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THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

CHAIRMAN  
Committee on  
Corporations, Authorities  
and Commissions

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

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

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

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

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

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<sup>1</sup> The entire correspondence between the Yankees and the Committee is included in Appendix A.

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

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

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

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<sup>2</sup> October 10, 2008 letter from NYC DOF Assistant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix B.

<sup>3</sup> February 1, 2006 letter to IRS from Mitchell Rapaport and Bruce Serchuk (Nixon Peabody LLP). Page 41. Please see Appendix C.

<sup>4</sup> October 21, 2008 letter from NYC DOF Assistant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix D.

<sup>5</sup> A series of January 31, 2006 and February 1, 2006 e-mails between NYC DOF Assistant Commissioner Dara Ottley-Brown and Peter White (Nixon Peabody LLP). Please see Appendix E.

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

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

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

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

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

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

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<sup>6</sup> October 2, 2008 letter from NYS OPRHP Commissioner Carol Ash to Chairman Brodsky. Please see Appendix F.

<sup>7</sup> September 15, 2008 letter from NYC DOF Assistant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix G.

<sup>8</sup> October 10, 2008 letter from NYC DOF Assistant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix B.

<sup>9</sup> October 10, 2008 letter from NYC DOF Assistant Commissioner Sam Miller to Chairman Brodsky. Please see Appendix B.

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

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

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