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

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

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

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

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

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

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

Even though the City has withheld many key documents from this Subcommittee, we have reviewed enough correspondence to raise serious questions about how the City assessed the stadium.

Yankee great Yogi Berra once said that "A nickel isn't worth a dime today." Well, the City of New York has turned Yogi Berra's maxim on its head: what they say is worth a dime today may be worth closer to a nickel.

As outlined in a letter that I sent last week to Mayor Bloomberg, our staff has uncovered a litany of serious questions about all aspects of the $1.229 billion stadium assessment, including the accuracy of the inclusion of certain costs in the $1 billion valuation of the stadium itself and the accuracy of the $204 million stadium site assessment. Here, I am going to focus on what appears to be the most clear and egregious inaccuracies in the assessment: the possible inflation of the stadium site assessment.

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

In an email from Seth Pinsky to Josh Sirefman, an official in the Mayor’s office, we learn that there was concern about how the tax assessment would match up against the requirements of the Yankees. Mr. Pinsky writes, “As I think you know, on the Yankees and Mets, their financing structures rely on PILOTs, which are limited by what real estate taxes would be, which, in turn, are limited by the assessments of the new stadia. Apparently, DoF is close to finalizing their preliminary assessment, and I’d like to understand what it is before it is released publicly to make sure it conforms to our assumptions... Do you know the proper person at DoF whom to talk about this?”

Later that afternoon, Mr. Pinsky sent another email to the executive director of his agency, “I think that Josh Sirefman [the City Hall official] is contacting Martha Stark directly. It would be helpful to have a directive from the top that we should be cooperated with.”

Knowledge of the estimated stadium assessment before its public release would provide City Hall and the IDA a further opportunity to pressure DOF to adjust the assessment in the direction that conformed to the City's and IDA's assumptions—provided DOF would cooperate.

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

The next afternoon, March 22, Mr. Pinsky made plans to call the Assistant Commissioner of the Property Division, Ms. Dara Ottley-

Brown. We do not know the details of their conversation, either because they don't exist, or because the City has withheld those documents from the Subcommittee. We welcome the opportunity to hear directly from Mr. Pinsky and Ms. Stark today. But one thing we do know is the result: DOF revised its valuation of the stadium site upward 600% from $26.8 million to $204 million, or $275 per square foot. Did the City and the IDA pressure DOF to increase dramatically the land assessment for the benefit of the Yankees? Was it necessary to have a higher land assessment to support the amount of bonds that the Yankees wanted to finance the construction of their new stadium? We hope to get answers to these questions today.

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

Why did this happen? The Yankees were happy to pay more PILOTs to finance the construction bonds as long as the federal government and federal taxpayers would provide them with cheap tax-exempt bonds: each additional dollar of tax-exempt bonds that IDA was willing and able to issue to finance the stadium's construction saved the Yankees from having to issue a corresponding amount of higher interest-rate taxable bonds. For its part, the City's investment in the stadium was almost entirely the sunk costs of paying for infrastructure improvements, and they wouldn't pay more if the amount of bonds was $600 million or $950 million. As Professor Clayton Gillette testified in our previous hearing, this is a problem with the incentive structures of PILOTs itself. In typical municipal finance arrangement for stadium constructions, a City raises taxes to pay the debt service on the bonds. If the City wants a more grandiose stadium built with tax-exempt funds, its taxpayers have to share the burden with federal taxpayers. With PILOTs, the City reaps the benefits of the tax-exemption while shouldering none of the burden. Artificially inflating the stadium assessment would be the next step—albeit a graver step and an illegal step—down this path.

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

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

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