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STATE OF NEW YORK
ALBANY

CHAIRMAN
Committee on
Corporations, Authorities
and Commissions

Testimony of Assemblyman Richard Brodsky

Mr. Chairman and Members of the Sub-Committee:

I am pleased to be able to transmit to you a copy of the Interim Report into Public Financial Assistance for the New Yankee Stadium, and to testify on the federal issues involved in the Stadium project.

The Report is based on previously secret and undisclosed legal documents, sworn testimony before Committees of the Legislature, and direct discussion with involved public and private persons. It sets forth the actions of various public and private parties as the New York Yankees and public officials sought and achieved a package of public benefits that total about one billion dollars. The Report concludes that, in spite of public claims by elected officials and the Yankees, there are almost no new permanent jobs, private investment, or local economic impact resulting from the taxpayer subsidies, the bonds were used for private benefit¹, and that the public is paying for the cost of construction of the new Stadium.² The Report further finds that the massive ticket prices announced by the Yankees, which will make Yankee games largely unaffordable to the very taxpayers who are paying for it, could have been mitigated if City officials had made affordable ticket prices a condition of the massive subsidies. The City refused to do so, instead, the using bond proceeds to acquire a luxury suite for its own use. City officials also manipulated state laws requiring that there be a measurable public economic benefit in exchange for taxpayer subsidies of private persons, state laws guaranteeing the integrity of our park system, and state and city laws that require the fair, professional and

¹ The City admits that the Yankee bonds are for a private benefit, saying that "...the transaction results in private business use of the proceeds of the Tax Exempt Bonds." (February 1, 2006 letter from Mitchell Rapaport and Bruce Serchuk (IRS) to the IRS. Page 47) The IRS acknowledged this as well, stating that "...all of the Stadium is reasonably expected to be used for a Private Business Use." (Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of The IRS Code of 1986. Page 15, Section d.2)

² "The City has determined to use its property taxes (in this case PILOTs) to finance the construction and operation...of the Stadium." (February 1, 2006 letter from Mitchell Rapaport and Bruce Serchuk (Nixon Peabody) to IRS. "NYCIDA – Request for Private Letter Ruling Under Section 141 of the Internal Revenue Code." Page 47.)

equal assessment of taxpayer property. I would be glad to cite the specific legal documents that are the evidence for these findings.

These serious failures of law and public policy are generally matters of state concern. I'm glad to further address them, and they do have some relevance to the federal issues before the Sub-Committee. But I now, in somewhat more detail, turn to issues of direct federal concern.

There is a growing national consensus that public financing of private sports facilities serves no useful public interest. The evidence we uncovered with respect to the Stadium deal is that there is little, if any, economic benefit to the public resulting from taxpayer subsidies. At a time when we are unable to fund our most basic infrastructure needs, the subsidization of sports facilities is not in the public interest and should cease. I urge the Congress, the Administration, and federal agencies to adopt this important reform.

There is a second concern about the proposed IRS regulation and its' impact on public financing of sports facilities. One caveat needs to be noted. As a citizen and representative of the State of New York, I'm keenly aware that the policies of the federal government result in my state receiving over \$80 billion dollars less than our taxpayers send to Washington, while most other states receive more than they send. The only reason for the Stadium deal that stands scrutiny is that any arrangement that returns tax dollars to New York remedies the unfairness of the current system. The fact that these public dollars flow to the Yankees, a private, hugely successful and wealthy corporation not located in New York is a disturbing fact, but I must in fairness note the interests of my state in a fairer distribution of federal money. Notwithstanding these observations, the proposed IRS regulation should be adopted because it limits the transfer of public dollars into private pockets and because it begins to deal with the problem of use of PILOTs (Payments In Lieu Of Taxes) to create massive new public debt outside of existing debt restrictions. Public debt should be issued by public officials, with public scrutiny and control. IDAs and other "off-book" entities have created an explosion of public debt paid for by taxpayers with little legal foundation, in deals like the Stadium deal all across New York and elsewhere. The IRS and the Congress need to stop this.

The third federal concern has to do with specific evidence uncovered in our investigation with respect to the Private Letter Ruling issued by the IRS in 2006 permitting the initial bonds to be declared tax-exempt. The IRS repeatedly questioned the City to assure that the "Private Payment" standard would be satisfied. That standard requires that a PILOT payment used to repay tax-exempt bonds be no greater than the property tax payment it replaces. An artificially high PILOT is a device to get tax-exempt financing that the IRS will not permit.

The City swore to the IRS that the PILOT would not exceed the property tax bill otherwise owed, and that the assessment of the property would be the normal and customary assessment that any other taxpayer would receive.³

The evidence uncovered in our investigation shows that these promises were not kept. The New York City Department of Finance, at the request of City and NYCIDA officials, did an assessment that significantly inflated the value of the land and the Stadium itself. With respect to the value of the underlying land it assessed the value of the land at \$204 million, or \$275 per square foot and the Stadium facility at \$1.025 billion, for a total assessed value of \$1.229 billion. It used a number of questionable, unusual, and indefensible practices to do so.

First, it compared the value of the Stadium land to parcels in Manhattan, where land values are much higher than in the Bronx, and contrary to written assertions used Manhattan land from as far away as the Lower East Side where land values are astronomical. This substantially inflated the value of the Stadium land.

Second, although it correctly adjusted the Stadium land value upward because of the passage of time, it did not adjust the value down because of disparate parcel size, and parcel location. These are all standard adjustments, but the City used only the adjustment that increased value and did not use the adjustments that decrease value. This substantially inflated the value of the Stadium land.

Third, the City calculated the assessed value for the land under the Stadium based on acreage of 17 acres. The actual acreage is 14.5 acres. A correction was not done for over one year, and the IRS was not notified of the change. This substantially inflated the value of the Stadium land.

Fourth, the City accepted unverified numbers for the cost of the Stadium itself, provided to it by the Yankees investment adviser. It is standard practice to use only “certified” cost estimates provided by certified professionals, usually engineers. The use of uncertified numbers is unusual and inconsistent with the promise to treat the Yankees as any other taxpayer.

Fifth, the City accepted categories of Stadium cost not usually included in assessed value calculations. These included furnishing and fixtures not normally allowed, and apparently duplicated some categories of cost such as “Contingency” and “Project Escalation.” If these prove to be duplicate categories it will have resulted in an inflated assessment.

³ “...the City...will use the same assessment method for the Stadium is (*sic*) used for assessing properties of the same class within the City...” (July 3, 2006 letter from Mitchell Rapaport and Bruce Serchuk (Nixon Peabody LLP) to Rebecca Harrigal (IRS). Page 2)

Sixth, a review of land values in the area surrounding Yankee Stadium shows a per square foot value a tiny fraction of the value given the land by the City. These other parcels, which were ostensibly valued by the City using normal assessment procedures, include residential, parkland, commercial, retail and other public and private uses. Their assessed value ranges from \$9 to \$60 per square foot, with most parcels in the \$15-\$30 range. This contrasts with the \$275 per square foot value given to the land beneath the Stadium.

Seventh, as part of the deal the City did two additional assessments of the land beneath the Stadium that valued the land at a small fraction of the value given to the IRS, and kept these appraisals secret.

The second appraisal⁴ was done because the National Park Service and the laws of New York require that the parkland taken to build the new Stadium be replaced by parkland of equal value. If the City had told the NPS or the State that it had valued the Stadium land at \$204 million it would have to find \$204 million to replace it. It apparently did not want to spend that kind of money, so it contracted for a different appraisal. Properly using comparable parcels in the Bronx, that appraisal showed the land to be worth \$21-28 million, and that number was given to the NPS and the State as the value of replacement parkland. The IRS was not told of second assessment of \$21 million, and the NPS and the State were not told of the City assessment of \$204 million.

The third appraisal⁵ was done as a consequence of a state law requiring appraisal of property disposed of without public bidding. That appraisal, using slightly different methods showed the land to be worth \$40 million. The NPS, the state, and the IRS were never informed of the existence of this appraisal.

These seven factors, taken separately or together, are powerful evidence that the assessed value of Yankee Stadium was artificially inflated by at least one-third, that this inflation was, contrary to sworn promise by the City to the IRS, the result of assessment actions that are not those applied to other taxpayers.

We were disturbed by the evidence of these assessment practices, and their ramifications for the existing tax-exemption, any future tax exemptions, the IRS proposed regulation, and the broader concern that must be felt by any taxpayer viewing the enormous disparities in value that appear embedded in the City's assessment roll. The Committee is continuing its investigation of these actions. Whether or not they are of interest to the IRS, the Congress, bondholders or other investigative bodies is not yet apparent.

Let me conclude with a final observation. There is a fundamental flaw in the decision by the Congress to allow for tax-exemptions that benefit private persons. The most obvious

⁴ The "Appraisal Report of Vacant Land (Macombs Dam Park)" done for NYC Department of Citiwide Administrative Services by Patjo Appraisal Services, Inc. find the land value to be \$21 million.

⁵ The "Appraisal of Future Yankee Stadium Site" done for NYCEDC by Grubb & Ellis Consulting Services Company, effective July 1, 2006, finds the land value to be \$40 million.

consequence of this policy is to create an economic development model that creates little new economic activity on a national basis. You have created a system that pits one state against another, that is marked by the elegant blackmail of private interests who receive subsidies and tax breaks not because of new investment, but because they threaten to leave one state for another. From a national perspective, it does the country no good when the Governor of New York gleefully announces that as a result of tax-exempt bonds he has persuaded an employer to move from Pennsylvania. The federal system was not envisioned as a vehicle for cutthroat competition for tax preferences between and among states and large economic interests. The Congress should stop the madness and restore fairness and equity to our tax system by denying tax-exemptions whose purpose is to move economic activity from one state to another.

Thank you for the opportunity to present the Interim Report and these other matters to the Sub-Committee.

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“THE HOUSE THAT YOU BUILT”

An Interim Report Into The Decision By New York City
To Subsidize the New Yankee Stadium

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I. Introduction

The Committee on Corporations, Commissions and Authorities (“the Committee”) has conducted a series of investigations into the activities of various State entities under its jurisdiction. This has included investigations of the Metropolitan Transportation Authority, the Thruway Authority, the Canal Corporation, the Long Island Power Authority, the Power Authority of the State of New York, the Hudson River Park Trust, the Empire State Development Corporation, Roosevelt Island Operating Corporation, local Development Agencies and Local Development Corporations, and others.

These investigations have uncovered a pattern of inappropriate and secretive lobbying by highly paid and politically connected procurement lobbyists, inappropriate hiring of politically connected former government officials, disposition of public property for less than its true value, interference with investigations of such behavior, failure to provide accurate and complete information to the public about authority activities and finances, and unfair and wrong decisions by authority personnel.

The Committee’s investigations resulted in the first comprehensive statutory reform of public authorities, the Public Authorities Accountability Act of 2005. It enacted rules to eliminate conflict of interest in authorities, provide oversight and accountability over the process governing the sale of property by public authorities and created a statewide Inspector General to investigate waste, fraud and abuse.⁶

Although the Public Authorities Accountability Act created unprecedented oversight over authorities throughout the State, more needs to be done. The Committee has introduced legislation enacting further reforms in order to bring these massive bureaucracies back under control of democratic institutions; limit abuse and fraud; limit the issuance of public debt; and provide independent, outside oversight of authority actions.

As will be described in greater detail below, this Report sets forth facts surrounding the deal for the new Yankees Stadium, including but not limited to the economic and other incentives provided by New York City (“City”) and the New York City Industrial Development Agency (“NYCIDA”). The Committee has jurisdiction over public authorities across New York and the City’s use of the NYCIDA—itsself a public authority—to drive the Stadium project raises serious questions as additional legislative reforms are advanced.

Working with the Committees on Local Governments, Cities, and Ways and Means, the Committee based this report on review of previously secret and undisclosed documents obtained by the Committee, sworn testimony taken at a public hearing, review of other public documents, meetings and discussions with City officials and other private and public parties; and numerous conversations with Federal, State, City and private persons. This is an Interim Report. As is its custom, the Committee will issue a Final Report after continuing its investigations and considering the views of interested parties.

⁶ Chapter 766 of the Laws of 2005.

II. Background and Chronology

A. The Announcement

In June 2005, shortly after the Mayor's proposal for a stadium on the Westside of Manhattan fell through, Mayor Bloomberg, Governor Pataki and other elected officials, and the New York Yankees announced an agreement to build a new stadium for the Yankees adjacent to the existing stadium.⁷

Two fundamental justifications were offered support of the subsidies included in the Yankee deal.

First, it was alleged that the financial assistance provided to the Yankees would create enormous economic benefit, largely by creating thousands of new jobs in the Bronx. Job creation was repeatedly described as an essential benefit to the public resulting from the public subsidies.

As Governor Pataki said in support of this claim:

We're building a great new attraction in the Bronx and creating thousands of jobs, developing acres of new parkland and building a new multimodal transportation station that will improve the air quality and the overall environment for the area.⁸

Mayor Bloomberg agreed, stating:

The new Yankee Stadium is an exciting public-private partnership that will revitalize the South Bronx with thousands of jobs....⁹ The City's press release claimed that "The project is expected to create nearly 6,500 construction jobs and result in about 1,000 permanent jobs."¹⁰

Empire State Development Chairman Charles Gargano also focused on job creation, saying:

This smart investment will create thousands of temporary and permanent jobs and yield hundreds of millions of dollars in tax revenue in the coming years.¹¹

The assertion that significant numbers of new permanent jobs would be created turned out to be inaccurate.

Second, the City has repeatedly asserted that the Yankees would themselves pay for the cost of construction, limiting the public subsidies to infrastructure, some direct funding, and the

⁷ Announcements were also made for agreements for new stadia for the Mets, and the soon-to-be Brooklyn.

⁸ August 16, 2006 NYC press release: "Mayor Bloomberg, Governor Pataki and New York Yankees Break Ground on New \$800 Million Stadium"

⁹ August 16, 2006 NYC press release, Ibid.

¹⁰ August 16, 2006 NYC press release, Ibid.

¹¹ January 18, 2006 ESDC press release: "Chairman Gargano Announces ESDC Board Approval for New Yankee and Shea Stadium's Infrastructure Plans."

tax-exempt financing provided by the City, State and Federal governments. NYCIDA President Seth Pinsky stated:

... the Yankees are paying entirely for that billion dollar stadium¹²...the entirety of the situation is that you have a private company that was willing to put a billion dollars into one of the poorest congressional districts in the country...¹³

According to a press release issued by the City:

Funding for the \$800 million in construction costs is being provided fully by the Yankees, who will also be responsible for operating and maintaining the new facility... The Yankees will be responsible for paying the entire cost of construction including any cost overruns. The City is contributing \$160 million to replace parkland and make necessary infrastructure improvements, and the State is contributing \$70 million for the construction of new parking facilities and \$4.7 million to a capital reserve fund for the new stadium. In addition, last month the New York City Industrial Development Agency (NYCIDA) approved the issuance of about \$920 million in tax-exempt bonds and \$25 million in taxable bonds, both to be repaid by the Yankees.¹⁴

The claims that the Yankees are themselves paying for the Stadium were inaccurate.

B. The Deal

In the months that followed the details of the Stadium deal were negotiated and finalized. At the direction of the Mayor, the governmental efforts were spearheaded by the New York City Industrial Development Agency, an authority created by state legislation to promote economic activity and job creation.

Other active participants were Empire State Development Corporation (ESDC), the Mayor's Office, the Governor's Office, the National Park Service, the State Department of Parks, the New York City Office of Economic Development, the New York City Department of Finance (NYCDOF), the Internal Revenue Service (IRS), numerous lawyers retained by the parties, and others.

The final agreements created the following chain of ownership, authority, and benefit. The City would own the site of the new Yankee Stadium, and would lease it to the NYCIDA. The NYCIDA would directly own the Stadium itself. The NYCIDA would then lease both to a "special purpose, bankruptcy remote entity created as an affiliate of the Yankees,"¹⁵ which would in turn lease it to the Yankees. The Yankees would not pay property taxes that they were otherwise legally obligated to pay. Instead the Yankees would

¹² July 2, 2008 public hearing: The Request for Increased Public Financing for Construction of a New Yankee Stadium in New York City. Page 65,

¹³ July 2, 2008 public hearing. Ibid. Page 34.

¹⁴ August 16, 2006 NYC press release: "Mayor Bloomberg, Governor Pataki and New York Yankees Break Ground on New \$800 Million Stadium"

¹⁵ February 1, 2006 Nixon Peabody letter to the IRS. Page 4.

pay to the NYCIDA a “PILOT” (Payment In Lieu Of Taxes) which would use these quasi-tax payments to pay off tax-exempt bonds¹⁶ it would issue, originally said to be in the amount of \$920 million¹⁷, for a term of 30 years. In other words, the cost of the Stadium would be paid by diverting tax payments otherwise legally owed to the City. The City has admitted the Stadium is being paid for by taxpayers, saying: “The City has determined to use its property taxes (in this case PILOTs) to finance the construction and operation...of the Stadium.”¹⁸

The total tax-exempt bonds awarded had an issue price of \$966,168,577.50¹⁹. The annual interest savings²⁰ to the Yankees amounts to “approximately \$7.7 million to \$15.7 million”²¹ for 30 years, totaling between \$235 and \$471 million.

It was also announced that there would be direct cash subsidies of around \$235 million. The City and State, through ESDC, would also provide direct funding for infrastructure and other items in the amounts of \$160 million from the City to replace parkland and make infrastructure improvements, and \$70 million from the State for the construction of new parking facilities and \$4.7 million from the State to a capital reserve fund.²² The amount of the cash subsidies eventually paid were substantially higher, about \$350 million. According to NYCIDA President Pinsky in July 2008:

Current estimates for the city’s portion of the project total about \$280 million. This figure is admittedly higher than originally anticipated²³...the state has committed to invest approximately \$75 million...²⁴

When the cash subsidy of about \$350 million is added to interest savings of between \$235 and \$471 million, the total cost to taxpayers and savings to the Yankees is between \$585 million and \$826 million.

The plan for tax-exempt financing by the NYCIDA immediately raised two difficult legal questions. First, did the Yankee Stadium project meet the legal standards for NYCIDA approval; and second, did the Yankee Stadium Project meet the legal standards for IRS approval? In a short period of time both the NYCIDA and the IRS answered both questions affirmatively, allowing the project to move forward. The correctness of those answers is discussed below on pages 7 through 22. The State also enacted legislation to permit the taking of existing parkland for the non-park purpose of building the Stadium,

¹⁶ The NYCIDA decision to use the PILOT as security for tax-exempt bonds raises significant legal and policy questions which are discussed below on pages 25 and 26.

¹⁷ August 16, 2006 NYC press release: “Mayor Bloomberg, Governor Pataki and New York Yankees Break Ground on New \$800 Million Stadium”

¹⁸ February 1, 2006 letter to IRS from Mitchell Rapaport and Bruce Serchuk (Nixon Peabody LLP).

“NYCIDA – Request for Private Letter Ruling under section 141 of the Internal Revenue Code.” Page 47.

¹⁹ Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of The IRS Code of 1986. Exhibit A. Initial Issue Price Certificate.

²⁰ The interest savings are a combination of state, federal and local tax exemptions.

²¹ July 31, 2008 letter from Robert LaPalme to Chairman Brodsky. Page 2.

²² August 16, 2006 NYC press release. Ibid.

²³ July 2, 2008 public hearing: The Request for Increased Public Financing for Construction of a New Yankee Stadium in New York City. Page 14.

²⁴ July 2, 2008 public hearing. Ibid. Page 13.

requiring that replacement parkland of equal fair market value be added to the Bronx parkland system. A Community Benefits Agreement²⁵ was signed setting forth various benefits to communities in the Bronx that would attend the construction and operation of the Stadium.

On the basis of these actions the NYCIDA sold the bonds in August 2006, the other subsidies were provided, and construction of the new Stadium was commenced.

Early in 2008 the Yankees indicated that they would seek additional tax-exempt funding in the amount of \$366.9²⁶ million for “completion” of the stadium projects. A preliminary application was filed with the NYCIDA. Action on the application has not taken place pending efforts by the Yankees, the NYCIDA, and others to reverse a proposed IRS regulation, which apparently makes the new bonding difficult or impossible. An analysis of the additional request is found below on pages 24 and 25.

III. The Committee’s Inquiry

The use of public subsidies to build sports facilities is widely controversial. There has been deep interest in whether the public would benefit from the billions of dollars in financial assistance to the Yankees, an enormously successful and wealthy private entity, and whether the process used to advance these projects was transparent, truthful, and responsible. For these reasons, the Committees on Corporations, Commissions and Authorities; Local Governments; Cities; and Ways and Means began an inquiry into these matters. A public hearing was held, documents were requested and provided²⁷, meetings and discussions with City officials took place, and an analysis was begun. Parallel to these activities, a Congressional investigation was begun, which will include a public hearing on September 18. The Committees’ work is not completed. This Interim Report is being issued to disclose what has been learned so far, and to focus our continuing work on the remaining unanswered questions.

A. The Committee’s Concerns

The Committee began its’ inquiry with three basic questions.

- **First, should there be measurable benefits to the public when government financial assistance is provided to a private entity?**

As taxpayer support for private corporations and private economic activity has mushroomed in recent years, the fundamental question of public benefit has surfaced and resurfaced, without a consistent and satisfying answer. Critics on both the left and right have decried these taxpayer subsidies as socialism, wasteful, corrupt, anti-free enterprise, and unfair to

²⁵ The implementation of the Community Benefit Agreement has been the subject of controversy. The Committee is continuing to inquire into these issues.

²⁶ Yankees Core Application. Annex 2-6, “Completion Bond Sources and Uses Table.”

²⁷ The NYCIDA produced voluminous documents with unfailing courtesy. It is unclear if all requested information was produced however. The DOF produced some documents. It is likely that all information requested has not been produced. The Committee is pursuing those documents.

average citizens whose economic struggles are undertaken without public subsidy. Yet the phrases “economic development”, “job creation”, “growth” etc., retain enormous political power. A real analysis of these subsidies has yet to be done, but there clearly is growing pressure to insure that public benefits flow from public investments. It is clear, however, that everyone from the most ardent supporter to the most ardent critic of the deal agrees that public subsidies are a decision to employ taxpayer money for the benefit of the public. Without a measurable, identifiable, specific and significant public benefit, public financial assistance should not be given. For better or worse then, the Committee answers the first question with a resounding “yes”, because common sense, the law and growing political and public concern about ineffective and unfair subsidies require that public dollars be spent only when there is a clear and provable public benefit.

- **Second, what public benefits, if any, resulted from the substantial financial assistance provided to the Yankees?**

The Committee has been unable to identify significant public economic benefits from the investment of between \$500 million and \$1 billion of public money. New York City and State have innumerable programs, which distribute billions in subsidies to private persons annually, with little or no proof of effectiveness or public benefit. Even at their worst, however, all these programs have maintained a legal requirement that there be a measurable public benefit, and the Yankee Stadium transactions were no different. What evidence exists shows that few of the assertions of public benefit were accurate, that there is in fact little in new job creation, private investment, or new economic activity, while there is enormous private benefit. Most importantly, the legal requirements of proof of such public benefits have been manipulated. The repeated initial assertions of job creation and reliance on Yankee resources to pay for the Stadium were initially widely accepted. The evidence uncovered by the Committee has cast substantial doubt on their accuracy.

- **Third, was the process used to explain, examine, and approve the Stadium deal transparent and honest?**

The actions of various state, city, and private parties contained a series of promises and claims that were aimed at both public opinion and the requirements of law. Little or no scrutiny of these actions took place while they were being negotiated and approved. While there were a series of formal hearings and the Yankees and the NYCIDA place much reliance on them²⁸, few of the details of the deal were publicly known and many were buried in the thousand of pages of legal and bureaucratic submissions made to various public agencies. The degree to which the promises, assertions and legal obligations of parties to the deal have been candidly and honestly carried out is a grave concern for the Committee, is the subject of continuing investigation, and is discussed at length below.

²⁸ July 2, 2008 letter from Randy Levine (Yankee President) to Chairman Brodsky and July 2, 2008 public hearing: The Request for Increased Public Financing for Construction of a New Yankee Stadium in New York City. Page 22: Pinsky: “...Some had recently claimed that this process occurred behind closed doors. This is simply wrong. In fact, the public was given the opportunity to offer input at approximately 20 hearings with review provided by government officials at the city, state, and federal levels.”

B. Additional Questions of Transparency and Honesty

As a result of information uncovered in the initial inquiry additional questions of transparency, honesty, and economic benefit have been raised, which are also discussed below. These include: the actions of the NYCIDA, the IRS issues, the City purchase of a luxury suite, the use of PILOTs to create debt, the request for additional financing, the role of elected officials, and the price of tickets at the new Stadium.

IV. The Actions of the NYCIDA

A. Powers and Duties of the NYCIDA

By deciding to use the NYCIDA as the primary vehicle for the deal, the Mayor empowered a relatively obscure agency to make major policy decisions, and to structure a deal involving billions of dollars and numerous public and private parties. The NYCIDA was the party with the legal authority and legal responsibility to represent the public interest. The powers and purposes of the NYCIDA are set forth in state law, and include:

To promote, develop, encourage and assist...industrial, manufacturing, warehousing, commercial, research and recreation facilities...and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living...²⁹

The NYCIDA is required by law to have a specific policy for the granting of public assistance that describes the public benefit that will result. This is the “Uniform Tax Exemption Policy” (UTEP).³⁰ It is the UTEP which creates the standards that distinguish between projects that have a public benefit and should be subsidized and those that do not.

According to the UTEP, in making the decision to provide financial assistance the NYCIDA Board must consider: “the extent to which a proposed Project will create or retain permanent, private-sector jobs,” “whether Financial Assistance is required to induce the Project,” “whether the Project involves an industry or activity which the City seeks to retain and foster,” “the estimated value of any other benefits that the City may be providing,” and “the amount of private-sector investment to be generated by the proposed Project,” among other factors.³¹

The UTEP also states that in order to qualify for financial assistance, it must be proven that without it, “...the Project would most likely not be taken by the proposed Recipient; or, if

²⁹ Article 18-A of the New York State General Municipal Law.

³⁰ The UTEP is required by Section 874 of New York State General Municipal Law: “The agency shall establish a uniform tax exemption policy...which shall be applicable to the provision of financial assistance...”

³¹ Second Amended and Restated UTEP of the NYCIDA. Page 1.

undertaken at all by such Recipient, the Project might occur at a substantially reduced level or outside of the State.”³²

Also according to the UTEP in order to qualify for funding, it has to be shown that without this financial assistance “... (i) a Recipient would either not retain and/or attract a specified number of employees or a business function or unit for a specified period of time within the City, and/or (ii) the loss of a vital service to the City might occur...”³³

The City determined early in the process that the Yankee deal could not meet these requirements. The NYCIDA explicitly admitted this, saying “...the terms of the provision of financial assistance for the proposed project do not conform to the provisions of UTEP.”³⁴

Some of the facts which led to this conclusion are:

1.) The deal did not create the new permanent jobs that had been widely promised, and would not meet other elements of the UTEP. The application the Yankees filed with the NYCIDA disclosed that only 15 permanent new jobs were to be created, and only 71 part-time jobs.³⁵

2.) The stadium was a “retail” project of a kind disfavored by the NYCIDA law.

3.) There was little of new permanent economic benefit to the host communities in the Bronx. The percentage of Yankee employees actually residing in New York City, and therefore the amount of economic benefit to New York City residents, is relatively low. Only about 50% of full time Yankee employees were New York City residents at the time, and only approximately 20% of part time employees.³⁶

4.) Given that the deal was funded by deferring tax payments otherwise legally owed by the Yankees, there was relatively little private investment by the Yankees in the project.

These facts were well known and publicly discussed at the time. The New York City Independent Budget Office (IBO) in testimony before the New York City Council on April 10, 2006 said, “...there is little reason to expect much gain in local economic activity beyond the three year construction period. The Yankees will generate additional revenues as a result of the higher average ticket and concession prices at the new stadium, but because a large share of sports business income flows to a relatively small number of players, and owners - few of whom reside in the city - much of these earnings will be spent elsewhere.”³⁷

³² Second Amended and Restated UTEP of the NYCIDA. Page 2.

³³ Ibid. Page 2.

³⁴ NYCIDA “Deviation from Uniform Tax Exemption Policy for Yankees Ballpark Company.” Page 1.

³⁵ Yankees Core Application to the NYCEDC, page 7. There was substantial temporary economic activity surrounding construction of the Stadium, with several thousand temporary construction jobs (Such temporary activity is usually a factor only when it can be ascertained that if the subsidy is not provided the work will not be done.)

³⁶ Yankees Core Application to the NYCEDC, page 7.

³⁷ NYC IBO testimony before the City Council Finance Committee on Financing Plans for the New Yankee Stadium. April 10, 2006. Page 4.

There were a considerable number of temporary jobs, created largely in construction.³⁸ These are a measurable economic benefit. However, the law and common sense do not rely on these jobs to justify a public subsidy. If they did, any large project employing large numbers of construction workers would receive taxpayer assistance, even if no other public benefit resulted.

B. The “Deviation Letter”

Having decided to ignore UTEP standards, the NYCIDA used what can charitably be called a loophole in the law. The loophole says that the NYCIDA can provide financial assistance to an otherwise ineligible project by “deviating” from the UTEP benefit standards, and prescribes a procedure for such “deviation”. The NYCIDA then sent a “deviation letter” to Mayor Bloomberg indicating that the project did not meet the UTEP standards, but would be funded anyway. The Deviation Letter states: “The project would not be eligible for the necessary financial assistance without the deviation from the UTEP.”³⁹

The NYCIDA is required to give a reason for the deviation and for the decision to provide the benefits in spite of the failure to meet the UTEP standards.

C. The Yankee Threat to Leave New York City

The sole reason given in the Deviation Letter was that the Yankees had threatened to, and actually might, move out of state. “Failure of the Stadium project...would likely result in the New York Yankees relocating the Team to a stadium outside the City.”⁴⁰ It also notes that “Ballpark company and the Yankees have indicated to the NYCIDA that the benefits outlined above are critical to the financing of the Project and that the Project would not proceed as planned without access to NYCIDA benefits.”⁴¹

Also, in a sworn statement to the IRS, the NYCIDA explicitly set forth the threat of the Yankees leaving the State as the reason to enter into a PILOT agreement. PILOTs are a “...reduction from the amount of real property taxes that would have been imposed that the NYCIDA believed was necessary to induce the Team to remain in the City.”⁴²

The threat to relocate from the City was the sole reason cited for the decision to give the Yankees financial assistance and was constantly repeated publicly and in legal documents.

NYCIDA President Seth Pinsky said:

³⁸ According to the 2006 Environmental Impact Statement for the Stadium Project, construction job estimates totaled 3,600 construction jobs related to Stadium construction. August 5, 2006 letter from Robert LaPalme (NYCEDC) to Chairman Brodsky. Memo on “Yankee Stadium Area Project Employment.”

³⁹ NYCIDA “Deviation from Uniform Tax Exemption Policy for Yankees Ballpark Company.” Page 1. The letter is undated but was likely sent prior to the Inducement Resolution of March, 17, 2007.

⁴⁰ NYCIDA “Deviation from Uniform Tax Exemption Policy for Yankees Ballpark Company.” Page 5.

⁴¹ NYCIDA “Deviation from Uniform Tax Exemption Policy for Yankees Ballpark Company.” Page 4.

⁴² July 19, 2006 Private Letter Ruling for Yankee Stadium PILOT Bonds. Page 4.

...the only option for keeping them in the Bronx was a new stadium.⁴³

The Committee has found no evidence that this crucial threat was ever made in these negotiations, the Yankees have been conspicuously silent on the subject, and the NYCIDA itself later backed off this claim:

Chairman Brodsky: Who in the NYCIDA was told by the Yankees that they would leave?

Mr. Pinsky: I don't recall.

Chairman Brodsky: Was anybody in the NYCIDA told?

Mr. Pinsky: There may have been. I don't recall.⁴⁴

In response to the Chairman's question of "Can you tell us in what form the Yankees threatened to leave New York?", Mr. Pinsky responded with:

The Yankees have made a number of statements over the years that they would be interested in leaving the South Bronx if they didn't have a more modern stadium.⁴⁵

Because of the public and legal importance of the threat to leave, because it was the sole reason given in defense of the subsidies, because of the uncertainty about whether the threat to relocate was actually made, and because of the vacillating NYCIDA statements, the Committee sought evidence about who made this threat and when it occurred.

The Committee requested documentation from the NYCIDA confirming its allegation that the Yankees would relocate without public assistance.⁴⁶ The only response from the NYCIDA to those requests was a packet of news clippings, largely containing speculation by reporters on the Yankees threatening to leave New York City, dating back to 1993.⁴⁷

These press clippings provide no evidence that, at the time of the NYCIDA negotiations, the Yankees had threatened to leave. There is nothing in the public record which backs up the public and legal assertions that the Yankees threatened to leave, no evidence of efforts by the NYCIDA to assess the actual threat, and no evidence that the Yankees had a financially and politically practical relocation site outside of the City. There is no evidentiary basis for the NYCIDA's assertion that relocation of the Yankees was a real issue in these discussions.

⁴³ Page 52, July 2, 2008 public hearing: The Request for Increased Public Financing for Construction of a New Yankee Stadium in New York City.

⁴⁴ Page 51, July 2, 2008 public hearing: The Request for Increased Public Financing for Construction of a New Yankee Stadium in New York City.

⁴⁵ July 2, 2008 public hearing: The Request for Increased Public Financing for Construction of a New Yankee Stadium in New York City. Page 50.

⁴⁶ July 11, 2008 letter from Assemblyman Richard Brodsky to NYC EDC President Seth Pinsky.

⁴⁷In once such quote Metro reports Yankees' attorney Jonathan Schiller's statement with respect to litigation occurring well after the project had been approved that "The Yankees will have to consider leaving the city." Arden, Patrick. "Yanks Threaten to Walk if Court Rules Against Ballpark." Metro. August 11, 2006.

At the suggestion of the NYCIDA⁴⁸, the Yankees have been directly asked about any threats to relocate they may have made. They have failed to answer these questions.⁴⁹

The best that can be said about the Deviation Letter is that it is mere speculation. It may also be misleading. In any event, the decision to commit billions in financial assistance required more effort, more inquiry and more evidence of a public benefit than was provided by the NYCIDA.

D. The “Inducement Resolution”

The actual approval of the tax-exempt financing by the NYCIDA board took place on March 17, 2006 in the form of a customary and legally required “Inducement Resolution”. That resolution, signed by Mayor Bloomberg and Yankee President Randy Levine, is required, among other things, to recite the reasons for the tax-exempt financing.

Normally, this would include the UTEP findings of a public benefit. However, since a Deviation Letter was used in place of a UTEP finding, and since the sole reason given in the Deviation Letter was the Yankee threat to relocate, the Inducement Resolution should have included that threat.

It does not. The reason given in the Inducement Resolution is that the Stadium project “will serve the Agency’s public purposes...by preserving or increasing the number of permanent, private sector jobs in the City and State of New York”⁵⁰, contradicting the analysis of job creation by the NYCIDA when it decided to “deviate” from the UTEP. The Yankee NYCIDA application states that only 15 new permanent jobs would be created. It can be fairly concluded that in the eyes of the Mayor, the Yankees, and the NYCIDA, 15 new permanent jobs constitute “increasing the number of permanent, private sector jobs,”⁵¹ at a level justifying hundreds of millions of dollars in taxpayer subsidy. That is neither fair nor reasonable.

The Inducement Resolution also notes that the stadium is a “retail” project,⁵² which would not normally qualify for NYCIDA funding, but that it in fact is eligible because it is “located in a highly distressed area.”⁵³ The Yankee employees do not seem to live in significant numbers in the community surrounding the Stadium, or in the City, or State. Whatever its physical location, Yankee Stadium has not been a major economic force in the lives of neighborhood residents.

The legal consequences of the inconsistent legal justifications are the subject of continuing Committee inquiry. It is unclear whether an Inducement Resolution can ignore the statutory

⁴⁸ July 2 public hearing, Ibid. Page 52: Pinsky: “...you can ask the Yankees this question too...”

⁴⁹ The Committee has been verbally informed that the Yankees intend to answer these questions at an unspecified later date.

⁵⁰ Tax Certificate Ibid. Exhibit F. Page 2, Section 2.d

⁵¹ Tax Certificate Ibid. Exhibit F. Page 2, Section 2.d

⁵² Tax Certificate Ibid. Exhibit F. Page 2, Section 2.a

⁵³ Tax Certificate Ibid. Exhibit F. Page 2, Section 2.b

requirement of the UTEP and Deviation Letter. It is also unclear whether NYCIDA counsel or Bond Counsel discussed or offered opinion on this matter.⁵⁴

V. The IRS Issues

A. The Private Ruling Letter

The NYCIDA approval of tax-exempt financing did not overcome a considerable additional obstacle in Federal law. The IRS had become increasingly reluctant to continue to approve tax exempt financing for sports facilities. There had been a growing, nationwide consensus that such subsidies did not produce commensurate public benefits, and that the reduction in revenues to the Federal, state and local governments was not in the public interest.

“Doug Turetsky, spokesman for the city's Independent Budget Office, said stadiums typically don't have a significant financial impact on the communities in which they are located. That's especially true, he said, when teams relocate to a new stadium that has fewer seats and higher ticket prices.[Neil DeMause, co-author of "Field of Schemes: How the Great Stadium Swindle Turns Public Money into Private Profit"] testified last year before a congressional committee about the financing of stadiums with tax-free borrowing. He said then that research shows stadiums have ‘no measurable impact on per-capita income’ and do not revitalize urban neighborhoods that surround them.”⁵⁵

“Publicly funded stadiums "have no effect on the growth rate of real per capita income and may reduce the level of real per capita income in cities that build them," [economist Brad] Humphreys [a stadium-finance expert at the University of Alberta] wrote with Dennis Coates in the most readable survey of the arcane field of stadium finance in Regulation magazine back in 2000. The reason, as the 26 economists write this week, "appears to be that sports stadiums do not increase overall entertainment spending but merely shift it from other entertainment venues to the stadium.”⁵⁶

For years, the IRS had deferred to state and local governments to determine if there was sufficient public benefit to justify tax-exempt financing for special projects. The IRS makes no independent assessment of the worthiness of such projects, probably on the assumption that no state or local government could or would seek tax-exempt funding for the benefit of a private party.⁵⁷

The IRS did require such projects to pass highly technical legal tests, the “Private Business Use” test and the “Private Security or Payment” test. These were intended to identify

⁵⁴ Questions about the role of the Bond Counsel and other counsel are discussed on pages 13 and 14.

⁵⁵ Herbert, Keith and Michael Frazier. “Do Public Subsidies Pay Off?” *Newsday*. July 2, 2008.

⁵⁶ Washington Times Editorial. “No Point in a Subsidy.” June 11, 2008.

⁵⁷ Most State Constitutions do not allow for gifts of loans for the benefit of private parties. A few examples are as follows: Pennsylvania State Constitution, Article VIII, Section 8; Washington State Constitution, Article VIII, Section 5, Arizona State Constitution, Article IX, Section 7; North Carolina State Constitution, Article V, Section 3.

transactions that benefited private parties and these became the focus of the IRS controversy, in a detailed, lengthy and often contentious exchange of letters.

The City addressed IRS concerns by first admitting that there was a private benefit in the Yankee transaction, saying that "...the transaction results in private business use of the proceeds of the Tax Exempt Bonds."⁵⁸ The IRS acknowledged this as well, stating that "...all of the Stadium is reasonably expected to be used for a Private Business Use."⁵⁹

However, the City argued that as long as the PILOT payments were not in excess of the real property taxes otherwise owed by the Yankees, the tests were met and the IRS should approve the tax exemption for the bonds. In other words, the IRS should not object to the use of PILOTs to pay off tax-exempt bonds floated to build the Stadium, if the PILOT payments were not artificially inflated to meet the debt service requirements. Again, if \$50 million was needed annually to pay off the bondholders, but actual property taxes or PILOT payments generated only \$30 million, the local government could not artificially raise the tax or PILOT payment the additional \$20 million a year, even with the permission of the taxpayer.

That the PILOTs would be enough to pay the debt service on the bonds was a logical consequence of DOF assessment policy according to proponents of the deal: "...the fact that the PILOT comes close to actual taxes is not a coincidence. Even though negotiated, use of the same assessment methodology should make the PILOT 'commensurate' with NYC real property taxes."⁶⁰

If DOF, however, had artificially inflated the assessed value, the entire legal justification for the tax-exemption collapses and the tax exemption would be denied. It is noteworthy that this concern was publicly discussed. The New York City IBO specifically raised the issue in testimony by the New York City Council: "Given the large annual payments needed to service...tax exempt bonds...a regular property tax bill would be...considerably below the annual debt service payments."⁶¹

This warning was ignored by the City, the IRS, the Yankees, and the lawyers for all parties.

There is a significant question as to whether the IBO statement should have triggered additional due diligence by public officials and Bond Counsel on the issues of stadium and land assessments and the adequacy of the PILOT revenue stream. The role of Bond Counsel in this and other matters is an unresolved issue. Attempts to clarify these issues

⁵⁸ February 1, 2006 letter from Mitchell Rapaport and Bruce Serchuk (IRS) to the IRS. Page 47.

⁵⁹ Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of The IRS Code of 1986. Page 15, Section d.2

⁶⁰ E-mail from Steven Lefkowitz (Fried Fank) dated July 2, 2006. Included in Robert LaPalme (NYCEDC) submission to Chairman Brodsky of August 5, 2008.

⁶¹ NYC IBO testimony before the City Council Finance Committee on Financing Plans for the New Yankee Stadium. April 10, 2006. Page 4.

with certain Bond Counsel were unsuccessful on the asserted basis that ethical constraints forbade any discussion with the Committee.⁶²

The heart of the IRS policy is to stop manipulation of property taxes for the purpose of receiving tax exempt financing. In other words, if the Yankees were treated as any ordinary taxpayer would be treated, the bonds could be approved. There was intense and voluminous correspondence between the IRS and the NYCIDA, Yankees, and others largely responding to IRS concerns. The NYCIDA swore to the IRS that the Yankees would be so treated⁶³ and that the annual PILOT would be “commensurate”⁶⁴ with the actual property tax liability of the Yankees to New York City, and, in a key assurance by the NYCIDA, that the New York City Department of Finance, which sets the assessed value for each parcel in the City, would assess the property in accordance with normal and accepted procedures.

In a July 3, 2006 letter to the IRS, NYCIDA counsel asserted that “...the New York City Department of Finance (“Finance”), the City agency that is responsible for assessing any property located in the City subject to real property tax, will use the same assessment method for the Stadium is (*sic*) used for assessing properties of the same class within the City...In other words, the City’s use of the actual assessed value, equalization rate, and tax rates...results in that PILOT being commensurate with the applicable real property tax.”⁶⁵ The NYCIDA was legally obligated to make sure that the Yankee Stadium property was assessed as every other such property is assessed, and to apply the same tax rate applied to any other such property, and to not artificially inflate the tax payments. It did not keep that commitment, the DOF assessment was inflated, and the IRS was never informed.

On the basis of these assurances the IRS issued a “Private Letter Ruling” approving the Stadium project for tax exempt financing. The IRS made explicit its reliance on NYCIDA representations, saying, “the PLR [Private Letter Ruling] is based on the facts and representations as provided to the Internal Revenue Service by the Agency and as set forth in the PLR itself and that deviations from such facts and representations could cause the PLR to be inapplicable to the Bonds.”⁶⁶ It added, “The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party.”⁶⁷

⁶² Peter White, counsel widely credited with structuring the deal, declined by letter to speak with the Committee. September 3, 2008 letter from Robert Bernius (Nixon Peabody LLP) to Chairman Brodsky and September 15, 2008 letter from Chairman Brodsky to Peter White.

⁶³ Chairman Brodsky: Was the material provided to the NYCIDA certified, sworn, or in any way verified? Mr. Pinsky: Yes.

July 2, 2008 public hearing: The Request for Increased Public Financing for Construction of a New Yankee Stadium in New York City. Page 128.

⁶⁴ July 3, 2006 letter from Mitchell Rapaport and Bruce Serchuk (IRS) to Rebecca Harrigal (IRS). Page 2.

⁶⁵ July 3, 2006 letter from Mitchell Rapaport and Bruce Serchuk (Nixon Peabody LLP) to Rebecca Harrigal (IRS). Page 2

⁶⁶ Tax Certificate Ibid. Page 14, Section d.1

⁶⁷ Tax Certificate Ibid. Exhibit F. Page 12.

B. The DOF Assessment of Yankee Stadium

The DOF then began the promised assessment process.

The NYCIDA and the Yankees were caught in a bind. On the one hand they had sworn that the assessment would not be inflated and that Yankees Stadium would be assessed as would any other property. On the other there was a real question as to whether the assessed value of the new Yankee Stadium would be high enough to generate PILOTs sufficient to pay the debt service on the bonds.

The Department of Finance began assessing the Stadium property in early 2005 using the “cost” method of assessment, rather than any income or revenue based method.

The assessed value was the total of the assessed value of the land upon which the Stadium sat, and the assessed value of the new Stadium itself.

1.) The Assessed Value of the Land Beneath the Stadium

The DOF began with its own assessment of the land beneath the new Stadium, 14.5 acres of park land. It has been parkland for years, and required special state legislation to permit its use for a non-park purpose.⁶⁸ The legislation does not remove the designation as parkland, it permits a non-park use of the land, i.e. the building of the new Stadium. It remains parkland, and any other non-park uses would require additional legislation.

It is accepted valuation practice for the DOF to measure land value by determining the value of “comparable” parcels of land. Those “comparables” are then adjusted for a series of factors, including time (real property, until recently, has increased in value over time, so a sale price of two years ago is adjusted to reflect two years of price inflation), size (large parcels are much less common and more difficult to use, so smaller parcels tend to sell for more per square foot than large ones, requiring a size adjustment if small parcels are used to value a large one), and location (it is best practice to find “comparables” in the same geographic and political neighborhoods. If no “comparables” exist locally, then parcels far away can be used, but a location adjustment is made.)

The Committee’s investigation has found significant failures on the DOF assessment, in the areas of the location of comparable parcels, acreage, a second appraisal, and the assessed value of neighboring land.

a. Location of Comparable Parcels

It is customary and best practice to use comparable parcels in the same community as the land being assessed. Instead, DOF chose to use eight “comparable” parcels from Manhattan, and none in the Bronx. No explanation of the decision to ignore Bronx parcels has been offered by DOF. The stated reason to choose Manhattan parcels was that the Harlem area and the Stadium section of the Bronx were undergoing similar redevelopment.⁶⁹

⁶⁸ Chapter 238 of the New York State Laws of 2005.

⁶⁹ July 24, 2008 NYCDOF meeting with Chairman Brodsky.

It is undisputed that real estate values in Manhattan are significantly higher than those in the Bronx.

The decision to ignore Bronx land values has not been explained or justified. There are comparable parcels in the Bronx, there is no evidence of similarity of value between Harlem and the Bronx, and most disturbingly, despite written assurance, DOF used parcels in Manhattan which are not located in Harlem.⁷⁰ Parcels in Chelsea and the Lower East Side are included in the list of comparable parcels, again with no explanation.

The cumulative effect of these decisions is to substantially inflate the assessed value of the Stadium land.⁷¹

b. Adjustments

The DOF did not make the customary adjustments for location, size and time.⁷² DOF did make an adjustment for time, which increased the value of the land. It did not make an adjustment for size, which would have decreased the value. It did not make an adjustment for location, which would have decreased the value. DOF, in violation of its own standard practices, made only those adjustments which increased value and failed to make the adjustments which would have decreased value. When asked, DOF had no explanation for this decision.⁷³ The effect of these decisions was to substantially inflate the assessed value of the Stadium land.

c. Acreage

Although the Stadium parcel is actually 14.5 acres, DOF calculated the value of the parcel as though it were 17 acres. There has been no explanation of why this happened, DOF, a year later, changed the acreage to 14.5 acres, and recalculated and reduced the value of the land a year later, although it did not inform the IRS of this change.

There were also a complicated set of redrawings of the boundaries of the Stadium parcel that are difficult to understand, and may or may not be related to the use of the erroneous acreage. It appears that both the Yankees and DOF were part of the process by which the lots were redrawn and the acreage calculated. The effect of these decisions was to inflate the assessed value of the Stadium deal.

⁷⁰ April 10, 2006 letter from Dara Ottley-Brown (NYCDOF) to Gregory Carey (Goldman, Sachs & Co.). Page 2.

⁷¹ July 24, 2008 NYCDOF meeting with Chairman Brodsky.

⁷² This failure to make these adjustments was confirmed by DOF staff at a meeting with Chairman Brodsky on July 24, 2008.

⁷³ July 24, 2008 NYCDOF meeting with Chairman Brodsky.

d. The DOF Assessed Value of the Land

As a result of these decisions the DOF determined the value of the Stadium land to be \$204 million, \$275 a square foot, \$12 million an acre.⁷⁴ This value was transmitted by letter to the NYCIDA on April 10, 2006.⁷⁵

e. The Second and Third Parkland Appraisals

The City did two other appraisals of the Stadium land, both of which dramatically contradict the DOF assessment, and both of which were withheld from the IRS, state and Federal officials, and the public.

1i. The Parkland Appraisal

State and federal laws required an appraisal of the Stadium land, because of its status as parkland and the need to replace the lost parkland with land of equal value.

The appraisal requirement was set forth in Chapter 238 of 2005, the State law which allowed parkland to be used for the new Stadium, as well as by federal law. The purpose of this appraisal was to assure that the replacement parkland added to the Bronx park system would be at least equal in value to the parkland lost to the new Stadium. This is the policy of the Legislature when it is asked to change the status of parkland, and well as a Federal requirement.

Chapter 238 sets forth the specific requirements:

“§ 3. ... the city of New York [shall] acquire additional parklands...of equal or greater fair market value in the Borough of the Bronx....

“§ 7. ... the city of New York [shall] assure that the substitution of other lands shall be equivalent in fair market value and recreational usefulness to the lands being alienated or converted.”⁷⁶

⁷⁴ The later reduction of acreage reduced the total land value to \$175 million: July 24, 2008 NYC DOF meeting with Chairman Brodsky.

⁷⁵ April 10, 2006 letter from Dara Ottley-Brown (Assistant Commissioner, NYCDOF) to Gregory Carey (Goldman Sachs).

⁷⁶ § 3. The authorization provided in section two of this act shall be subject to the requirement that the city of New York dedicate the site of the existing Yankee Stadium to park use, and acquire additional park lands and/or dedicate land that is currently inaccessible by the public for park or recreational purposes, of equal or greater fair market value in the Borough of the Bronx and/or perform capital improvements to park and recreational facilities in the Borough of the Bronx which are equal to or greater than the fair market value of those park lands being alienated by this act.

§ 7. The conveyance of parkland authorized by the provisions of this act shall not occur until the city of New York has complied with any federal requirements pertaining to the alienation or conversion of park lands, including satisfying the secretary of the interior that the conversion complies with all conditions which the secretary of the interior deems necessary to assure that the substitution of other lands shall be equivalent in fair market value and recreational usefulness to the lands being alienated or converted.

The IRS similarly required “the substitution of other recreational properties of at least equal fair market value and of reasonably equivalent usefulness and location.”⁷⁷

If the DOF appraisal had been used, it would have required an addition of \$204 million in new parkland. Rather than send the National Park Service and the State Department of Parks the DOF appraisal, the City, acting through NYC Citywide Administrative Services did another appraisal by hiring a known outside appraiser.⁷⁸ That appraisal, relying on parcels in the Bronx, valued the same property that DOF had valued at \$204 million at \$21 million, \$45 per square foot, \$1.5 million per acre.⁷⁹ The second appraisal was submitted to the NPS and the State Department of Parks. The existence of the DOF appraisal was not disclosed to Park officials.⁸⁰

Whether or not this constitutes a violation of federal and state law is a matter of continuing interest to the Committee.⁸¹

2i. The Grubb & Ellis Appraisal

Pursuant to the requirements of the Public Authorities Accountability Act of 2005, the City, through the New York City Economic Development Corporation, contracted with Grubb & Ellis, a well-known real estate appraiser, to value the land under Yankee Stadium. It is clear from a series of e-mail messages involving numerous City officials, private attorneys, the Yankees and others that the purpose, terms, and results of this appraisal were widely known, even as it affected discussions with the IRS.

The methodology of this appraisal differed from the DOF appraisal in that it did not use a “cost” method, it used an “income capitalization” method. The reasons for this change, and the varying elements of the appraisal discussed in the e-mails are not yet clear. The appraisal valued the land at \$40 million.

The existence of this third appraisal was also withheld from the IRS, the DOF, federal and state parks officials and the public. It is not clear if the appraiser was given copies of the DOF or parkland appraisals.

It can reasonably be concluded that given the wide discussion and dissemination of this appraisal, City officials in and out of the Mayor’s Office were aware of the discrepancy between this and the other appraisals, and that the apparent failure to justify the profound differences among the three appraisals was not an accident or omission.

⁷⁷ Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of The IRS Code of 1986. Exhibit F. A-3.

⁷⁸ “Self-Contained Appraisal Report, Land Beneath Yankee Stadium.” May 3, 2006.

⁷⁹ “Self-Contained Appraisal Report, Land Beneath Yankee Stadium.” Cover letter. May 9, 2006.

⁸⁰ It should be noted that the State legislation setting forth these requirements also pertains to the land used for Yankee Stadium parking garages.

⁸¹ The Commissioner of the Department of Parks has been notified of these actions: September 8, 2008 phone call to Carol Ash, Commissioner, from Chairman Brodsky.

f. Land Value of Neighboring Parcels

In order to gauge the reasonableness of the DOF value of \$275 per square foot for the Yankee Stadium land, the Committee reviewed the assessed values of land surrounding the new Stadium site. This review reveals that DOF has assigned values to these parcels that are a tiny fraction of the value assigned to the Yankee Stadium land, even those parcels that do not suffer from the “parkland” restriction that limits the use and value of the Yankee Stadium land.

The apartments on the corner of 162nd street are on a parcel valued at \$14 per square foot, and the supermarket at 881 Gerard Avenue is on a parcel valued at \$38 per square foot, and the parcel on which the McDonalds on 161st Street is located is valued at \$63 per square foot;. The average value of the land parcels encompassing the strip across from the current Yankee Stadium is \$36 per square foot. Of particular note is the value of the land currently being developed by Related Companies into the Gateway Center at the Bronx Terminal Market, a “retail” shopping plaza which includes stores such as Target and Bed, Bath and Beyond; the average assessed value of this land is \$9 per square foot. This parcel would seem to be closest in purpose, investment, and community impact to the Yankee Stadium site. Yet the land, according to DOF, is worth about 3% of the value of the Stadium land. There has been no explanation of these discrepancies, or the DOF policies and practices that create them. A more detailed list of neighboring property values is attached in Appendix A.

g. Summary of Land Value Findings

The City, the NYCIDA and the DOF, in valuing the Yankee Stadium land at \$204 million, and submitting that value to the IRS, used parcels in Manhattan and not in the Bronx, misrepresented the location of those parcels within Manhattan, did not adjust down for location and size while adjusting up for time, based its valuation on a 17 acre parcel while the actual acreage was 14.5 acres, ignored land values for neighboring parcels that are a fraction of the value assigned to the Stadium parcel, and simultaneously submitted to the Federal and State governments an appraisal of the same land at about 10% of the DOF valuation. These repeated and undisputed actions are evidence that the Yankee Stadium land valuation was significantly inflated, in spite of accepted professional assessment practices, and the promise to the IRS that the Yankees would be treated as would any other taxpayer.

The evidence shows that the assessment was manipulated, that different agencies of the Federal government were given dramatically different values that in each case protected an economic interest of the City, that responsible officials were aware or should have been aware of these failures, and that the state and the IRS, which relied on the NYCIDA’s assertion that the Yankees would be treated like any other taxpayer, have an interest in determining the actual value of the underlying land and whether the assurances given were actually carried out.

2. The Assessed Value of Yankee Stadium

In addition to its’ assessment of the Stadium land, the DOF began a valuation of the Stadium itself. DOF used the replacement cost method of valuation, arguing that for a sports facility the cost to replace the facility was a better method than the income

capitalization method. That is, rather than try to establish the sale price and assessed value for an asset that almost never reaches the market by capitalizing its income stream, DOF would determine the cost of building the facility itself.⁸² However, after describing its assessment of Stadium land as “independent,” DOF inexplicably stated that it would accept cost numbers for the Stadium itself as provided in “the schedule of construction costs provided by Goldman, Sachs and Co”⁸³ (the Yankees investment firm), without verification, a highly unusual practice.

On April 10, 2006 DOF announced that the assessed value of the Stadium itself was \$1,025, 283,187. This figure was the total of hard costs of \$749,396,309 and soft costs of \$275,886,878. These numbers were supplied in a letter to DOF Assistant Commissioner Dara Ottley-Brown in a February 27, 2006 letter from Mr. Gregory Carey, a senior member of Goldman, Sachs & Co. DOF admits it accepted without independent inquiry Mr. Carey’s assertion of Stadium costs.⁸⁴ In the documents provided to the Committee, in response to questions at a meeting with DOF staff, and by DOF’s admission in its April 10, 2006 letter, DOF did nothing to verify these numbers, or to seek an independent verification of them.

After seeking advice from reputable assessment professionals, the Committee has identified a number of areas of concern with the Carey/Ottley-Brown numbers.

First, it is not customary assessment practice to receive and accept such cost numbers from financial advisors to a taxpayer, without verification or inquiry. It is customary and best practice for these numbers to be certified by a project engineer or other construction professional in a “certified cost schedule”. DOF’s decision not to seek verification of Mr. Carey’s numbers requires further inquiry and clarification.

Second, various categories of cost asserted by the Yankees and accepted by DOF seem unusual in both their nature and their value. The Committee has been advised that two categories of cost given to DOF by the Yankees, \$25 million for “Equipment and Furnishing” and \$17.5 million for “Audio Visual Systems”, are not normally included in replacement value assessments. While they do have business value they are not usually associated with real property values.

Third, the same concern is raised by the inclusion in real property value of \$53 million for “Luxury/Sky/ Boxes”. While this description is inherently unclear, it would appear that aside from construction costs accounted for elsewhere, these costs are best understood as part of a category of costs known as “Furniture, Fixtures, and Equipment”, again not normally part of real estate costs.

Fourth, it appears that the Yankees included two similar categories of cost, \$36 million for “Escalation”, and \$34 million for “Project Contingency” It is unclear what is included here, and whether these costs overlap.

⁸² These costs are outlined in a February 27, 2006 letter from Gregory Carey to Dara Ottley-Brown.

⁸³ April 10, 2006 letter from Dara Ottley-Brown (NYCDOF) to Gregory Carey (Goldman, Sachs & Co).

⁸⁴ It slightly revised his assertion of hard costs, increasing it by about \$2.5 million.

Fifth, certain soft costs seem unusually high. The Yankees included \$119 million for “Architectural, Engineering, and Development Costs”, and \$122.5 million for “General Conditions and Fees (Financing Costs)”. The Committee has been advised that this amount of soft cost is unusually high, amounting to over one-third of hard costs, and slightly under one-quarter of total costs. It is also unclear if elements of financing costs including certain reserve funds are properly included in a real property assessment.

Sixth, it appears that the Yankees included costs for the construction of property not legally part of the Stadium, particularly the cost of construction of a new police station. The new station is explicitly exempted from the ownership agreements governing the new Stadium: “Police Substation is neither part of the land or property leased to the Agency under the Ground Lease, nor the land or property leased to the Company under the Lease Agreement.”⁸⁵ Since the police station is not legally part of Yankee Stadium, it appears that standard practice would be to reduce includable costs by the amount of the construction cost of the station. This was known to the City and attorneys for the Yankees. In an e-mail dated December 6, 2006, Robert LaPalme of NYCEDC said “The IDA excludes the substation parcel, but the tentative tax lot appears to include it.”⁸⁶ Apparently, DOF was not made aware of the existence of this entire matter and took no action on it. DOF responded to the Committee’s question about the police station by saying “Our records don’t indicate a police station on the site.”⁸⁷ In a second letter DOF admits “the lot estimates we received did not mention a substation, and our valuation did not take into account a substation.”⁸⁸ The DOF assessment includes the police station which appears to have inflated the assessed value of the Stadium.

These matters are highly technical, and no definitive conclusion on the legality or propriety of any individual cost can now be reached. The Committee did repeatedly seek all documents in the possession of DOF which might have explained these actions, and whether they constituted normal DOF practice. The Committee has been told they have received all documents in the file, and concludes that in the absence of any documents clarifying these decisions, having sought expert opinion on these matters, and based on its own understanding of the law and accepted assessment practice, there is a need for further investigation of the actions of DOF in assessing the Stadium facility.

3. The Cost Per Seat Comparison

In the April 10, 2006 letter and subsequently the City has asserted that despite whatever defects may exist in its assessment of the land and the Stadium facility a comparison of a per seat cost with other stadia around the country indicate that the costs are comparable. After asserting that the per seat costs of Yankee Stadium is \$19,345, the April 10, 2006 letter states:

⁸⁵ Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of The IRS Code of 1986. Exhibit C – Certificate of The City of New York regarding Stadium. Section 3.

⁸⁶ December 6, 2006 e-mail from Robert LaPalme (NYCEDC) to Steven Lefkowitz.

⁸⁷ August 28, 2008 letter from Sam Miller (NYCDOF) to Chairman Brodsky.

⁸⁸ September 15, 2008 letter from Sam Miller (NYCDOF) to Chairman Brodsky.

“Building Cost Other Stadiums

The cost per seat for the following stadiums adjusted to New York Cost.

Washington DC:	\$19,227
Minnesota:	\$17,809
Oakland:	\$17,049”

It is unclear what “adjusted to New York Cost” means. In any event, an independent review of publicly available stadium data for the three stadia shows per seat numbers dramatically lower than those claimed by DOF. The per seat cost calculated from the publicly available information provided by the respective stadia owners shows a value for the Washington stadium at \$12,255.85, for the Minnesota stadium of \$11,917.21 per seat, and a per seat cost of \$14,285 at the Oakland stadium. These are all well below the DOF numbers. The Committee is continuing to try to reconcile these dramatically different estimates of per seat cost. The full calculations and sources of data used by the Committee are found in Appendix B.

4. The Dollar Value of the Inflated Assessment

The final assessed value of the underlying land and the new Stadium, as provided in the April 10, 2006 DOF letter totaled \$1.229 billion.⁸⁹ The evidence that this is an inflated value is repeated, unexplained, and persuasive. The worst case estimate of the dollar value of the inflated assessment of Yankee stadium is approximately \$180 million in land value and is as much as \$220-225 million in hard costs, or about one-third of the total assessed value. It is unclear what effect a lower more accurate assessment would have on PILOT payments and debt service payments. The evidence of over-valuation is more than sufficient to require an independent, outside investigation.

VI. Luxury Suites

The NYCIDA and the Mayor’s office decided to use bond proceeds to purchase a luxury suite for use by City officials at the new Yankee Stadium.⁹⁰ This decision illuminates the IDA and the City’s failure to publicly address the wide range of issues raised by the Stadium deal. The decision to acquire the suite and additional game tickets, the failure to disclose it, the continuing failure to explain the reasons it was acquired, the initial denial by the Mayor’s Office that it had been acquired, the failure to explain the funding source for the tickets, and the apparent lack of a policy for determining who gets the tickets or access to the suite are the kind of things that should have been publicly discussed and weren’t.

⁸⁹ April 10, 2006 letter from Dara Ottley-Brown (NYCDOF) to Gregory Carey (Goldman, Sachs & Co.)

⁹⁰ Tax Certificate. Page 16. Section ix, Use of Stadium: “Under the Lease Agreement, the Agency is entitled to use 1 luxury suite at the Stadium, which right is assigned to the City. The allocable cost of the luxury suite will be allocated to proceeds of the Taxable Bonds. The Lease Agreement also provides the Agency with certain other rights, including the option to purchase certain tickets for events at the Stadium...”

VII. The Price of Tickets at the New Stadium

The price of tickets to the new Yankee Stadium is a matter of legitimate public concern, given the enormous public subsidies involved. Since the Stadium deal was announced the Yankees have announced massive ticket price increases. It is unlikely that average middle class New Yorkers, whose tax payments subsidize the new Stadium, can afford regular access to most seats.

One of the differences between a sports facility and the typical NYCIDA project is that public access to a Stadium is a function of the price to the public of event tickets. At a privately financed facility, the private owner charges any ticket price people are willing to pay. When the public subsidizes a sports facility, however, there is a public interest in assuring that the people who are paying for the facility afford to can attend events there. Unfortunately the public interest in affordable access to Yankee Stadium was never a concern of the City of New York, or any of the public entities that structured the deal.

The Committees are still seeking information from the NYCIDA and the Yankees on the total revenue generated by the ticket price increases. Although the information is still anecdotal, tickets that the Yankees sold for \$100 to \$150 per game are now being offered for between \$850 to \$2500 per game. Tickets in other price ranges are also being increased by five to ten times, at least. Whatever opportunity low or middle income families have of attending a Yankee game in any other than the cheapest seats has vanished, at the same time that these same taxpayers are pouring hundreds of millions of their dollars into the building of the Stadium.

It is difficult to understand why the City, the NYCIDA, ESDC, and other public decision makers failed to even consider whether the right of the public to access to the new Stadium was an interest that ought to be protected. When asked at the Committee hearing whether the NYCIDA knew of the price increases, or was concerned about their impact, or viewed them as a factor in deciding whether to provide financial assistance, NYCIDA President Pinsky said:

No, no. We considered it in the context of whether the stadium, given those median revenues, would be affordable to the Yankees, who were paying for the stadium....⁹¹

President Pinsky offered further a defense of the decision not to consider ticket prices as part of a public benefit analysis:

When you ask a private company to invest a billion dollars somewhere, then it's hard to tell them that they can't charge ticket prices that allow them to pay for that billion dollar investment. Just like if they were IBM.⁹²

⁹¹ July 2, 2008 public hearing: The Request for Increased Public Financing for Construction of a New Yankee Stadium in New York City. Page 74.

⁹² July 2, 2008 public hearing: Ibid. Page 76.

This asserted free-market defense of the Yankee ticket increases fails to meet the most basic test of rationality and fairness.

The Yankees, in a free-market system, have the right to charge whatever they wish. Once they accept large amounts of public subsidy however, they have or ought to have a responsibility to the public which funds their efforts. The inability of the NYCIDA to understand this is distressing. But Mr. Pinsky's assertion that the Yankees are operating in a system where the market sets the price is astoundingly wrong. The Yankees, along with all of baseball, benefit from an exemption from federal and state anti-trust laws. They are a legal monopoly. They can and have engaged in anticompetitive practices, and control the market for their tickets in ways that would violate the law for any other industry. The NYCIDA, the City and other public entities are subsidizing a monopoly. To compare it to IBM, which operates in a competitive market, illuminates NYCIDA's the failure to protect the public interest in almost every aspect of this deal.

It also appears that the NYCIDA failed to consider the huge increase in ticket revenue to the Yankees as relevant to whether or not they needed, or qualified for, public financial assistance.

The problem of huge ticket price increases after huge public subsidies has not gone unnoticed. Legislation to address this problem has been introduced by Assemblyman Brian Kavanagh of New York County and 25 Assembly colleagues.⁹³ Additional legislation to insure that NYCIDA subsidies of places of public access at least consider the ticket pricing policies is also being drafted.

VIII. Request for Additional Financing

When the initial agreement for subsidized tax exempt financing for the new Stadium was announced, it was in the amount of \$920 million in tax exempt bonds.⁹⁴ There was no indication that additional financing would be sought or approved. To complicate matters, the IRS, which had expressed concerns about tax-exempt financing for sports facilities at the time of the initial approval, has issued a proposed regulation, which would make it difficult if not impossible to issue new Yankee Stadium-NYCIDA debt. Even with that obstacle unresolved, the Yankees are now seeking an additional \$366.9 million⁹⁵ in tax-exempt financing, as evidenced by a "preliminary" application to the NYCIDA. The application itself, as redacted by the NYCIDA⁹⁶, does not make clear what the specific purposes of the new financing would be. They mention a vague category of "Scope Modifications" in the amount of \$196 million, but do not specify exactly what these are.⁹⁷ The Yankees have asserted that the financing is for the purpose of "completion" of the project, something that was anticipated in the initial financing. Press reports, and some additional information

⁹³ New York State Assembly Bill 11692.

⁹⁴ August 16, 2006 NYC press release: "Mayor Bloomberg, Governor Pataki and New York Yankees Break Ground on New \$800 Million Stadium"

⁹⁵ Annex 2-6 to Yankees Core Application to NYCIDA.

⁹⁶ The Committee does not support or accept the decision to redact this information.

⁹⁷ Annex 2-6 to Yankees Core Application to NYCIDA.

supplied by the NYCIDA indicate the bulk of the money is for an expanded audio visual system, probably a large video screen, improved washrooms and vertical transportation, among others.⁹⁸ It is unclear if the audio visual and washroom costs are properly funded by tax-exempt construction bonds.

Several unanswered questions have arisen. First, are the purposes for which the funding is sought valid public purposes sufficient to justify the funding as both a matter of policy and as a matter of law? The most unclear issue is related to the NYCIDA Deviation Letter in the initial financing. In that letter the NYCIDA asserted that the threat that the Yankees would leave the state provided the justification for the financing. Although there is little evidence to back that assertion (see pages 9 through 11), there is absolutely no basis for a new threat to leave especially since there is now a non-relocation agreement. Accordingly, if the original Deviation Letter is to be believed, there is no legal basis for the second round of financing.

IX. Use of PILOTs to Create Debt

The use of PILOTs to back tax-exempt quasi-public debt is crucial to the Stadium deal.

PILOTs were created as a means of evading the constitutional requirements that all taxpayers be treated equally and that public funds not be given to private persons for their private benefit. While PILOTs can be granted directly by a municipal government, an NYCIDA may take ownership of a private asset and then simultaneously lease the asset back to the private owner, thereby relieving the private owner from any legal obligation to pay property taxes. Instead of those property taxes, the government/NYCIDA negotiates the PILOT at a lower amount than the tax that would otherwise be owed. That tax saving is a subsidy by the public to the private project that meets constitutional requirements: “The fixed amount of PILOTs represents a reduction from the amount of real property taxes that would have been imposed on the Stadium and Stadium Site...”⁹⁹

State law requires that PILOT revenues be returned to the government for general government budgetary purposes: “Payments in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt.”¹⁰⁰ The theory is that the government gets reduced revenue, but a project that creates economic growth for the whole community will be built.¹⁰¹ It is that latter benefit which provides the pretext for the public subsidy.

⁹⁸ July 17, 2008 letter from Irwin Kirshner (Herrick) to Robert LaPalme (NYCEDC).

⁹⁹ Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of The IRS Code of 1986. Page 16, Section d.3.v

¹⁰⁰ Section 874 (c) of New York State General Municipal Law

¹⁰¹ However, “Last year, discounted PILOTs amounted to \$107 million in lost revenue to the city, with abatements averaging a whopping 60% per company.” Juan Gonzalez. “Deals that Lead to Lost Property Taxes.” Daily News. December 20, 2007. Figures are based on a Report of all PILOT revenues and expenditures sent from the City Office of Management and Budget to City Council Speaker Christine Quinn.

Recently, New York City, and perhaps others, have advanced a novel financing scheme. Instead of going into the municipal treasury for schools, transit, health care or other municipal purposes, the PILOT payments are pledged to pay off debt. Because this new PILOT debt is technically not municipal debt, it is off-budget, off-book, not subject to the usual requirements of disclosure and legislative control, and in the case of New York City, apparently not included under the municipal debt limit required by state and City enactments. This has resulted in an explosion of quasi-City debt, literally billions of dollars, that is little known, and which is actually repaid by municipal revenues.

Originally, the Mayor took the position that such debt could be issued directly by him, with no other approval. But, since the PILOT is a payment to the government and public property, there was no satisfactory way to explain how the PILOT funds made their way into the pockets of private citizens who owned the NYCIDA bonds. There was no approval by the legislative body, no budget action, no appropriation, and no public accountability other than the desires of the Mayor. In the face of this critique, the City Council, in 2005, passed Local Law 73 and later Resolution 259, which sought to give legislative approval to this debt creating scheme. It remains unclear if this Council action was legally effective, and unclear whether State law permits the use of PILOTs in this way.

A final judgment on the legality of securitized PILOTs is beyond the scope of this Interim Report. It is a matter of deep public concern as it resembles the private sector “off-book entity” machinations of recent years, which in the case of Enron and others showed the disasters that can result from unrestricted debt issuance backed, in this case, by public funds and institutions. The Committee is engaged in an effort to estimate the total public debt that has resulted from this new mechanism. If, as may be, there is no sound legal basis for such debt, than the Stadium deal, as well as many others, will be in difficulty.

X. The Role Of Elected Officials

From the beginning of its’ inquiry the Committee have been seeking to determine the role of elected officials in the important decisions surrounding the Stadium deal. It seems obvious, and consistent with text book democratic theory, that decisions of this magnitude, including the issuance of billions of dollars of public debt, should be made by the elected representatives of the people. That is not the case. In this deal, as with a series of similar deals all over the state, executives’ use of public authorities has created a parallel and all-powerful model of the decision to issue public debt. These executives, mayors, governors, county executives and supervisors, have sought and received legislative permission to create these new public authorities and although not legally empowered to do so, have controlled their decisions by appointing authority boards that see themselves as subordinate to the wishes of the Executive who appointed them. As a matter of law, the decision to provide billions of dollars of public financial assistance to the Yankees was made by the NYCIDA Board, whose current members are: Seth Pinsky, Derek Park, Amanda M. Burden, Michael A. Cardozo, Albert V. De Leon, Steven C. Devereaux, Robert C. Lieber, Joseph I. Douek, Kevin Doyle, Andrea Feirstein, Bernard Haber, Albert M. Rodriguez, Robert D. Santos, William C. Thompson.¹⁰² With all due respect to these public-spirited and well-intentioned

¹⁰² NYC IDA website.

citizens and government employees, it is unlikely many New Yorkers have heard of them, or wish them to be vested with the enormous power they now wield.

When asked about this issue, Mr. Pinsky replied that only the Mayor of New York City needed to be involved in such decisions:

Chairman Brodsky: Does it seem to you that this is a matter of such public importance that elected officials ought to be driving the decision?

Mr. Pinsky: Like the mayor, sure.

Chairman Brodsky: Other than the mayor, are there any elected officials worthy of participation in this?

Mr. Pinsky: No.¹⁰³

In fact, the decision to go forward with the Yankee deal was largely the decision of the Mayor, and the NYCIDA admitted as much. In a June 30, 2006 letter to the IRS, Mitchell Rapaport and Bruce Serchuk (of Nixon Peabody LLP), counsel to the NYCIDA explicitly admitted that the deal was not in the control of the NYCIDA, but had been “negotiated with the City,”¹⁰⁴ apparently meaning the Mayor.

It is not in the public interest for the decision to issue billions in public debt to be made purely by the executive, outside the constitutional system of checks and balances. The State Legislature, the City Council, and others concerned about the governance of public institutions, and the proliferation of public debt, need to address these complicated, formal and informal, executive driven, and secretive institutional arrangements. One can hardly expect enormously wealthy private entities such as the Yankees to avoid the riches showered on them by these deals if elected officials themselves do not examine and control them.

XI. Findings

A. The New Stadium Will Not Create Any Significant New Permanent Employment or Economic Activity

In exchange for \$500 million to \$1 billion in public subsidies proponents of the new Yankee Stadium deal claimed there would be significant economic benefits to the people of the City and the State. Unfortunately as measured by permanent new job creation, new private sector investment, new local economic activity and other factors, the new Yankee Stadium will yield little if any public economic benefit, in spite of legal requirements otherwise.

The growing national evidence and the growing national public conclusion is that sports facilities are not sound economic investments for taxpayers.

¹⁰³ July 2, 2008 public hearing: The Request for Increased Public Financing for Construction of a New Yankee Stadium in New York City. Page 138.

¹⁰⁴ June 30, 2006 letter from Mitchell Rapaport and Bruce Serchuk (Nixon Peabody, LLP) to Rebecca Harrigal (IRS). Page 1.

... stadiums typically don't have a significant financial impact on the communities in which they are located. That's especially true, he said, when teams relocate to a new stadium that has fewer seats and higher ticket prices.[Neil DeMause, co-author of "Field of Schemes: How the Great Stadium Swindle Turns Public Money into Private Profit"] said that research shows stadiums have 'no measurable impact on per-capita income' and do not revitalize urban neighborhoods that surround them."¹⁰⁵ (See page 12 above.)

State laws recognize the need for measurable public benefit when subsidies are offered. The NYCIDA evaded these statutory requirements and refused to acknowledge the basic economic truths about the Stadium deal. The confusing and contradictory justifications made in the NYCIDA Deviation Letter and Inducement Resolution illuminate the lack of any persuasive economic data showing a public benefit.

The application the Yankees filed with the NYCIDA disclosed that only 15 permanent new jobs were to be created, and only 71 part-time jobs¹⁰⁶, the stadium was a "retail" project of a kind disfavored by the NYCIDA law, that and there was little of new permanent economic benefit to the host communities in the Bronx. The percentage of Yankee employees actually residing in New York City, and therefore the amount of economic benefit to New York City residents, is relatively low. Only about 50% of full time Yankee employees were New York City residents at the time, and only approximately 20% of part time employees.¹⁰⁷ (See page 8 above.)

The NYCIDA, and the Mayor, who are charged by law with assuring that public benefits do exist, took two conflicting official positions. In the required "Deviation Letter", the sole reason given in support of public financing was a purported Yankee threat to relocate out of the City. There is no evidence that the Yankees actually made such a threat. However, in the required NYCIDA "Inducement Resolution" the NYCIDA and the Mayor are silent about a relocation threat, and assert that "The Project will serve the Agency's public purposes by preserving or increasing the number of permanent private sector jobs in the City and State of New York", apparently referring to the 15 new permanent jobs described by the Yankees in their application to the NYCIDA.¹⁰⁸

This inconsistency not only raises substantial questions about the legality of the NYCIDA approvals, it illuminates the difficulty Stadium proponents had in meeting the traditional standards for economic growth and development. Whatever emotional or political benefits result from public financial assistance to the Yankees, the economic benefits are slight or non-existent, while the public costs, estimated at over \$700 million, are enormous, at a time when other pressing capital needs go begging.

The decision to spend this public money on Yankee Stadium was not in the public's economic interest.

¹⁰⁵ Herbert, Keith and Michael Frazier. "Do Public Subsidies Pay Off?" *Newsday*. July 2, 2008.

¹⁰⁶ Yankees Core Application to the NYCEDC, page 7.

¹⁰⁷ Yankees Core Application to the NYCEDC, page 7.

¹⁰⁸ Tax Certificate. Exhibit E. Page 2.

B. The Public, Not The Yankees, Is Paying The Cost of Constructing The New Yankee Stadium.

Taxpayers are paying the cost of constructing the new Yankee Stadium despite repeated claims to the contrary by City officials: “Funding for the \$800 million in construction costs is being provided fully by the Yankees.” (See page 3 above.) These statements are simply not true. The cost of construction is being paid by diverting tax payments the Yankees are legally obligated to make to New York City to repayment of the tax-exempt bonds floated by the NYCIDA.¹⁰⁹ The City repeatedly in legal documents admits that it is taxpayer money, not Yankee money, which is building the new Stadium. “The City has determined to use its property taxes (in this case PILOTs) to finance the construction and operation...of the Stadium.”¹¹⁰ These PILOT payments are in fact taxes owed. “City PILOTs are the only way that the City can treat the real property as if it were subject to real property taxes”.¹¹¹ Without the PILOTs “...the Stadium would be subject to full real property taxes.”

The best that can be said about the public assertions that the Yankees were paying for the Stadium is that they were politically necessary to keep the deal alive. But when it came time to describe the transaction in legally binding ways to the IRS, the truth had to be told. Simple common sense yields the same conclusion. No homeowner, no commercial developer, could build a new building, and then demand that the taxes owed to the locality be sent to the bank to pay off the mortgage, and then claim it was their money paying for the building.

Whatever other justifications exist for public support of Yankee Stadium, the assertion that the Yankees are paying to build it are untrue and should cease.

C. The Actions Of The NYCIDA Did Not Protect The Public Interest, And May Have Violated The Law.

The NYCIDA manipulated and evaded State law requirements that there be a public economic benefit in exchange for the massive public subsidies received by the Yankees. The NYCIDA was created by state law as a vehicle to enhance economic growth and development, but only where there was a demonstrable public economic benefit that resulted. No such public economic benefit can be shown in the Yankee deal. “...the transaction results in private business use of the proceeds of the Tax-Exempt Bonds...”¹¹² The gyrations of the NYCIDA as it sought to find any benefit, the conflicting reasons it has given for the subsidies, and its’ complicity in the dubious actions of other agencies are a matter of grave policy concern. The state law which governs NYCIDA actions should be amended to end these abuses, to require broader disclosure of key elements of its projects, to assure a real public benefit in exchange for public subsidies, to end the abuse of the

¹⁰⁹ This diversion of tax payments is done by the use of Payments in Lieu Of Taxes (PILOTs).

¹¹⁰ February 1, 2006 letter from Mitchell Rapaport and Bruce Serchuk (Nixon Peabody) to IRS. “NYCIDA – Request for Private Letter Ruling Under Section 141 of the Internal Revenue Code.” Page 47.

¹¹¹ February 21, 2006 letter, Ibid. Page 22.

¹¹² February, 1 2006 letter, Ibid. Page 47.

UTEP process through “deviation letters”, and to limit the unfettered and explosive growth in NYCIDA sponsored public debt.

Both the NYCIDA and the State law governing IDAs are in need of fundamental overhaul and reform.

D. The NYCIDA Should Not Be Used For The Creation Of Massive Amounts Of Public Debt. Such Use May Violate Existing Law.

The NYCIDA alone has created billions of dollars of new public debt with little transparency or control by elected officials and outside of existing debt restrictions. This is not in the public interest. The broad attack on the growth of public debt should be accompanied by a recognition that the vehicles for the debt increase are relatively new schemes to avoid existing debt restrictions. The use of public authorities, Local Development Corporations, and other “off-book” entities presents a clear and present danger to the fiscal health of the State City and region.

The securitization of PILOTs as a new way to create unrestricted public debt may not be legal. The Mayor’s original assertion that he could create such debt through these new entities without legislative approval was clearly beyond the law. Whether or not the City Councils actions cured that defect in City actions is unclear. Whether or not state law permits such machinations is also unclear should be examined. If state law does permit such debt issuance it should be amended to contain reasonable standards protecting the public interest and procedures to assure transparency and fairness.

E. The NYCIDA’s Refusal To Consider The Issues Of Ticket Prices And Public Access To The New Yankee Stadium Was A Failure To Protect The Public Interest.

The NYCIDA refused to protect the public’s interest in affordable ticket pricing at the new subsidized Yankee Stadium and failed to consider the new revenue bonanza the Yankees will receive as a result of dramatic ticket price increases. The public has a real interest in affordable access to facilities it subsidizes. The Yankees right to charge any price they wish for tickets ended when they sought and received public subsidies. The NYCIDA and the Mayor’s Office should have insisted that ticket prices and public access be part of their negotiations over the subsidies, and that the enormous spike in revenues the Yankees will receive be considered in determining the level of subsidies to be given to the Yankees, if any. The failure to consider the public interest in ticket prices and affordable access to NYCIDA projects, and many other concerns should be reviewed and, where needed, changed.

F. The Tax Assessment Practices of DOF, For Yankee Stadium And Elsewhere, Need Immediate Independent Review.

The NYCDOF inflated the assessed value of the new Yankee Stadium despite sworn promises by New York City that it would not. It did so, in all probability, to qualify the Stadium project for tax exemptions. The decisions and actions by DOF with respect to its assessment of the land and facility at Yankee Stadium are disturbing, and may have violated

legal requirements. These actions include use of out-of-community comparables, failure to make appropriate adjustments, failure to accurately state the location of comparable parcels, failure to accurately state the acreage involved, wide disparities in assessed value of land in the Yankee Stadium area, the existence of two other City appraisals of the property at much lower values, uncritical acceptance of information from the Yankees without certification or independent review, failure to exclude non-Stadium costs, and acceptance of unusual costs as part of the facility replacement cost. The consequence of these actions is an assessed value for the Yankee Stadium project that is inflated by as much as one-third.

An immediate, thorough, and independent review of this assessment, and assessments elsewhere in the Stadium neighborhood, and perhaps elsewhere in the City, is required.

G. New York City's Acquisition Of A Luxury Suite And Yankee Tickets Was, At Best, Unwise.

The NYCIDA and the Mayor's office decided to use bond proceeds to purchase a luxury suite for use by City officials at the new Yankee Stadium. This decision illuminates the IDA and the City's failure to publicly address the wide range of issues raised by the Stadium deal. The decision to acquire the suite and additional game tickets, the failure to disclose it, the continuing failure to explain the reasons it was acquired, the initial denial by the Mayor's Office that it had been acquired, the failure to explain the funding source for the tickets, and the apparent lack of a policy for determining who gets the tickets or access to the suite are the kind of things that should have been publicly discussed and weren't.

H. There Is An Immediate Need For Thorough, Independent Reviews Of The Actions OF DOF, NYCIDA, And Other Public And Private Parties.

The Committee will continue its' inquiries and issue a Final Report. That Report will contain specific recommendations for statutory, administrative and operational reforms of the various public and private entities involved, and may refer the Final Report to other investigative bodies for appropriate action. But the facts and conclusions contained in the Interim Report are sufficient to cause other independent investigations to begin immediately.

Appendix A

This information was derived from private and public websites.

	Block	Lot	AV	FMV	S.F	FMV/S.F
101 E. 157th (parking lot)	2483	1	65,250	145,000	10,300	14.08
810 River Ave. across from YS		5	156,600	348,000	20,000	17.40
90 E. 158th St. (apt. Cor Gerard)		15	80,100	178,000	19,695	9.04
107 E. 157th (apts corner Gerard)		23	80,100	178,000	19,695	9.04
81 E. 158th St. across from YS		32	39,510	87,800	3,948	22.24
844 River Ave.		34	138,150	307,000	15,017	20.44
48 E. 161st St./S.E. cor.		40	720,000	1,600,000	9,061	176.58
58 E. 161st St./store mid-block		44	180,000	400,000	2,500	160.00
62 E. 161st/store S.W.cor Ger.		45	765,000	1,700,000	12,190	139.46
845 Gerard/midblock apts.		53	64,350	143,000	14,375	9.95
831 Gerard Ave./apts. On 158th.		59	66,150	147,000	16,200	9.07
83 E. 158th St. 2-story garage		68	168,750	375,000	9,800	38.27
		158	824	1,831	300	6.10
			2,524,784	5,610,631	153,081	36.65
940 River Ave. full-block garage	2485	1	981,000	2,180,000	130,600	16.69
Garage A-big site	2499	100	1,120,500	2,490,000	240,405	10.35
Garage C-small site	2499	1	369,000	820,000	62,859	13.04
Garage B	2493	9	612,000	1,360,000	68,828	19.75
New Yankee Stadium	2493	1	78,750,000	175,000,000	634,335	275.88
Old Yankee Stadium	2491	1	3,150,000	7,000,000	424,760	16.48
Old Macombs Dam Park ('06)	2492	1	2,691,000	5,980,000	464,916	12.86
	Block	Lot				
586 Cromwell Bronx HOD.	2357	1	1,080,000	2,400,000	207,383	11.57
	2354	74	211,500	470,000	38,365	12.25
590 Exterior	2356	20	258,750	575,000	24,800	23.19
65 E. 149th St.	2356	2	423,900	942,000	191,500	4.92
671 River Ave.	2357	86	118,800	264,000	37,665	7.01
Under Major Deagan	2539	60	411,300	914,000	66,500	13.74
587 Cromwell	2539	32	1,710,000	3,800,000	460,800	8.25
				9,365,000	1,027,013	9.12
120 E. 149th St. (Hostos)	2350	39	179,550	399,000	17,600	23
Citifield Site	1787	20	109,988,198	244,418,217	2,747,985	88.94

	Block	Lot	AV	FMV	S.F	FMV/S.F
51 E. 161st St.McD N.E.	2484	5	326,250	725,000	11,503	63.03
880 River Ave.		9	198,000	440,000	19,306	22.79
60 E. 162nd St. cor.apts		15	137,700	306,000	20,802	14.71
881 Gerard Ave. supmkt		33	89,550	199,000	13,600	14.63
67 E. 161st NWCor.Ger		35	199,350	443,000	11,503	38.51
Totals/Avg For Block			950,850	2,113,000	76,714	27.54

Both A average 10.98

possibly 107,965(include/street

997,132 Square Building, No improvement
Value

up from 250,000 in '03
down from 1,060,000 in
'03

up from 349,555 in '03

APPENDIX B

MEMORANDUM



To: Assemblyman Brodsky
Re: Cost Per Seat Numbers
Date: 9/12/08

We have double checked the numbers for the Washington Nationals, Minnesota Twins, and Oakland A's stadiums based on information publicly available on the stadium websites. The per seat costs are much lower than those calculated by Dara Ottley-Brown.

- The Washington stadium has 41,888 seats. Thus: \$611 Million for the total cost, subtract \$97,627,000 for land acquisition and you arrive at \$513,373,000. Divide that number by the 41,888 seats and the cost per seat is \$12,255.85 (<http://www.jdland.com/DC/stadium.cfm#3>)
- The Minnesota stadium has approximately 40,000 seats (as stated on site) with a total project cost of \$517,529,185. Subtract the \$40,840,790 for site acquisition and you get \$476,688,395 for a project cost. Divide that cost by 40,000 seats and the cost per seat is \$11,917.21 (www.ballparkauthority.com)
- The Oakland stadium site provides general numbers. There will be between 32,000-35,000 or 30,000-34,000 seats depending on where you look on the site and the cost will be between \$400-500 million, excluding land cost. If this is the case and we take the two highest estimates, then \$500 million divided by 35,000 seats will create a cost per seat of \$14,285 (<http://oakland.athletics.mlb.com/oak/ballpark/new/facts.jsp>)

Acknowledgements

The Committee would like to thank the following people for their work on the Interim Report:

Kelly MacMillan-Akram
Emma Furman
Christopher Valens
Michael McLaughlin
Kent Sopsis