall value made sense and was consistent with how we do other properties. So in my testimony I said, to you for other properties valued using the income as well as the sales approach, the way that we do that is we value the property overall and then we impugn a land value that is between 15 and 25 percent.

So for this value, to ensure that we were doing this again consistent with how we would other properties, we looked at sales of land that were based on what had been enhanced and/or improved by government investment. Separate and apart sales analysis, it is the one that you have up on the screen. That is what we did.

And then, after that, we did a check to make sure that it was falling in line with how we would do other properties, which is to have a land to overall building value of between 15 and 25 percent. So it was a check on that.

Mr. KUCINICH. Is this what you call a cost approach, permitting the percentage?

Ms. STARK. No. Actually, sir, because we did a separate vacant land analysis. You actually have it up on the screen.

I would also beg to differ with Mr. Brodsky saying that we didn't adjust on the lower Manhattan prices. The lower Manhattan price on Alphabet City was $383 a foot, and we used $275 a foot. So, in fact, we took the median price of those sales and arrived at a value of those prices.

Mr. KUCINICH. Let me ask you this. As a matter of logic, how can you even value the land as a percentage of the overall property value whereas here you couldn't possibly know the overall property value until you calculate the value of the land?

Ms. STARK. Sir, we knew what the building value was. Again, if you read all of the appraisal literature, you're in a jurisdiction that revalues every year. You're taking a percentage and looking at what is the appropriate percentage, twofold. One is the total land value to the building value. That is sort of a ratio that is looked at and then to the overall value.

Mr. KUCINICH. Here's what I'm trying to understand. How does this percentage method, even if it is allowable under the cost approach and feasible without first knowing the total property value, score with the fact that for both the initial and final assessment the Department of Finance actually valued the land using comparable sales and not a percentage method and, in fact, there is absolutely no indication from the documents produced to the subcommittee that the percentage method was an appropriate methodology or that it was, in fact, used until we received your testimony yesterday.

Ms. STARK. Sir, I wish the comp on the property tax were not as complicated as it is. I spent an entire lifetime actually working on trying to make sure people understand it. What I did say to you, chairman, is we arrived at the overall land value using a comparable sale approach and then, as a test of validation of that comparable sales approach, what you do is check it as a percent of the overall building value and the overall total value. We did not use that approach to value the property. We used it to validate the resulting land value that we got from using comparable sales.

Mr. KUCINICH. The second explanation that you provided was that the $26.8 million value was wrong because the Department of Finance used vacant land rather than land that had benefited from infrastructure improvements and investments. Now, what infrastructure improvements are you referring to here? And can you provide me an example of when the Department of Finance has increased an assessment 600 percent because of infrastructure improvements? And if a sixfold increase in the assessment for infrastructure improvements is justified, why is commercial property in the immediate vicinity of the new Stadium assessed at a much lower than even the $32.50 rate at the initial assessment? For example, you have this nearby retail shopping plaza assessed at $9 per square foot.

Ms. STARK. Sure, sir. Again, for those other properties we are not valuing them based on the cost approach. The cost approach is used for specialty properties like stadiums, like utility property and the like. We are not using the same approach. We are using an income approach.

And when you take the overall value of our income approach or our comparable sales approach that we use for small houses, the way that we come up with the land value is by taking a percent. In those instances, we take a percent of the overall value and attribute that to the land.

Again, I really think it is an important thing for you to be clear on. The cost approach is used for specialty properties, and that is the approach that we use in those instances. The other nearby retail properties are valued using an income approach, and then the land approach—the land value is imputed. So it is based on the overall cost.

Again, the $26.8 million value used sales from every single other borough but was not specific to vacant land sales that had been enhanced by government improvements and investments. And the ones that I would cite that you talk about is, if you're in Harlem, it was the fact that the city did a lot of work to get there to be a new supermarket there, in addition took a lot of abandoned housing, put it in one of our really successful programs for renovating housing, made the city investment to build back up the neighborhood. And we were looking at vacant land sales that had benefited from that government improvement and enhancement.

Mr. KUCINICH. You mentioned Harlem. I want to pick up on that. You state that the new comparables were more appropriate because they reflected land in similar neighborhoods, including Harlem, which are less than a half a mile away and where the land value had been enhanced because of a significant government investment. This is what you just told us.

Well, first, why does distance have anything to do with the appropriateness of comparables and the value of properties? One of the sad ironies of modern cities is that poor neighborhoods abut wealthy ones. In fact, this is perhaps most true in New York. For example, while throughout the 1990's the stretch of 110th Street and Lexington in Manhattan was notorious as an open air drug market, only about a half mile downtown you couldn't buy a loaf of bread for less than $5 in fancy bakeries in the upper east side.

Moreover, if you're talking about the comparables used were far from the South Bronx in both distances and stages of economic development such as Manhattan Valley, the site of the Columbia University expansion, a new, trendy Alphabet City, do you really expect me or this subcommittee to believe with these shifting explanations that your staff use of these comparables was anything other than cherry picking? And when did you become aware of the May 2006, $21 million appraisal of the Stadium site and the July 2006, $40 million lease appraisal?

Your response, and then we will go to Mr. Cannon.

Ms. STARK. Two things. One is that everything in real estate is location, location, location, sir; and I have never before heard it said that the proximity to the Stadium site or to any site is irrelevant in valuing of property. That is the first I have actually heard that.

As a matter of fact, if you and I were going to buy a house, we would certainly look at sales of properties nearby; and the closer they are to your existing house, the more likely it is that you believe that sales price tells you what nearby properties would sell for.

So Harlem, yes, absolutely, there has been a boom in Harlem as a result of government investment and enhancement in the Harlem neighborhood. So the sales in less than a half a mile away from the Stadium site are absolutely appropriate to use.

The second thing that I think you just closed with—sir, I'm sorry. I forgot your second question or your last question, I should say.

Mr. KUCINICH. When did you become aware of the May 2006, appraisal?

Ms. STARK. Right. As a matter of fact, we knew nothing about those other appraisals until Assembly Member Brodsky released his report. Those appraisals were neither relevant to us in terms of valuing the property as no appraisal would be—we knew nothing about any other appraisals and actually would defer to my colleague to explain what those appraisals were for.

My staff did not rely on them. Again, we are independent. They were irrelevant to us in terms of how they arrived at value. We did not learn of them until in fact they were brought to our attention by the assembly member.

Thank you.

Mr. KUCINICH. Thank you very much. My time has expired.

The Chair recognizes Mr. Cannon for 10 minutes of questioning.

Mr. CANNON. Thank you.

I've been paying a great deal of attention to this. Let me just say, Ms. Stark, you've been under lot of pressure and asked some pretty intense questions. I haven't seen any shifting in your position at all. I think you have explained the questions, and they have been asked well, and I think this is relatively straightforward, and I don't know that there is anything more that I can ask. But I think you've been highly consistent.

Now, there may be disagreement with Mr. Brodsky, but your position has been very direct or very consistent. And this is a big project. In fact, Mr. Levine, how much money are the Yankees spending on this project?

Mr. LEVINE. So far, it has been well—through our PILOT payments, well over a billion dollars. When we get done, it will probably be close to, you know, $1.3, $1.4 billion.

Mr. CANNON. That is a big number.

Mr. LEVINE. It sure is. And it will be the largest investment in a baseball stadium and a very unusual—most baseball stadiums are done through direct taxpayer funding.

Mr. CANNON. I would like to just let the Chair know, by the way, that there is no attorney/client privilege, as the Chair said earlier; and I am supportive of the Chair's view that documents should be had when a committee of Congress wants those documents.

Mr. KUCINICH. If the gentleman will yield, the staff has notified us that it was the city asserting attorney/client privilege. So this is a discussion now between attorneys for staff and the city.

Mr. CANNON. Let me remind the staff, there ain't no attorney/client privilege as it relates to Congress. That is a common law privilege. It relates to the courts and not to us.

Mr. Pinsky, you at one point, I think, were cutoff. You wanted to explain—you were asked about a recollection of words. You didn't have an exact recollection, but you recollect the context, I believe. And I wondered if you wanted to go back and talk about the context where you were not allowed to earlier.

Mr. PINSKY. Thank you very much, Congressman.

The question that was asked was, was there any sort of negotiation between EDC, IDA and the Department of Finance; and I just wanted to say categorically there absolutely was not. We were not aware of the $26.8 million number or any other number until the numbers were presented to us as final.

And just as evidence of the fact that we have not in fact been, as has been alleged, manipulating the numbers, the figure that was derived and was sent to the IRS for the assessment of the property was $204 million. After that number was provided, when the Department of Finance went back and actually assessed the property once the project—the deal was closed, it was noticed that there had been an error in the calculation, that they had been looking at the entirety of the tax law. Whereas in the process of the finalizing the project, a certain portion of that had been split off into a separate tax law for a garage. And, in fact, the assessment on the land was lowered from 204 to $175 million. Nobody objected to that. That is the number that is now on the books, and that is the number that we are relying on and using for the calculations of the PILOT.

Mr. CANNON. Thank you.

This hearing seems to be about perfidy in the land valuation process. Was there an inappropriately predetermined value?

This is a complicated project, as I see it. Lots of different views about what we should do with these kinds of things. No impropriety has been suggested in any other way here.

And now we've been dealing with this quite complicated process of valuation. You have a piece of property. You can buy it on the market for X. You have a building on it which brings huge value to the area. I don't think anybody has disagreed with that. And that makes the property different in nature.

And let me just say that I think you all have responded to these questions. They are complicated questions. You have been very consistent.

Again, this hearing is not about whether or not we should have a Stadium in The Bronx. It is not about the poorest area in the country. If this hearing is about whether there is perfidy, I think the laundry has been aired entirely. The answers have been very direct, and I appreciate that.

And would anyone like to make final comments on anything? Otherwise, I will yield back, Mr. Chairman.

Mr. BRODSKY. Congressman, only that the private payments that you heard Mr. Levine refer to of $1.3 billion are the taxes they owe. It is as though you built an extension on your house and said to the local taxing authority, send my tax payments to the bank to pay off the mortgage. The notion that this is being paid for by the Yankees is——

Mr. CANNON. Let me clarify. The Yankees are putting money on the table, and their tax bill is going to go down in the future; is that right?

Mr. BRODSKY. No, the Yankees are taking their tax payment and sending it to pay off the mortgage.

Mr. CANNON. Mr. Levine, are the Yankees putting money into this deal?

Mr. LEVINE. The way it works—Mr. Brodsky, he really knows better, and he continues to mislead both you and everybody. We don't pay taxes now. We are a tenant of the city of New York. We don't pay taxes at the old Yankee Stadium.

As I said before, there would not have been a new Stadium unless this mechanism was put into place. A classic, as intended, to do something that the city of New York wanted to do. So this new facility is going to be owned not by the Yankees at all. It is going to be owned by an entity in effect owned by the city of New York, and we are going to be a tenant there.

And without there being a Stadium—remember, we don't pay taxes now—the money that we'll pay this entity will go to service the bonds. So as a result, no money is coming out of the Treasury of the city of New York that could have gone to schools, could have gone to hospitals or could have gone anywhere else. It is all going, in effect, to the landlord in words to pay the bonds. The money is coming, in effect, through our PILOT payments from the Yankees.

And Mr. Pinsky can add or disagree with me, but I don't think he will.

Mr. CANNON. Let me just say that, in the process, the city is shedding some liability as the current landlord that you're the tenant to, right?

Mr. LEVINE. Under the present system, the city is responsible for the maintenance and repair of Yankee Stadium. That is a lot of money and will continue to grow as the Stadium goes into disrepair. Under the new Stadium, that entire amount will become the responsibility of the New York Yankees.

Mr. CANNON. Fundamentally, I don't think taxes are owed. We derive really interesting ways of rending cash out of the body of the public. But to look at something as ripping off tax just seems to me to be wrong.

I appreciate the fact that you guys came forward. I'm anxious to get it done and get up there and watch a game.

With that, let me yield back, Mr. Chairman.

Mr. KUCINICH. I thank the gentleman.

The Chair recognizes Mr. Cummings for 10 minutes.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I just again go into the integrity of the process. Where were you all going to go, Mr. Levine? Where were you going to go? Were you coming to Baltimore or what? We have one team.

Mr. LEVINE. And you have a great team. You have a great team.

Mr. CANNON. If the gentleman will yield, we don't have a professional baseball—we have a team but not a top-tier team. We'd love to have you in Salt Lake City if you decide that this deal is not going to work out.

Mr. LEVINE. It has been no secret for many, many years before this was done that the New York Yankees said if they didn't have a new Stadium, they would have to look elsewhere. And, believe me, there were no shortage of suitors. We think of ourselves as a paradigm in Major League Baseball and in professional sports. But we said over and over again we wanted to go the extra mile to stay in The Bronx, and we are happy we did. But it has been no secret. Go back and look at the all the stories. There was no lack of suitors for the New York Yankees.

Mr. CUMMINGS. I was really kind of kidding you, because I assumed that.

But, Mr. Pinsky, on a more serious note, as you're aware, the Federal law requires that a municipality seeking Federal taxes and treatment for bonds issued—a bond—for bonds issued projects serving a private purpose like a sports stadium finance the bonds with primarily public funds, which the Treasury Department interprets as meaning the bonds must be financed with generally applicable taxes. However, Mayor Bloomberg and you seem to want it both ways. You tell the city and the State audiences who don't want to hear that their tax dollars pay Carl Pavano's salary, that the Stadium PILOTs are not, in fact, foregone tax revenues but are instead private payments as we just heard. Then you turn around and tell the Federal Government that PILOTs are tax revenues and, thus, public money.

For example, Mayor Bloomberg defended the Mets and Yankee Stadium projects by contrasting tax-backed bonds with PILOT-backed bonds, stating that, "others build stadiums with public money. We built these stadiums with private money, and the State and the city put in a relatively small amount for infrastructure."

Similarly, at Mr. Brodsky's State assembly hearing, you testified that, "the entirety of each Stadium is being financed entirely by payments from the teams themselves."

You further explain, "the specific structure involved charging the Yankees a payment in lieu of taxes [PILOT], and then using the PILOT stream to back the bonds to pay for the Stadium." Though at the time some mistakenly characterized this as a diversion of city tax revenue to a private project. The fact is that because the Stadium had always existed on city owned land, and I think you just talked about this, Mr. Levine, it never had been subject to real estate taxes. The structure therefore represented no net loss of expected revenue to the city because both before and after the project the real estate taxes received by the city's general fund from the Stadium remain unchanged.

I have to commend you. Your elegant argument is precisely the one that we have been trying in vain to get the Treasury Department to accept. PILOTs in this context aren't taxes because they don't replace taxes. Economically, they function as private payments.

Of course, the IDA didn't display such common sense when it requested a tax exemption from the IRS. Instead, you plainly stated, "the city has determined to use its property taxes—in this case, PILOT—to finance the construction and operation of the Stadium."

Mr. Pinsky, which is it? Are the PILOT payments private or public money? Are they a private payment and therefore not generally applicable tax—generally applicable tax? Or are they a tax payment and therefore not the Yankees' money but the city's?

Mr. PINSKY. They are a payment in lieu of generally applicable taxes, which is exactly what we explained to the IRS. But what made this project particularly attractive to the city of New York was the fact that, currently, the city of New York receives no real estate taxes from the Yankees. In this project, what we were able to do was impose a tax on the Yankees which is a generally applicable tax and use that money to finance the Stadium. The net effect of that is that the city of New York ended up in the same place it had been previously, which is that it wasn't receiving into its general fund the real estate taxes. But the Yankees were in a materially less profitable position in that they were now paying taxes and that those taxes are payments in lieu of taxes, were financing the Stadium.

Mr. CUMMINGS. In the final regulations, the Treasury Department tightened the use of PILOTs to finance taxes and bonds. Among other changes, the regulations now prohibit a fixed PILOT and require that the PILOT float at a fixed percentage of the annual tax that they ostensibly replaced. Do you agree that if these regulations were applied to the Yankees' project, it could not have been structured in the way that it was eventually was?

Mr. PINSKY. It could not have had a fixed PILOT, that's correct. But that doesn't necessarily mean that the project could have happened. It would have had to have been structured differently.

The important thing to know, though, about the IRS regulations is that the IRS isn't saying that you can't use PILOTs; and it is also not even saying that you can't use fixed taxes. And the reason why the city of New York and the State of New York objected to the proposed regulation is because in certain States you're actually able to fix the taxes, which would mean that you could do the exact same structure even under the new IRS regulations in States, as I understand it, like California and Minnesota; and because of the way that the New York State and city Tax Codes were, you can't do it because we can only fix PILOT payments.

That is the only change. The IRS was not saying that you can't use PILOT-backed bonds. It is not saying that you can't use PILOT-backed bonds to finance economic development projects, and it is not saying that you can't use PILOT-backed bonds to finance stadia.

Mr. CUMMINGS. So you are saying that if—let me make sure I am sure what you are saying. So, if the Treasury Department did not grandfather the Yankee Stadium project and exempt them from the new PILOT rule, what are you saying that they had not done?

Mr. PINSKY. What I am saying is that the only option for the city would have been to impose a floating PILOT rather than a fixed PILOT.

And just to clarify one thing. The regulation that was imposed and that was issued, in all due respect to Randy, although it helps potentially the Yankees and the Mets, was most important to us because of the impact that the new regulation would have had on the Atlantic Yards project in Brooklyn, which is a major economic development initiative of the city and the State; the issuance will be through the State, not the city or the IDA, but a major economic initiative that has not gotten underway.

Mr. CUMMINGS. Mr. Chairman, I am going to yield back the balance of my time.

Mr. KUCINICH. I think we have covered most of the questions that this subcommittee has for the day.

I would like to state, once again, that it has been disappointing that the city has not produced 70 percent of the remaining responsive documents.

This subcommittee is not in the business of "got you." We have provided time for—reasonable time for witnesses to be able to respond, to be able to tell their story, not to try to trap you in half answers, but just to keep moving on so we get to what is happening here.

It would be more helpful if the city was ready to be more forthcoming than it has. And as Mr. Cannon points out, the attorney-client privilege, which has been claimed, is really not relevant to a congressional investigative committee, which is why you can expect that we are going to proceed with the inquiry.

I do want to say that, on behalf of the subcommittee, that we are grateful for the appearance of each and every witness here. And I say this with great respect for the institution of the New York Yankees and for the work that Mr. Pinsky does, as well as for Ms. Stark, who I think was forthcoming today in her answers, and we appreciate that. And for Assemblyman Brodsky, who certainly is working in public service in trying to have the opportunity to look at this in the many different ways it can be presented. But we are going to continue our work here, and make no mistake about that.

This is the Domestic Policy Subcommittee of the Oversight and Government Reform Committee. Our hearing today has been "Gaming the Tax Code, the New York Yankees and the city of New York Respond to Questions About the New Yankee Stadium." And, again, the subcommittee will continue its work.

Mr. Cannon, I want to thank you for your presence here and for your work in the U.S. Congress. Mr. Cummings, thank you very much for your presence here today.

This committee stands adjourned.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

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