COUNCIL OF THE CITY OF PHILADELPHIA

COMMITTEE ON RULES

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, February 9, 2010
10:25 a.m.

- - -

PRESENT:

COUNCILMAN JAMES F. KENNEY, CHAIR
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN WILLIAM GREENLEE
COUNCILMAN JACK KELLY
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN FRANK RIZZO
COUNCILMAN DARRELL CLARKE
COUNCILWOMAN BLONDELL REYNOLDS BROWN

BILL 090704 - An ordinance establishing a neighborhood improvement district in an area that generally includes Cheltenham Avenue...

BILL 090852 - An ordinance amending Chapter 14-1800 of The Philadelphia Code, entitled "Zoning Board of Adjustment"...

BILL 090927 - An ordinance to amend the Institutional Development District Master Plan of the Fox Chase Cancer Center...

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COUNCILMAN KENNEY: Good morning, ladies and gentlemen. We now have a quorum and the Council Committee on Rules can begin its hearing on three bills.

The first bill is Bill No. 090704, which is an ordinance establishing a neighborhood improvement district in the area that generally includes Cheltenham Avenue with boundaries of Wadsworth Avenue on the west and Broad Street on the east, Ogontz Avenue with boundaries of Cheltenham Avenue on the north and 67th Avenue on the south and Wadsworth Avenue with boundaries of Cheltenham Avenue on the northeast and Michener Avenue on the southwest.

Who is here from the Administration to testify? Anyone? Whoever is testifying with the Administration.

Just for the record, we have a quorum with Councilmembers Goode, Donna

Reed Miller, Bill Greenlee, Jack Kelly and Councilman Kenney, who is chairing the Committee on behalf of Council President Verna today.

(Witness approached witness table.)

COUNCILMAN KENNEY: Please identify yourself for the record.

MR. FRISHKOFF: Good morning. My name is Andrew Frishkoff, Director of Neighborhood Economic Development for the Philadelphia Commerce Department.

The Commerce Department has previously testified on behalf of this bill. At this point in time, we have no further comments, but we are available for any questions from members of the panel.

COUNCILMAN KENNEY: Thank you very much for including the record.

Any other witnesses to testify on this bill?

(No response.)

COUNCILMAN KENNEY: Any

questions from any of the members of the Committee?

(No response.)

COUNCILMAN KENNEY: Thank you very much.

We will now proceed to Bill -- also let the record show that Councilman Clarke is also in attendance as a member of the Committee.

The next bill is Bill No. 090927, which is an ordinance to amend the Institutional Development District Master Plan of the Fox Chase Cancer Center, located at 333 Cottman Avenue, by allowing for the construction of a new building to be used as a comparative medical research facility.

(Witness approached witness table.)

COUNCILMAN KENNEY: Please identify yourself for the record.

MR. KRAMER: Good morning, Councilmember Kenney, members of the Rules Committee. I am William Kramer, Division Director of the Development Planning Division of the Philadelphia City Planning Commission. I am here today to testify on Bill No. 090927, which was introduced by Councilmember O'Neill December 17th, 2009.

Bill No. 090927 amends the Master Plan of the Fox Chase Cancer Center Institutional Development District in order to permit the construction of a 25,000-square-foot structure to be used as a comparative medical research facility. The structure will occupy a footprint of 6,000 square feet containing four stories and be located between two existing structures. The new facility will allow for a modernization to a new state-of-the-art facility to continue existing functions already conducted elsewhere on the Fox Chase campus. This amendment is entirely contained in the original campus for the Fox Chase Cancer Center and does not represent an expansion into Burholme Park.

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The Philadelphia City Planning Commission considered and approved the proposed amendment to the Fox Chase Cancer Center Master Plan at its meeting of November 17, 2009. Bill No. 090927 approves the same amendment and is, therefore, considered consistent with previous policy. Accordingly, the Planning Commission recommends that Bill 090927 be approved.

At the request of the Law Department, we have a request to change the exhibit. The concern of the Law Department was, the bill was drafted electronically and the original exhibit is not legible electronically when printed out. They have requested that we submit a large copy of the bill to be kept on file with the Clerk's Office for anyone's review that may wish to do so.

COUNCILMAN KENNEY: Do you know if that requires a formal amendment or just an attachment?

MR. KRAMER: The Law Department

indicated it should be an amendment, and I've indicated so in the paperwork.

COUNCILMAN KENNEY: Okay.

MR. KRAMER: That concludes my testimony. I'd be happy to answer any questions you may have.

COUNCILMAN KENNEY: Any questions for Mr. Kramer?

(No response.)

COUNCILMAN KENNEY: Seeing none, is there anyone else to testify on this bill?

(Witnesses approached witness table.)

MR. PRIMAVERA: Good morning, Mr. Chairman, members of the Committee. Carl Primavera. With me is my colleague Darwin Beauvais, and to my right is Gary Weyhmuller, who is the Chief Operating Officer at Fox Chase, who has a very brief statement to read into the record.

COUNCILMAN KENNEY: Please identify yourself for the record.

MR. WEYHMULLER: Good morning,

Mr. Chairman and members of the Committee. My name is Gary Weyhmuller and I'm Chief Operating Officer of the Fox Chase Cancer Center.

Fox Chase is one of 40 NCI-designated comprehensive cancer centers in the nation and one of three in Pennsylvania. We provide the highest treatment and care to our patients while providing global leadership and research. Our doctors provide unmatched care to their patients, and our researchers lead the nation in understanding basic mechanisms of normal and abnormal cell development.

Fox Chase has a history dating back to 1904 and in the last 100 years has become one of the largest employers in Northeast Philadelphia with over 2,400 employees. Because of its international recognition, Fox Chase has been an internationally recognized center for cancer treatment and prevention, attracting patients, doctors, researchers and skilled employees and funding from around the world to Philadelphia. Our researchers have been recognized for their work with awards and honors, including Nobel Prizes for chemistry in medicine, the Kyoto Prize, the Albert Lasker Award for Clinical Medical Research and the General Motors Cancer Research Foundation Prize and the American Cancer Society Medal of Honor.

Today, Fox Chase seeks your approval to amend our IDD, which was previously approved in 2007. Our request stems from us proudly receiving a grant from the National Institutes of Health of approximately $8 million in funding to construct, maintain and promote another cancer research facility on our campus. This grant is a testament to Fox Chase's proud history of being a national leader in cancer research.

The specifics of our project include adding a three-story building on our existing campus. Although this is a relatively small project, it is an important part of our ongoing research.

Thank you very much for your time and I'll be happy to answer any questions you might have.

COUNCILMAN KENNEY: I want to take the opportunity to thank you and Fox Chase for your continued commitment to the City despite all that you've been through over the last few years.

Just for the record, how many employees are at Fox Chase?

MR. WEYHMULLER: We have a little over 2,400 employees at this time.

COUNCILMAN KENNEY: And do you know offhand -- because I think it's been given in testimony before -- the average salary of your employees?

MR. WEYHMULLER: I believe our average salary is somewhere around 60 to 70 thousand dollars.

COUNCILMAN KENNEY: Not too shabby.

And I do recognize -- I mean, I

know you've worked very hard with Councilman O'Neill, who is the District Councilperson, and I know you've been through here a number of times and not all of those happenstances have been pleasant for you and your staff, but I can't think of any way else to thank you for your continued commitment to the City.

The fact that you're building another building here does make me feel better that some of the thoughts of not being here may be fading, and I can't think of a more medically famous institution in the City, amongst the many that we have, the CHOPs, the HUPs, I don't know if any of them have Nobel Laureates.

So thank you again for being here. Thanks for all you've gone through to stay here, and just thanks. We'll get this out ASAP.

MR. WEYHMULLER: Thank you, sir.

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COUNCILMAN KENNEY: Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Mr. Chair.

Good morning.

MR. WEYHMULLER: Good morning.

COUNCILMAN CLARKE: Just a point of information. Can you tell me what happened with the lawsuit that involved the parkland?

MR. PRIMAVERA: Well, it's an important question. The Appellate Courts decided that the Orphans' Court was correct and the Park should not be allowed to be either swapped or redeveloped, even though there was serious compensation going to the Park to acquire replacement land. And personally speaking, I think it was not a well-advised opinion, but based on that, I did understand that Fox Chase has abandoned that plan and now they're looking at various other options, the preferred option being to stay in their current location, and they're looking at a variety of configurations, including building up instead of out, that might allow that to happen.

COUNCILMAN CLARKE: Okay. But at the end of the day, the Appellate Court upheld the original decision?

MR. PRIMAVERA: Right.

COUNCILMAN CLARKE: That's interesting.

MR. PRIMAVERA: It didn't go all the way to the Supreme Court of Pennsylvania, which I think would have changed it, speaking for myself, but I think given the long road that they had already plowed to get where they were and it was a distraction to future activity, the uncertainty, so they decided to abandon that aspect and to look at other alternatives. No decision has been made, and I think as Councilman Kenney said, the fact that they're adding to their existing campus with high technology, new buildings is a good indication they see the value of staying here at least in part.

COUNCILMAN CLARKE: We're very happy about that. Thank you so much.

MR. PRIMAVERA: Thank you.

COUNCILMAN KENNEY: Thank you very much. In your search, I know it's not, again, on your campus site proper, but one of the areas, if you haven't looked at it already, I would urge you to look at the Philadelphia Naval Business Center. The concentration of research and other type of biomedical facilities there, its proximity to the Airport, 95, 76, free parking like a suburban campus location, we'd love to have you in South Philly, and I would urge you to look at those locations also, and PIDC owns a lot of property there. We just want to keep you here and keep you expanding as much as we can.

Any other statements or questions from any members of the Committee?

Councilwoman Miller.

COUNCILWOMAN MILLER: Hi. Good morning.

MR. WEYHMULLER: Good morning.

COUNCILWOMAN MILLER: I'd just like to know in terms of expansion, are you talking about expanding to another location completely or just adding buildings somewhere else?

MR. PRIMAVERA: Well, what's here today is strictly an addition on our existing campus. Ultimately there is a need for newer buildings, and the idea was to have them in a contiguous format, not in a high-rise format. So if it turns out that they need to be low rise, we don't have any more land, so we would have to look for a sister location, maybe at the Naval Yard. On the other hand -- and we have our design team here -- they are looking at building up. Not preferred, more expensive, but building up would allow us to amass the extra space and laboratory and hospital, and we would tear down some of the older buildings, which are 30 years old.

MR. WEYHMULLER: Thirty or more in some cases, yeah.

MR. PRIMAVERA: But nothing has been decided officially.

MR. WEYHMULLER: The most important facility that we need to look at next after this small research building is a new hospital. So one of the options that we're considering is to perhaps build a new hospital right next to the existing hospital that we have on the campus, which would mean demolishing one of the buildings there and building a multiple-story structure. But it would allow us to use some of the renovations that we've done in the old hospital and, at the same time, build a new facility that would help us with expansion.

MR. PRIMAVERA: And within the last two or three years, we built a major garage -- we came to Council for that -- and a major hospital addition.

MR. WEYHMULLER: Right, outpatient and a research facility.

MR. PRIMAVERA: So we are continuing within our own footprint to build. The reason we're here today with this small amendment, we had previously requested money from the National Institute of Health for this and they never approved it, and I think as part of the stimulus package, they came back to us, without even our invitation, and they said, Remember that project, we have money. So given that, we're now going to leverage other funds so we can make it happen.

COUNCILWOMAN MILLER: Thank you.

COUNCILMAN KENNEY: Thank you very much.

Councilwoman Brown.

COUNCILWOMAN BROWN: Good morning, gentlemen. I simply want to underscore Councilman James Kenney's remarks and say thank you as well. I actually toured the Fox Chase Center at the request of Councilman Brian O'Neill now three years ago. So to see that your willingness to circle back and, as he indicated, stay in the City is always huge and something we don't take for granted from any of our business or civic or corporate residents of the City. Thank you very much for your testimony.

MR. PRIMAVERA: And also I know that you and Councilman Kenney are both involved in LEEDs. The grant does specify that they be LEED certified, and we are going to be.

COUNCILWOMAN BROWN: Very good.

COUNCILMAN KENNEY: Thank you.

Any other comments or questions?

(No response.)

COUNCILMAN KENNEY: Thank you very much again.

MR. PRIMAVERA: Thank you.

COUNCILMAN KENNEY: Is there anyone else in the room to testify on this bill?

(No response.)

COUNCILMAN KENNEY: Thank you.

The next bill is Bill No. 090852, which is amending Chapter 14-1800 of The Philadelphia Code, entitled "Zoning Board of Adjustment," to provide that the Zoning Board of Adjustment shall require any persons seeking a variance from the terms of Title 14 to be current on payment of all taxes imposed under Title 19, under certain terms and conditions.

The Chair recognizes Councilmember Rizzo for a statement.

COUNCILMAN RIZZO: Thank you, Mr. Chairman.

Mr. Chairman and members of the Rules Committee, good morning. As we all are too well aware, our city is facing yet another serious budget deficit. Although the economic downturn that severely impacted our entire nation appears hopeful, to have already hit its low point, we are not yet out of the economic woods.

Bill No. 090852, the subject of today's hearing, will provide the City with tools that can be used efficiently to recover monies that are rightfully due to the City. As introduced on November 19th, this bill would provide that the Zoning Board of Adjustment would not grant any application for a variance unless the property owner submitted proof from the Revenue Department that the applicant's taxes are current.

At a civic association meeting I attended last fall, Ms. Maureen Greene, a constituent who will be testifying today, made a suggestion that gave rise to this bill. I ask her to stand and be recognized.

Thank you.

The great majority of our citizens are hard-working, law-abiding individuals who pay their city taxes, but tax deadbeats don't deserve the privilege of a variance. Those who pay their taxes should be able to seek variances.

I understand the Administration has amendments that would broaden the restrictions on access to the Zoning Board of Adjustment for tax deadbeats. At the conclusion of today's testimony, I hope that all my colleagues on the Rules Committee will see fit to move this forward with amendments that are being considered.

Thanks.

COUNCILMAN KENNEY: Thank you very much for your testimony.

Anyone else have any comments before we start the witness list?

(No response.)

COUNCILMAN KENNEY: Thank you.

Please identify yourself for the record, whoever is going to testify.

MR. KRAMER: Good morning, Chairman Kenney and members of the Rules Committee. I am William Kramer, Division Director of the Development Planning

Division of the Philadelphia City Planning Commission. I am here today to testify on Bill No. 090852, which was introduced by Councilmember Rizzo on November 19th, 2009.

Bill No. 090852, as introduced, would amend Chapter 14-1800 of the Philadelphia Zoning Code by requiring all property owners seeking zoning variances to be current in their municipal taxes or have a payment agreement with the City. The bill would require the applicant to get a certification from the Department of Revenue to certify that all of the property owner's Title 19 taxes are current or subject to a payment agreement in order to get the variance.

In reviewing the proposed legislation, several concerns were raised by the Philadelphia City Planning Commission. First, as written, the provision is limited to zoning variances and, therefore, would not apply to instances where a special use permit or zoning certificate is requested.

Second, the Commission noted that if a property owner is tax delinquent, applications for special zoning permission sought by a tenant in that property would be delayed even if the tenant had no legal responsibility for paying the taxes.

The Commission also noted that if the tax certification process did not yet exist, implementation of the program could slow down the development approval process.

To address these concerns, several meetings and discussions were held with the Department of Licenses and Inspections, the Department of Revenue, the Law Department and representatives of Councilman Rizzo's office. The result is a proposed amendment to the bill, which I have submitted to the Clerk for your consideration.

The amendment specifically addresses the first two concerns of the

Commission. First, the amendment would make tax certification requirement applicable not only to applications for variances but also to applications for special exceptions, special use permits, ZBA certificates and temporary use certificates.

Second, the amended bill would provide that if a tenant makes the application for the variance or certificate, the tenant need demonstrate only his or her clean tax status with the City and not also that the property owner is entirely free from any tax liability, although the tenant would still need to show that no property taxes are due on the specific property for which the special zoning treatment is requested.

The Department of Revenue and the Department of Licenses and Inspections have been addressing the third issue relating to making available a system for tax certification, and I have been advised by the Department of

Revenue that there will be no problem in having that system in place well before the bill is effective.

The Philadelphia City Planning Commission at its meeting of December 8th, 2009 recommended that with these changes, Bill 090852 be approved and the recommendation has been formally submitted to Council.

That is the conclusion of my testimony. I will be happy to answer any questions of the Committee at this time.

COUNCILMAN KENNEY: Thank you very much for your testimony.

Any questions for Mr. Kramer?

(No response.)

COUNCILMAN KENNEY: Thank you very much.

Whoever is next, please identify yourself for the record. Mr. Haigler, are you offering testimony?

MR. HAIGLER: I am not offering testimony. I'm Otis Haigler, Jr., Director of Legislative Affairs for the

Department of Licenses and Inspections.

Mr. Kramer offered the Administration's testimony. I'm here to provide any answers to questions that might relate to the departments.

COUNCILMAN KENNEY: Thank you very much.

Mr. Breslin, do you have any testimony today?

MR. BRESLIN: No, I have no testimony. I'm just here to -- Frank Breslin from Revenue -- to answer any Revenue-related questions.

COUNCILMAN KENNEY: Councilman Greenlee.

COUNCILMAN GREENLEE: Thank you, Mr. Chairman.

Good morning, gentlemen. First of all, is there any concern -- is that easily verifiable between your two departments if people owe taxes or not? Is that hard to determine or would that be any burden on anybody?

MR. BRESLIN: It's not an easy

task, but it's not difficult to determine. The Department has a tax status certification process that they utilize currently, and that's been a successful program.

COUNCILMAN GREENLEE: What about issues like if there's some appeal to the Tax Review Board or something? I mean, I guess if the person shows that, that that would be --

MR. BRESLIN: If a person has a valid appeal or a person is in a payment arrangement, they're considered compliant.

COUNCILMAN GREENLEE: One other thing. I know there will be some other testimony about this and we got some letters about it, and I don't know if any of you gentlemen can answer this. I guess it's more a legal question.

There seems to be a question about whether we have the right to do this. Now, as a non-lawyer, I think variances or permits are not entitlements, so I don't see why we couldn't. But, Mr. Kramer, was that ever discussed at the Planning Commission, just the legality of this?

MR. KRAMER: It certainly was discussed. Several members of the Commission are in fact lawyers by profession, so certainly there was some concern about the legality of this. I would defer to the Law Department as to a final ruling on that, as I am not an attorney myself.

COUNCILMAN GREENLEE: I understand.

MR. KRAMER: In a de facto sense, the Zoning Board already does check your tax status when they're adjudicating cases before them. That's not quite the same as what this bill is proposing, but they do certainly look into the matter at this time.

COUNCILMAN GREENLEE: Okay. All right. Thank you.

COUNCILMAN KENNEY: Thank you.

Mr. Breslin, it's whose responsibility to get the tax clearance certificate? I mean, do you have to -- when you appear to apply for the variance, do you need to present a tax clearance certificate at that time?

MR. BRESLIN: In this case, I would envision it being that the Department of License and Inspections would be able to check the taxpayer's status.

COUNCILMAN KENNEY: At the desk?

MR. BRESLIN: At the desk. What we're working on right now is, we've developed a computer -- a web-based system where you enter the taxpayer's information, and essentially what comes back is a clearance or not clear, and in a not clear situation, they would be forwarded to Revenue.

COUNCILMAN KENNEY: Is that in effect now?

MR. BRESLIN: We have that,

yes.

COUNCILMAN KENNEY: Which taxes are examined to be in compliance? Like if I want to build a strip mall or I want to build a small office building and I need a variance and I appear at the desk to do whatever paperwork I need for the variance, which taxes are reviewed to determine clearance?

MR. BRESLIN: Generally all taxes.

COUNCILMAN KENNEY: I mean --

MR. BRESLIN: Business tax, real estate tax, wage taxes. It depends on what taxes that particular entity that's seeking the variance is set up for. So if they're set up for business taxes, then we would be checking them. If it's a business, we'd be checking them for business taxes.

COUNCILMAN KENNEY: Would this apply to residential variance requests also?

MR. BRESLIN: I believe it

would.

MR. HAIGLER: Yes.

COUNCILMAN KENNEY: Do we have any idea how many variance requests the Department of License and Inspection receives each year?

MR. HAIGLER: Otis Haigler, Jr., Director of Legislative Affairs.

Roughly in the area between 1,800 and 2,000 variance requests per year.

COUNCILMAN KENNEY: Okay. Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Mr. Chair.

One quick question. If a person comes forth and wants to put in for a zoning variance and it comes up that that person has delinquent taxes, they make a tax agreement to pay the City, they get the variance and then six months down the line they break their agreement. What happens? Is there a revocation process in place?

MR. HAIGLER: Again, Otis Haigler, Jr., Director of Legislative Affairs.

No, we don't have a revocation process in place to revoke a permit that was issued based on the fact of a variance. If you have your permit, you have your permit.

COUNCILMAN CLARKE: So that's it?

MR. HAIGLER: Permits are not renewable like licenses. Licenses are renewable where you can deny the renewal of a license at the next license cycle period, but as far as a permit, once the permit is issued, that's a matter of right to do whatever you're going to do.

COUNCILMAN CLARKE: Okay. I'm just asking the question. Unfortunately, that will probably happen in some instances.

Thanks, Mr. Chair.

COUNCILMAN KENNEY: Thank you very much.

Any other questions for these witnesses?

(No response.)

COUNCILMAN KENNEY: Seeing none, thank you for your testimony.

Maureen Greene, please.

(Witness approached witness table.)

COUNCILMAN KENNEY: Good morning. Please identify yourself for the record.

MS. GREENE: Good morning. My name is Maureen McDevitt Greene.

COUNCILMAN KENNEY: Please proceed.

MS. GREENE: I wish to sincerely thank Councilman Rizzo for listening. It's unfortunately not so common an occurrence that citizens actually feel that we're being heard, but you listened to my exasperation and not only acted as if you understood my frustration, but immediately acted upon it. I have to say that that is most impressive, Mr. Rizzo.

COUNCILMAN RIZZO: Thank you.

MS. GREENE: I'm also grateful that most of Council has joined with you in making a small scrap of common sense into law. Again and again tax-paying neighbors find themselves confronted by a zoning issue that is foisted upon their community by someone who has not seen fit to pay the taxes owed on their property before they spend money to make it into something that does not meet the neighbor's approval. With the passage of this bill, at least tax delinquents will not be able to disturb a neighborhood until they are no longer delinquent.

Our current zoning situation often causes real angst and expense for neighborhoods who are often up against objectionable proposals made by tax delinquents who nevertheless can afford high-priced zoning attorneys. If all politics are local, so too should be the laws that govern use here in

Philadelphia.

The specific case that prompted my question to Mr. Rizzo occurred this summer in my Bustleton neighborhood. A recent ZBA decision granted a variance to open a tattoo parlor, and that variance, I would maintain, should never have been granted based on the property's proximity to residents and the current zoning -- but that's another story -- in a building that had most recently been a brothel. That property owner still owes $3,682.68 in unpaid property taxes. This is particularly galling to the real estate office directly next to the new tattoo parlor, where the long-suffering realtor keeps up his property and pays his taxes and is rewarded first with an illegal use and then a variance that allows a tax delinquent to profit from a use that is not in keeping with the neighborhood. That owner has made it clear to the neighbors the high regard that he has for law and decorum. The City should be supporting the tax-paying neighbors, and this law will at least remove the insult of being defeated by a scofflaw. We all paid for the police and the L&I activity that were required to shut down his brothel tenant on multiple occasions.

My only concern is that the law applies to all properties owned by an applicant and that it is not to be rendered meaningless through straw purchases and the identity-concealing corporations that populate our zoning notices.

While researching the tattoo case, I realized that one owner has five properties in that block and the next. At least one has had zoning activity, and the properties are not all assets to my neighborhood. The owner is delinquent in three of five properties, owing $10,421.02 in back taxes. You need to be sure that he can't just pay on one property before he can create more nuisances for the neighborhood.

I thank you for giving the neighbors one small stick to help beat back poor proposals, and hopefully it will at least be a small carrot to help fund our city.

I believe that good neighbors pay their taxes and do better for the neighborhood and city. I hope that the change coming to our Zoning Code will further this hopeful sense of doing things that work for the neighborhood, and I really thank you for your attention.

COUNCILMAN KENNEY: Thank you for your testimony.

Any questions for this witness?

(No response.)

COUNCILMAN KENNEY: Seeing none, thank you very much.

MS. GREENE: Thank you.

COUNCILMAN KENNEY: Paul Levy, please.

(Witness approached witness table.)

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COUNCILMAN KENNEY: Good morning. Please identify yourself for the record.

MR. LEVY: Good morning. My name is Paul Levy. I'm President and CEO of the Center City District. I have copies of my testimony here. I'll be very brief.

I'm here in support of this bill, so long as it obviously doesn't slow down a legitimate developer, but I want to suggest that the ordinance be amended to include any outstanding payment of assessments to the special services districts that exist in Philadelphia. More than a dozen special services districts help support the work of the City of Philadelphia, enhancing business and commercial corridors throughout the City. While the City gets about 12 percent of its tax revenue from the real estate tax, most special services districts derive between 70 and 100 percent of their revenues from surcharges on the real estate property tax. Many of the smaller special services districts in neighborhoods across the City must spend a significant amount of their staff time trying to collect delinquent charges.

The inclusion in this ordinance of assessments paid to special services districts would provide an additional method of enforcement of payment of charges owed to them.

Just as a note, just as title companies routinely call all the special services districts to ensure that property owners are current before a property is transferred, adding this step in and including the special services districts in front of the Zoning Board of Adjustment would be much appreciated.

Thank you very much.

COUNCILMAN KENNEY: Thank you very much for your testimony.

Councilman Greenlee.

COUNCILMAN GREENLEE: Thank

you, Mr. Chairman.

Mr. Levy, just a quick question. When you say that special services districts -- or the applicant needs to ensure that they're current, how do they do that? Is there something that they would have to show that? I mean, I'm not against what you're saying. I'm just trying to figure out how to do it.

MR. LEVY: Philadelphia is realty unique. In most cities, the city does the collection of the special district assessment and remits it, so it is part of the city records. Here, all the districts collect on their own. So I think it's simply what the title companies do. At the settlement table, we get telephone calls from the title companies saying is this property current. My suggestion here is in the due diligence process in the Law Department, they know where all the special services districts are, they simply call and say, Is this property owner current. It's a small extra step, but I think it would help particularly the neighborhood corridors.

COUNCILMAN GREENLEE: Could another way be that the person has to get some certification from the special service district to present it?

MR. LEVY: That would not be a problem for us. I've got a fairly large staff, but many of these districts are one-person districts, and I think Cindy Philo here from Old City could just address the logistics of it. I'd hate to add more burden on some of the much smaller districts.

COUNCILMAN GREENLEE: I hear you. All right. Thank you.

Thank you, Mr. Chair.

COUNCILMAN KENNEY: Thank you.

Any other questions or comments?

(No response.)

COUNCILMAN KENNEY: Thank you very much.

Cynthia Philo, please.

(Witness approached witness table.)

COUNCILMAN KENNEY: Please identify yourself for the record.

MS. PHILO: Good morning.

COUNCILMAN KENNEY: Good morning.

MS. PHILO: I'm Cynthia Philo and I just wanted to thank you all for allowing me here to testify today. I am the President and CEO of the Old City District here in Philadelphia, and I am here to testify on behalf and in favor of Bill No. 090852. In addition, I am testifying to ask you to amend it to put in the assessments for business improvement districts, as Paul Levy just mentioned.

The Old City District is a municipal authority special improvement district that started in 1998 by both the state and the city ordinances. Daily, we supplement City services in the area of clean and safe and do it for a 22-square-block area for a zone that encompasses the historic area of Philadelphia, along with some of Philadelphia's finest retail, restaurants and art galleries.

Through our annual assessments on commercially owned properties, we are able to accomplish these goals. Aside from grants, which unfortunately are few and far between today not only for us but for cities as well, this is the only source of revenue for the Old City District to maintain clean sidewalks, remove graffiti, illegal posters and pay for additional police services, as well as other supplemental services.

Being the head of this organization for the past 12 years, I've seen my share of variance requests come through on many of the properties in Old City. Many development projects from small to large have happened in the Old City District over this time, and many are done by owners who have outstanding taxes, and by the fact that they have ignored the City's responsibility, they more than likely ignore the Old City District assessments responsibility as well. In fact, there are many times when the owners are in arrears for a number of years.

Our only recourse is to lien this property and potentially put it up for sheriff's sale. This is not something that we want to do and, as a matter of fact, for a staff of two, takes a great deal of time when you're dealing with 1,158 properties. So the idea put forth by this bill that would allow us another avenue of making sure that our assessments would be collected, especially on those tax-delinquent owners, is just a benefit, and I would request that the bill's language be expanded to include business improvement district assessments.

The only way that the District

would be able to continue to do what it does with such success is to make sure our assessments are collected, and as such, by expanding this bill to include municipal authority business improvement districts would only be proper. In fact, it could be stated that the owner should be up to date, not only on the City taxes but really on all outstanding municipal tax services, prior to receiving any type of a variance.

I would urge the Committee to expand the language of this bill to include that a person seeking a variance must also be up to date on all municipal authority and business improvement district assessments.

I want to thank once again this panel. I wanted to thank Councilman Rizzo and, of course, Maureen, the catalyst for this here, for this particular bill, and I wanted to wish everyone a safe and effective snow removal in the present days that are coming before us.

I'm willing to take any questions that you may have. And I do have testimony here prepared.

COUNCILMAN KENNEY: Thank you for your testimony.

Any questions or comments?

(No response.)

COUNCILMAN KENNEY: Thank you.

MS. PHILO: Thank you very much.

COUNCILMAN KENNEY: Marjorie Greenfield, John McKeever, Rosanne Loesch? Are they here today?

(No response.)

COUNCILMAN KENNEY: Is Joseph O'Donnell here?

MR. O'DONNELL: Yes, I am, Mr. Chair.

COUNCILMAN KENNEY: Please come forward.

(Witnesses approached witness table.)

COUNCILMAN KENNEY: Good

morning. Please identify yourself for the record.

MR. O'DONNELL: Yes. Gentlemen, my name is Joseph O'Donnell and I am currently the President of the Old City Civic Association. Seated to my right is Richard Thom, who will also testify and is an architect and head of our Development Committee.

Gentlemen, it is my great honor to speak to you on behalf of Bill 090852. We support this bill and believe it should be strengthened to include all applications for land use and construction related to approvals sought from the City, including, but not limited to, all approvals by the ZBA, approvals by the Planning Commission, approvals by the Historical Commission and the rezoning of parcels in the City by City Council.

Such a bill, along with the fairly recent legislation that has made it easier for the City to sequester property for unpaid taxes and assessments, will go far to help preservation of the historic treasures in Old City and make it easier to maintain our city as an attractive tourist magnet.

As President of the Old City Civic Association, I speak for the residents of Old City, both residential and business neighbors, who through their civic association seek to preserve and beautify a unique place. Unique not only to Philadelphia, but also to the thousands of visitors from all over the world, who walk our streets every day.

We appreciate the efforts of our community members who work together with the Old City District and the City to make Philadelphia a great place to live and a wonderful place to visit by cleaning streets and sidewalks, controlling litter, planting trees, planting gardens and maintaining the common areas of Old City for all to see and admire.

Needless to say, we are upset by those among us who make things more difficult by not paying their real estate taxes and use the zoning system our taxes support for personal gain.

Ms. Kelly, I'm happy to report to you that the OCCA has appealed the zoning decision, is working to remove the psychics from Market Street, is working to eliminate the congestion caused by a parking lot, has done away with the pole dancing and is working to make liquor licenses more difficult to get and to use.

Gentlemen, I thank you very much for the opportunity to speak.

COUNCILMAN KENNEY: Thank you very much for your testimony.

Councilwoman Miller.

COUNCILWOMAN MILLER: Hi. Good morning. Thank you for your testimony. I just have a real simple question. What are the boundaries of Old City?

MR. O'DONNELL: The boundaries

of Old City start at the river and they go up to 6th Street. They start at Walnut Street and they continue to Spring Garden Street.

COUNCILWOMAN MILLER: Oh, okay. I represent the Northwest section of Philadelphia, 8th District. So I hear Old City all the time. I've never asked what are the boundaries. So there's evidently another group that picks up from 6th and comes up to City Hall?

MR. O'DONNELL: I'm not sure there is a group.

COUNCILMAN KENNEY: You have the special service district, which is the commercial side, and then I guess Wash West to a degree.

MR. THOM: Mr. Chairman and Councilwoman, Richard Thom for Old City Civic.

Our boundary goes to actually 7th Street, and about five years ago, six, seven years ago, we discovered there was no man's land of no civic groups. So we extended our boundary from 5th Street to 7th. There is the Chinatown Development Corporation. There is Wash West, as Councilman Kenney mentioned. There tend to be little pockets of areas of Center City that do not have representation by civic groups, but are, in effect, represented by the BIDs, the improvement districts and that sort of thing.

COUNCILWOMAN MILLER: All right. Thank you.

COUNCILMAN KENNEY: Thank you very much.

Mr. Thom, please identify yourself for the record.

MR. THOM: Good morning, members of Council. My name is Richard Thom and I am a Board member of the Old City Civic Association and, for the past 16 years, Chair of its Developments Committee. This Committee is charged by our Board with considering applications to the Zoning Board of Adjustment, among other development-related issues.

OCCA has had over 30 years of experience in dealing with matters of redevelopment in our community. As you are probably aware, the Old City neighborhood was considered by many to be a local ground zero in the recent surge in local development activity, particularly in the residential condominium market. In light of the recent contraction of such activity in our community, we are now faced with leftover project sites of over a dozen potential projects, many of whom are now in tax arrears. The applicants, of course, do not volunteer the status of any tax delinquencies on the proposed projects at the time of appearance before my committee. If they did so, I can assure you all they would be hearing from us would be a sound uprating by many of our honest, tax-paying OCCA Committee members who, like myself, pay all monies due to municipal tax rolls.

Given the millions of dollars owed by the City coffers by negligent tax property owners, it would seem wise to consider all mechanisms that may convince the recalcitrant owners, redevelopers and investors in new projects to make whole their tax obligations. That is why I'm here today in support of Bill 090852, but I have a suggested change.

We all agree that the applicants to the Board are not only seeking project approval from a planning and architectural standpoint, but to also enhance the value of their properties in the marketplace. Such added valuation cannot take place until a zoning permit reflecting the final decision of the ZBA is issued by the Department of Licenses and Inspection. Required proof of payment of all taxes due at the time of the application for this final permit would have the same enforcement effect as making it a condition of an appeal. Such a change in the timing of the payment will ensure that no one considering the purchase and redevelopment of one of the hundreds of tax-delinquent properties often derelict will feel that they are at risk of failure before the Zoning Board. The bill's approach may have a chilling effect on development at a time when we all need to encourage real estate reinvestment. I would hope the bill sponsors would consider this very reasonable change in adding the same enforcement effect.

Thank you for the consideration.

COUNCILMAN KENNEY: Thank you very much.

Any questions for this witness?

(No response.)

COUNCILMAN KENNEY: Thank you for your testimony.

MR. O'DONNELL: Gentlemen, let me just --

COUNCILMAN KENNEY: Gentlemen and ladies.

MR. O'DONNELL: Gentle persons. I'm very sorry.

Let me just state that Mr. Richard Thom we're very proud of. He has received an award from the City for saving the Girard property on Front Street, which is a tremendous addition to Old City.

Thank you.

COUNCILMAN KENNEY: Thank you. Thank you, Richard.

David Glancey, Ira Kauderwood, University of Pennsylvania.

(Witnesses approached witness table.)

COUNCILMAN KENNEY: Please identify yourself for the record.

MR. GLANCEY: My name is David Glancey. I'm from the Office of Government Affairs and Community Relations at the University of Pennsylvania. Good morning, Councilman Kenney, members of the Committee, Councilman Rizzo. Mr. Kauderwood is with me today. A substantial portion of his practice is before the ZBA and is clearly an expert on the procedures and the practices before the ZBA.

COUNCILMAN KENNEY: Lucky you.

MR. GLANCEY: So let me state at the outset that the University fully agrees with the intent of this proposed ordinance. We're fully supportive of the notion that all taxes that are due and owing to the City by any entity or any person must be timely paid. We believe, however, that the language contained in the bill poses some difficulties, both in its applicability and its legality.

Let me talk about the applicability first.

A plan of development used by many institutions of higher education and other land owners is the leasing of land to a developer who will then construct a building upon that land. It's kind of the opposite of what you've just seen in the amendment that the Administration has passed up.

I will tell you that universities such as Temple University, Drexel University, other institutions throughout the Philadelphia region, other institutions of higher education, use this model.

The landowner and the developer enter into a long-term ground lease, often for 30 years or more. The University of Pennsylvania, some of them are 50 and I think some of them are 80 years long. So, in essence, that's a fee, because it's that long, that lease is that long.

It is then recorded with the Department of Records, and the developer, the ground lessee, pays a transfer tax and, according to the lease terms, assumes all tax liability for this property for the duration of the lease. Since the landowner or the institution owns the land, it continues to be the record title owner or, in the language of the ordinance currently, the person who owns the property according to the City records. The developer, however, controls, maintains and has complete responsibility for the building and for all taxes and fees during the term of the lease.

So let us suppose that the landowner were to be an applicant for a variance before the ZBA, and the developer, who is the ground tenant, was delinquent in some tax. The current language of the ordinance would prevent the ZBA from granting that application for a variance even though the landowner is not in any way responsible for the taxes or for the delinquency.

COUNCILMAN KENNEY: David, I'm sorry. Could you say that again, because you lost me.

MR. GLANCEY: Okay. What would happen is, the University applies -- Ira will go before the ZBA applying for a variance. The ground lessee, who has the lease for 30, 40, 50 years, is delinquent in some taxes. We wouldn't know that necessarily. He's delinquent in some taxes. He goes before the ZBA and cannot get a variance for the University because of that delinquency, under the language of the ordinance as it is before us today. Obviously that's not the intent. We understand that. But that would be the result if the current language of the bill was adopted.

Quickly to the legality, a long line of cases in Pennsylvania holds that conditions that essentially serve a non-zoning purpose may not attach to a use or special exception, and we would posit to a variance as well. Recently, the Commonwealth Court -- and this is in 2007 -- held that while municipalities may attach reasonable conditions in approvals for zoning uses, the conditions cannot be so onerous as to preclude the use that is before them, nor may broad policy statements form the basis for such conditions.

Again, I think the current language of the ordinance seems to violate these provisions and may lead -- and I say "may" because it's not for sure -- but may lead to a de facto unjust and unconstitutional taking of property.

Let me reiterate that the University supports the intent of this ordinance, and I just heard today and did not know that de facto that the ZBA would mandate that taxes on the property that was at issue before them must be current prior to the grant of any variance. We think that should be done and maybe that should also be law rather than simply de facto. For the reasons already stated, however, it's our belief that the language of the bill in its current form poses significant problems in its applicability and its legality.

Thank you very much for listening to us today. We'll be happy to answer any questions you may have.

COUNCILMAN KENNEY:
Mr. Kauderwood, do you have anything to add? Please identify yourself.

MR. KAUDERWOOD: Ira Kauderwood from the Office of General Counsel.

I would just like to add from the lucky person who does appear at the counter and before the Zoning Board of Adjustment, I know that there's major efforts being made to streamline the processes, but the idea that the Department of Revenue or the Board of Revision of Taxes would have to issue some sort of a clearance certificate, for example, to the University of Pennsylvania, we have hundreds and hundreds of tax accounts. The Title 19 taxes are extensive and varied, and for us to have to go to the counter and wait for one of those departments to issue one of those clearance certificates, even assuming that everything -- that we attempt to pay all our taxes in a timely manner, but things get mixed up and everything, but for us to add that burden to those departments, to special service districts and then have to make that a prerequisite to either applying for a variance or applying for a permit at L&I I think might create some major problems for us.

COUNCILMAN KENNEY: The confusion I have in the testimony is, David's testimony is that the potential lessee of the property, which I guess is like kind of a design/build arrangement where you give them a long-term lease and they would come in, take the responsibility of design and construction and then --

MR. KAUDERWOOD: They collect the revenue from the tenants. It's two levels. We lease the land, the developer uses their capital to build the project, and then they typically would lease it to third parties.

COUNCILMAN KENNEY: Back to Mr. Glancey's testimony, he's saying that if the Zoning Board of Adjustment refused to grant the variance based on the lack of tax certification, that that could be potentially interpreted as a taking, as an illegal taking?

MR. GLANCEY: That's correct.

COUNCILMAN KENNEY: If the denial or refusal occurs at the counter, it's never scheduled for a hearing. The Zoning Board of Adjustment never hears it. Do you believe that's similarly an illegal taking?

The Department of License and Inspection is the administrative agency of the City that accepts the application and then sets up the hearing. The Zoning Board of Adjustment is the quasi judicial decider of fact and then makes the decision. If the administrative arm of the City government that has responsibility of collecting the taxes says we're not taking the paper, is that the same as the Zoning Board of Adjustment refusing them on the basis of tax delinquency?

MR. KAUDERWOOD: If they won't take the paper, then we couldn't even apply for a permit even if a variance wasn't required.

COUNCILMAN KENNEY: Okay. One other and I know Councilman Greenlee has some questions.

It would be interesting for me to know, because we have this -- and this is just an aside. It would be interesting for me to know, because you mentioned a number of tax accounts that the University of Pennsylvania has. There has been ongoing conversation over the years that I've been here and probably before I got here, almost 20 years ago, about the non-profit tax non-paying of the University on real estate. I would be interested -- and maybe this is something that Wharton can do or Fels could do or somebody can do, is really analyze the tax payment that the University makes, just the education, not the health system -- that's another whole story -- vis-a-vis what it saves in real estate because it's a tax-exempt operation. Because I think it would be a very interesting conversation as to what the real tax implications or tax benefits to the City that Penn, Temple, Drexel, LaSalle --

MR. GLANCEY: You're talking about all taxes?

COUNCILMAN KENNEY: I'm talking about all -- and, again, it's a big project. I would just be interested to see, because when those issues come up about the alleged unfairness of the real estate tax side, I really would like to know wage, business. Because it's got to be an astronomical number.

MR. KAUDERWOOD: I think we actually already have that, and I could make sure that got to you.

COUNCILMAN KENNEY: I would like to see it just out of curiosity.

MR. GLANCEY: I'm sorry,

Councilman, just to make sure. We have that information probably current as of 2006. We're in the process now of updating that information. I could supply the 2006 quickly to you, and I would do that if that's what you would like.

COUNCILMAN KENNEY: Thank you.

Councilman Greenlee.

COUNCILMAN GREENLEE: Thank you, Mr. Chairman.

Good morning, gentlemen. I'm probably on shaky ground trying to argue legality with two lawyers, but I'm going to give it a shot.

Mr. Glancey, in your statement you say about the Commonwealth Court held while municipalities may attach reasonable conditions in approval, the conditions cannot be so onerous as to preclude the use, nor may broad policy statements.

Is the paying of taxes unreasonable conditions? Is that onerous to ask? Is that a broad policy statement, that you need to pay your taxes?

MR. KAUDERWOOD: Well, let's say -- I think Mr. Glancey gave you one example, for example, where a ground tenant was, let's say, delinquent in their taxes and then Penn -- but we would be the record owner of the property and we would try and apply for permits, for example, at the hospital and then we would be told, Well, you can't get that permit because there's this other problem.

COUNCILMAN GREENLEE: But I was getting to that. That's the applicability thing. I was going to ask you about that, too.

But the pure legality of it, the City doesn't have the right -- I mean, isn't it -- I used the word before. I mean, a zoning permit is, in a sense, an entitlement, right? It's not a right to have.

MR. GLANCEY: Councilman, I don't think there's any doubt that the City clearly has a right to ask for taxes that are delinquent. We agree with that. However, the legality comes from the line of cases that we know exist in the state, of the Commonwealth. That might change if somebody challenges that. That was what I was referring to and particularly what the Commonwealth Court stated about broad policy matters attaching to --

COUNCILMAN GREENLEE: But broad policy, it's paying your taxes? I mean, we're not making a statement on global warming or something. We're saying the City government, you should pay your taxes to get a permit; that's all.

MR. GLANCEY: Zoning is -- and, again, the Bar Association is here and they can certainly testify more about this than I, but zoning is in rem. It means that piece of property that is before the Zoning Board at that time is what they must look at.

So I think what the Commonwealth Court is saying is that you can't bring these other considerations for -- again, taxation is a policy, and we might not want to consider it a broad policy like global warming, but it is a policy. So I think that's what the court was saying there. But, again, for us specifically, it is the applicability of the language as it is currently written that is more of a problem than the overall legality.

COUNCILMAN GREENLEE: Just one last question on legality. Has there ever been a case just like this, though, where a municipality has put in an attachment, if you will, on taxes to zoning, that you know of?

MR. GLANCEY: I'm not aware. I'll ask my colleague.

MR. KAUDERWOOD: No. We haven't done that research.

COUNCILMAN GREENLEE: So we don't know exactly?

MR. KAUDERWOOD: No.

COUNCILMAN GREENLEE: See, I got one point on you guys.

COUNCILMAN KENNEY: Councilman Clarke.

COUNCILMAN GREENLEE: I'm sorry. I just have one other, Mr. Chairman.

On the applicability, I hear what you're saying on that. I'm a little confused too, but I think I know what you're saying. Is there any language or amendment that you can think of that could deal with this? Because, look, I'm not trying to make -- none of us are trying to make innocent people --

MR. GLANCEY: Probably. I'm going to let my colleague flesh this out, but it seems to me that it is the opposite of the amendment that was just put before you by the Administration kind of protecting the tenant in that situation. It seems the opposite of that is our problem, because we are the landlord, but it might be that tenant that is causing us not to get the variance.

MR. KAUDERWOOD: I think there's two things that come to mind based on Mr. Glancey's testimony. One is that if a ground tenant that has paid transfer tax and is now responsible for the taxes is the one that's delinquent, the owner of the land should not be precluded from applying and obtaining variances.

Another situation would be the research -- what you had to be current on, it might -- the applicability might be more streamlined if what you had to be current on were taxes for the particular property at issue, not, for example, if we were applying for a permit at the Center for Advanced Medicine, that they would research properties that we own completely not in proximity to that.

It's not only real estate taxes we're talking about. They're also talking about all Title 19 taxes. I mean, if we had to make a list of what they are and how many accounts there were, I don't know how many. It could be -- I mean, we're talking about wage tax, real estate tax, business licenses. I mean, it's a lot.

COUNCILMAN GREENLEE: I understand. Thank you.

COUNCILMAN KENNEY: Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Mr. Chair.

Gentlemen, good morning.

MR. GLANCEY: Good morning.

COUNCILMAN CLARKE: Real quick. With respect to the constitutional issue, both of you know that in the Zoning Board -- and I have no idea as to how far they are allowed to go, but there are always -- well, not always, but in a lot of instances, there are these things called provisos attached to variances, and sometimes those variances can go quite broad.

Is it your suggestion -- because you say that the tax issue is not related to the matter at hand, the property. We disagree. So are you saying that there's a limit in terms of the provisos that can be attached to a zoning variance that sometimes go way beyond simply the use of that property?

MR. KAUDERWOOD: Yes, and there have been cases about that in Pennsylvania.

COUNCILMAN CLARKE: And when challenged, that the court has overturned?

MR. KAUDERWOOD: Yes.

COUNCILMAN CLARKE: Okay. So there is --

MR. KAUDERWOOD: For example, there is a case just in preparation for this hearing, there's a case where they were limiting the hours of a particular operation, and the court found that it wasn't related to the public health, safety and welfare and it was an unreasonable proviso.

COUNCILMAN CLARKE: Really? Okay.

COUNCILMAN KENNEY: Councilman Kelly.

COUNCILMAN KELLY: Good morning, gentlemen.

MR. GLANCEY: Good morning.

COUNCILMAN KELLY: I just have a quick question. If one of your tenants falls behind in paying their taxes and whatnot, you as a land owner, would you be able to apply any pressure for that tenant to get up to date and pay his taxes? Is there anything in that respect that you could do?

MR. GLANCEY: We do that. There are any number of instances that I have been informed of -- I haven't done it personally -- where that has happened and we have -- for instance, someone from the Public Safety Department goes to try and get a sprinkler and enters L&I to get that sprinkler permit and says, No, you can't have that because you're delinquent in whatever tax it might be. Well, that person gets a hold of the General Counsel's Office or gets a hold of me or somebody, and we attempt then to try and get that tenant to pay those taxes. And we really do, we push them very, very hard, but we don't write the check. I mean, that's their responsibility.

So, yeah, while we try to do that, Councilman, there are times you might find somebody who is recalcitrant. Or I'll give you another less onerous example. As we've talked about, there are many hundreds of property accounts that Penn has, some in the model that I described, others where we're tenants, and as a tenant, maybe going before the ZBA for a variance and finding the opposite problem where that owner, for instance, has not paid a tax.

So, yeah, that happens. We attempt to do everything we can. And I don't know if Mr. Kauderwood wants to add anything, but we attempt to do everything we can to get them to pay up, because we believe, with the intent of this kind of legislation, everybody ought to pay their taxes, of course, in order to get a variance or to get any other privilege that the City offers.

Can I make one suggestion, Councilman Kenney? And I haven't researched this at all, but it might be something that the Committee might want to think about, and maybe it doesn't work. We're non-profit, and most non-profits probably, other than the model I described and being tenants, lots of non-profits are not in the position of paying taxes at all. Maybe an exemption of non-profits from this legislation would be something that you could think about, or tying it maybe to a business privilege account number as opposed to just saying all property owners. I don't know. I mean, maybe that would be something that someone on the technical staff could take a look at. Those are just some suggestions I would make.

COUNCILMAN KENNEY: Thank you. Just one last question. You had mentioned twice -- I think both of you have mentioned -- the issue of transfer tax on lease. All leases require the payment of transfer tax or just certain ones?

MR. KAUDERWOOD: All leases that have a longer term than 29 years.

COUNCILMAN KENNEY: Okay. Fine. Thank you.

Any other questions?

Councilman Goode.

COUNCILMAN RIZZO: I have one, please.

Good morning.

COUNCILMAN KENNEY: Hold it. He has one question.

COUNCILMAN GOODE: Just one quick question on the issue of non-profits. Do you have for-profit subsidiaries?

MR. KAUDERWOOD: We actually -- there is one. I'm not sure if it actually owns anything at this point, but there is -- there's something called Penn Tower Hotel, Inc. that --

COUNCILMAN GOODE: But you do have for-profit subsidiaries?

MR. KAUDERWOOD: That is a for-profit subsidiary, yeah.

COUNCILMAN GOODE: Thank you.

Thank you, Mr. Chair.

COUNCILMAN KENNEY: Councilman Rizzo.

COUNCILMAN RIZZO: Is possibly process an issue here? You collect rent from certain folks, right, for what we're talking about here? Couldn't we see that the rent pays the taxes first before it goes into your pocket?

MR. KAUDERWOOD: That rent, just to clarify, that rent paid by a tenant to us, we would use it to pay their taxes?

COUNCILMAN RIZZO: Well, you don't want to have tenants that are deadbeats, do you?

MR. KAUDERWOOD: Of course not.

COUNCILMAN RIZZO: So shouldn't there be some prerequisite that they have a deal with you that they have to pay their taxes? Don't you think you have the responsibility to lease to people that are responsible?

MR. KAUDERWOOD: Absolutely, but we also -- they are also the -- once we lease to them, they're also the entities that are deriving revenue from the property. Typically the ground lease -- we're using -- we use the ground lease mechanism so that we don't put our capital into non-academic projects, for the most part. We don't add it to our debt service or have it affect our credit capacity. So they're the people that are actually making revenue. We get, you know -- what we get from them is their expenditure of capital to build the project.

COUNCILMAN RIZZO: What I'm hearing and thinking is that you possibly could do more to make this work rather than just saying exempt non-profits. I believe that there's more that you can do to cooperate with this financially struggling city to get us the taxes that are due.

Thank you.

MR. GLANCEY: Councilman, we'd be very happy to do that. If there's any suggestions that you want to give to me, I'd be happy to take those suggestions.

COUNCILMAN KENNEY: Any other questions for these witnesses?

(No response.)

COUNCILMAN KENNEY: Thank you very much.

MR. GLANCEY: Thank you.

COUNCILMAN KENNEY: Mr. Wright.

(No response.)

COUNCILMAN KENNEY: Mr. James Wright.

MR. WRIGHT: Here.

COUNCILMAN KENNEY: James Wright and James White. You can both come up together, if you'd like.

(Witnesses approached witness table.)

COUNCILMAN KENNEY: Good morning. Please identify yourself for the record.

MR. WRIGHT: Good morning, everyone. My name is James Wright. I am the Commercial Corridor Manager for the People's Emergency Center CDC. We manage the Lancaster Avenue corridor from 38th Street to 44th.

COUNCILMAN KENNEY: Please proceed.

MR. WRIGHT: PEC nurtures families, strengthens neighborhoods and drives change. We are committed to increasing equity and opportunity throughout our entire community. We provide comprehensive supportive services to homeless women and children, revitalize our West Philadelphia neighborhood and advocate for social change.

Since 1992, PEC's community development arm has provided real estate, economic development and quality-of-life programs to transform the West Powelton, Saunders Park and Mantua communities into a neighborhood of choice, a community in which people choose to live, work and thrive. Our comprehensive approach to neighborhood revitalization builds upon neighborhood assets and responds directly to the needs of the community.

PEC works with property owners and potential new businesses to fill vacant commercial spaces on Lancaster Avenue. We keep an inventory of available properties and urge owners of vacant buildings to sell or rent to potential business occupants.

PEC also continues to encourage property owners to restore the mixed-use character of their buildings. We have led the way with our own mixed-use project, Fattah Homes I, which is scheduled to complete in July 2010.

Bill No. 090852 will require that any person seeking a variance from the terms of Title 14 to be current in all payments of all taxes. If approved, this measure will add another step to the already laborious task of revitalizing anchor buildings, filling vacant storefronts and improving the facades of blighted structures on the Lancaster Avenue commercial corridor. Additional requirements will increase project timelines and costs that can influence the feasibility of a project.

Often variances are sought by retail tenants for the purposes of signage. This bill would penalize those tenants for a matter that they have no control over. It is the obligation of the property owner to remain current on all taxes. Furthermore, under the current requirements, real estate developers must ensure that tax balances have been satisfied before applying for a variance. Therefore, this bill would be a duplication of methods.

PEC urges the members of City Council to oppose Bill No. 090852 because it will adversely affect our commercial corridor revitalization strategy and decrease opportunities in the West Philadelphia community.

Thank you.

COUNCILMAN KENNEY: Thank you very much. So I understand your testimony, are you saying that in struggling commercial districts where there may be a higher level of tax delinquency, the ability to improve a property to do better in business would be hampered and, therefore, continuing the slide down into insolvency or bankruptcy?

MR. WRIGHT: What I'm saying is, a lot of times properties are converted, improved by the tenants. The property owners simply collect the rent. And so the tenant isn't concerned or doesn't necessarily concern themselves with paying the taxes. They just want to beautify their space so they can attract customers to make money. The taxes should be paid by the property owners, and that's exactly --

COUNCILMAN KENNEY: Councilman Greenlee.

COUNCILMAN GREENLEE: Just real quick. Thank you, Mr. Chairman.

Mr. Wright, I think that concern you just raised is covered in the amended -- I don't know if you were here when Mr. Kramer from the Planning Commission talked about the amendment that's being put in.

MR. WRIGHT: Yes.

COUNCILMAN GREENLEE: Doesn't that cover your concern, that all the tenant has to demonstrate is that his or her record is clean, not the owner? So it's not --

MR. WRIGHT: It does. My testimony was prepared previously.

COUNCILMAN GREENLEE: Oh, okay. Good. We solved one problem. Thank you.

COUNCILMAN KENNEY: Any other questions?

(No response.)

COUNCILMAN KENNEY: Please identify yourself for the record and proceed.

MR. WHITE: Good morning and thank you for the opportunity to testify. My name is James White and I'm the Policy Coordinator of the Philadelphia Association of Community Development Corporations. PACDC is a citywide association of 80 community development corporations and other organizations that have extensive experience developing affordable homes and commercial space and working to strengthen neighborhood commercial corridors as part of our larger mission of addressing resident needs and foster successful revitalization for our neighborhoods.

Philadelphia's CDCs have frequent contact with the Zoning Board of Adjustment and realize the importance of a well-functioning Board, as well as the City's need to collect delinquent taxes to raise revenue for our city's budget.

This bill directs the ZBA to not grant any application for a variance until the owner of the property for which the variance is being sought has submitted certification from the Department of Revenue that all of the person's taxes are current or are subject to a payment agreement or produces evidence that denial of the variance would be an unconstitutional taking of property. We have a number of concerns about this bill, including the following.

I'll amend my testimony to accept the amendment from the Planning Commission regarding commercial tenants and hope that it's incorporated into the Honorable Councilman Rizzo's bill.

We do have a couple of other concerns.

Agreements of sales: Purchasers of property sometimes seek a variance from the ZBA when they have an agreement of sale to purchase a property, but are not yet the actual owner. Their willingness to purchase and redevelop the property is contingent on their ability to obtain the variance. Under the proposed change in this bill, they would not be able to obtain a variance if the current owner is delinquent in their taxes, which could delay, if not halt, the sale and redevelopment of vacant and underutilized properties in our city.

Our other concerns are as follows:

Clear title: Properties disposed of by public agencies in Philadelphia for redevelopment often do not come with clear title, because liens for old tax and water bills have not been properly extinguished by the City. As a result, old tax liabilities remain with the property and are passed on to the new owners, whether a CDC, for-profit developer or a new homeowner, which can also prevent them from obtaining a ten-year tax abatement. The proposed ordinance would exacerbate the City's current clear property tax dilemma.

Tax certification: Because the Department of Revenue is understaffed and has outdated computer systems, the tax certification process as it is now can take up to six months, further delaying redevelopment projects and increasing the cost of development in Philadelphia at a time when the Administration is trying to lower development costs to attract new development and jobs.

Duplication: In The Philadelphia Code, Provision Title 9, Section 102, Subset 9 requires that a person or an entity must be either current in their taxes or have a payment agreement with the Revenue Department in order to obtain a permit or a license from the Department of License and Inspection or to renew a license. A variance is not a permit, and the notice of decision from the Zoning Board clearly says so. In fact, if a permit is not obtained within one year of the variance grant, the variance expires by its own terms. This is known as the one-year rule. So there's a question of duplication with this proposed ordinance that's before us today.

Lastly, we appreciate the intent of the bill to reduce delinquent taxes and generate much-needed revenue for the City, and we thank the sponsor for his due diligence in bringing it forward. However, given the duplication and the unintended circumstances of implementing this policy change, we urge the Committee to hold this bill to provide an opportunity for the sponsors to convey key stakeholders to craft an effective and realistic solution to collecting delinquent taxes without negatively impacting community development efforts in Philadelphia.

Thank you.

COUNCILMAN KENNEY: Thank you very much.

Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Mr. Chair.

Good morning.

MR. WHITE: Good morning.

COUNCILMAN CLARKE: First, thank you guys for your diligence as it relates to providing affordable housing for the citizens of the City of Philadelphia. A couple quick questions, and I was interested in hearing your testimony when you told me last week that you had some concerns about this bill, understanding the need to continue to aggressively create affordable housing. There's kind of a couple of things that I wanted to reference.

With respect to the agreement

of sale -- and I understand interacting with developers and zoning lawyers -- couldn't that simply be resolved by having a provision in the agreement of sale that says that contingent upon compliance with this bill, if it were so to pass, that the certification process was adhered to? So if I have an agreement of sale, this agreement of sale is contingent upon compliance with Bill No. Such-and-such, so if that person didn't comply with that particular bill, then that agreement of sale will be null and void, so, therefore, the person who got the agreement of sale then went to Zoning, said, This guy is not up on his taxes, so, therefore, you wouldn't be left holding the bag.

MR. WHITE: I mean, theoretically, yeah, that would work in terms of making it work for the proposed ordinance. I think, though, what would happen, though, is that every time anybody went into a deal with a real estate broker, they'd want to know what the property owner's tax record was before they even looked at the site or considered the site. I think in some cases, with most of the projects that we get, a lot of them come from the City. So there's still the question of the recycling agreement and the Administration beginning to do payments into court, but --

COUNCILMAN CLARKE: We don't own it --

MR. WHITE: I agree with what you're saying, Councilman, but I'm just proposing a question for you, the other side of the coin. The other side of the coin being for us mostly as non-profit developers of affordable housing or small business developers in commercial corridors and neighborhoods, quite often the person or the entity we deal with is the City and the Administration. Now, if the recycling agreement by the current Administration or the payments into court were to happen, that would also help alleviate some of our concerns, because then the recycling agreement would be honored and a lot of the problems with tax delinquencies would be reduced.

COUNCILMAN CLARKE: You mean on properties that were condemned by us?

MR. WHITE: Properties that were condemned by the City or that have outstanding tax delinquencies where they're vacant and the owner is gone.

So there's a lot of things, and I really --

COUNCILMAN CLARKE: I --

MR. WHITE: But hang on. There's a lot of issues here that I think that if we take the time and look at this and work together, because, believe me, I don't think anybody in this room doesn't want to see the City get delinquent taxpayers paying their taxes. I mean, the first thing I said to Councilman Rizzo was, I get it, I understand it, but there's some other things going on here that we have to fix in order for this to work. And I agree with you. In answer to your question, yes, that would work if it was contingent, but I think there's some other things that we need to fix, too. If we're going to just fix that one problem, we need to get all of them fixed so this works for us, and that's all I'm saying. I don't mean to be taking you down a different road, and I have all respect for what you're suggesting. I think it's a great idea.

COUNCILMAN CLARKE: No. I know what you're about. Trust me, I understand. My thing is that as one of the co-sponsors of the bill -- and I know how hard Councilman Rizzo worked on this -- we want to get this moving. Sometimes -- and Councilman will ultimately determine whether or not it comes out of Committee, but sometimes if we don't move it out of Committee, it kind of stays there for a long, long time and there's no burden on people to move the process, and I am a little concerned, actually talking to Councilman Greenlee, about the City's ability to implement this bill, because I do agree we have some challenges as it relates to staffing levels and unfortunately given what's probably going to be said on March the 4th at the Mayor's budget address, it's going to impact the staffing levels a little more.

I guess in terms of -- Councilman, do we have an effective date on the bill?

COUNCILMAN RIZZO: That's what I was going to bring up, that that effective date could always be amended to when we're all satisfied that it's ready. But from what I'm hearing, this bill could motivate a lot of owners, property owners that do lease their property, to get their act together and start paying their taxes, especially when their tenants start coming to them and saying, Look, I want to get a variance and I can't because you owe taxes and I'm not going to pay you my rent.

So I think that all of the things we heard today can be implemented, especially the effective date. And I think moving forward, especially with what we're facing, is important.

COUNCILMAN CLARKE: Thank you.

MR. WRIGHT: I just want to comment on that. A lot of property owners are really unconcerned with those sort of matters in taxes. On Lancaster Avenue. I can speak for Lancaster Avenue. They're just concerned with collecting the rent check, and they leave maintenance and other issues up to the tenant. And so any kind of obstruction to the tenant doing a facade improvement, getting the building permit to improve their space because of this bill, it wouldn't really -- I don't believe, I'm not sure, but I don't believe that it would encourage the property owners to get their act together.

COUNCILMAN KENNEY: Any other questions for these witnesses?

(No response.)

COUNCILMAN KENNEY: Seeing none, thank you very much for your testimony.

MR. WHITE: One last thing. I do have copies of my testimony. Thank you again for your time. Thank you to Councilman Rizzo.

COUNCILMAN KENNEY: Thank you very much.

Mr. Pinkus, please.

(Witness approached witness table.)

MR. PINKUS: Good morning, Councilman Kenney, members of the Committee. I'm Ralph Pinkus. I thank you for hearing me. I'm a last-minute substitute for a colleague. I'm an attorney. I'm a member of the Philadelphia Bar Association active in the Zoning Committee, the Real Property section and have been attending almost all of the Zoning Code Commission hearings, so I'm very interested in any legislation that may have some effect on the zoning process and the development process in the City of Philadelphia. And while I logged the Councilman in the proposal of the bill to in some way monitor tax payments, the word "variance" and the word "permit" I think are being used interchangeably here and I think it's important that a distinction be made, because as Mr. White has testified and as Mr. Thom has testified, the process of making application for a zoning variance frequently involves a property that may have become derelict or abandoned by an owner. The owner hasn't paid taxes. But there's a developer, there's an owner who says, I now want to improve this property, I need to improve this property. If I improve it, I will put a tenant in it. I have a tenant and I will now be able to put it back on the tax rolls. I'll put people to work in my property. It's all good for the City, but right now it's a problem. If I get the zoning variance, my request for a variance approved.

Remember, there's an application that was made at the Department of Licenses and Inspections. You don't go for a variance unless your application was denied, because the Code says this is not an approvable use or there's a dimensional problem. You then appeal to the Zoning Board and you have a hearing. The Board will grant a variance, but the grant of the variance does not permit you to go forward with what was approved by the Zoning Board. You must still go to the Zoning -- you must still go back to the Department of Licenses and Inspections and get a zoning and use registration permit. You must also, if you want to do any construction or development work on that property, get a building permit. There are provisions, as Mr. White testified, in the Licenses and Inspections section of the Code in Chapter 9 and also in Chapter 14 at Section 1700 requiring that an applicant be tax compliant when they apply for a permit.

So what I would say is -- and I would be happy to work with the Councilman and the Committee to make a more effective language that deals with the permitting process rather than the variance process, because I believe there are a lot of well-meaning applications that will benefit the City that if a variance were to be granted, that person would be able to then make tax payments.

A question was asked about the agreement of sale. The agreement of sale, because my other part of what I practice is transactional law, has always in it a contingency for title being good and marketable for the purchaser. That would mean that a title report is issued and if there are delinquent taxes, they will be disclosed in that title report, and most developers do not take title to a piece of real estate subject to the delinquent taxes. They get paid when they take title. So if there's a contingency in an agreement of sale, it says contingent on zoning approval and contingent on getting good and marketable title, that means at that particular time taxes will get paid.

So I believe there are mechanisms in place that have the same effect and there's an opportunity here within the permitting process to make sure taxes are paid.

COUNCILMAN KENNEY: Let me ask you a question. What then, in your opinion, does this bill do that's not already in effect?

MR. PINKUS: I believe it will discourage valid and --

COUNCILMAN KENNEY: Not from that -- you can give me that perspective. I'm just saying as far as the mechanics of a variance moving forward or a project being started or a sale being completed, what does this bill add on or not add on to what we currently have with the ability to deny a use permit or to deny a building permit?

MR. PINKUS: Because I believe if someone knows that the taxes aren't paid and the Board is precluded from granting a variance, the applicant will not file with the Department of Licenses and Inspections. They will say getting a variance -- I can't get a variance because the taxes are unpaid. The Zoning Board will not approve my request. My development proposal, I can't go forward with it.

COUNCILMAN KENNEY: Without this bill, the actual proposal still can't go forward because you can't get a building or use permit.

MR. PINKUS: But you know you now have permission to do the development or the particular activity on the property. You knew that -- in most instances you know that taxes are outstanding. So now you know that you have to pay the taxes, but at least you can proceed with whatever your proposed activity is. You don't get the opportunity to have a day on whether or not that activity can proceed, which might be an activity that enhances a property, a hospital.

They're talking -- Mr. White was talking about community development projects on Lancaster Avenue, but we can be talking about a shopping center or something else anywhere in the City that requires a variance, a small variance, maybe it's a dimensional variance, nothing very big, but you can't go in there -- or you go in and you say, Well, I don't know if I'm going to get a variance. So I think it's a discouragement for applicants.

COUNCILMAN KENNEY: Do you have other testimony? I seemed to have interrupted you, so I wanted to make sure you finish.

MR. PINKUS: I think I covered the points that I wanted to make, and because I'm a late-minute sub for someone, I didn't have any prepared remarks submitted beforehand.

COUNCILMAN KENNEY: Councilman Clarke.

COUNCILMAN CLARKE: Thanks, Mr. Chair.

Real quick. You say it's a discouragement to proceed with your development, but don't you think it's also an encouragement to pay your taxes or, at a minimum, make a tax agreement?

MR. PINKUS: Oh, I agree --

COUNCILMAN CLARKE: I think it's a reasonable approach in the bill that says if you have a valid agreement on your taxes with the City of Philadelphia, you can proceed.

MR. PINKUS: And I think --

COUNCILMAN CLARKE: Isn't that reasonable?

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MR. PINKUS: I think you can do that as a requirement of getting the permit, not of getting the variance, because --

COUNCILMAN CLARKE: But what you said is that you're not allowed -- and you know once you get a zoning variance, that can exponentially increase the value of your property and the variance is very important. If you get a variance, you don't necessarily have to get a permit. Now I have a property that's zoned for multi-family units. That property is significantly more valuable than a single-family home, say, for instance, two blocks from the Temple University campus.

MR. PINKUS: You still have to get a permit.

COUNCILMAN CLARKE: I understand that, but I'm saying you have a property that's now been zoned for a use that creates a significantly higher value.

MR. PINKUS: Correct.

COUNCILMAN CLARKE: So you don't necessarily have to get the taxes. You can just simply sell the property for twice. And the only reason I say that -- and I know you're familiar with the Temple University area. You have single-family homes in that area that will sell for $45,000. You turn that property into a multi-family unit when you can rent to Temple students, you can sell that property for $200,000 and pay the taxes out of the settlement. I mean, and then walk away with a significant property. What we want to do, why don't you just make an agreement and pay your taxes?

COUNCILMAN KENNEY: Can I maybe add on to your line of questioning?

COUNCILMAN CLARKE: Absolutely.

COUNCILMAN KENNEY: I assume that it's our -- and I'm making this as more a rhetorical question. I assume it's the City's desire to collect what it's owed, what's owed to it. And I understand Councilman Clarke's upsetment with folks who don't conduct their properties the right way, then convert them to multi-family and walk away with money, but if they're walking away with money and we're getting what's owed to us, does it matter?

COUNCILMAN CLARKE: Yes.

COUNCILMAN KENNEY: I'm just --

COUNCILMAN CLARKE: Yes. I don't think the person should be able to make a significant profit based on them getting around the system. I mean, if you owe taxes, you shouldn't be able to enter into an agreement that's going to allow you to profit dramatically when you owe taxes to the City of Philadelphia.

MR. PINKUS: But I don't know that those taxes won't get paid, because if you get the variance --

COUNCILMAN CLARKE: If you develop the property for a permit.

MR. PINKUS: Well, then it

doesn't get developed and it doesn't happen. But if you get permission to make it a multi-family unit, then you sell it to the developer and there's an actual sale, there's a settlement and there's a title insurance that's issued, and those taxes will get paid at that particular time. It's not that the City won't get paid. The City will get paid the delinquent taxes when the title is transferred to that new owner.

COUNCILMAN CLARKE: So your suggestion is that the people who owe taxes -- and I know I'm a getting a little beyond the beaten path on this -- who owe taxes should be able to get a City job?

MR. PINKUS: I'm not sure that I see the connection.

COUNCILMAN CLARKE: Well, you're saying I owe a bunch of taxes to the City, I should get a City job. Once I get that job, then I can pay my taxes.

MR. PINKUS: I am saying that

there is another way to make sure that tax is paid and it isn't necessarily triggering it or tying it to the grant of a variance, but it's the issuance of the permit that you must obtain after you get a variance.

COUNCILMAN CLARKE: All right. But I'm just bringing up I should get a contract with the City. If the City of Philadelphia gives me a contract, I'll pay you the taxes. That's okay, right?

MR. PINKUS: No. I'm not making --

COUNCILMAN CLARKE: That's what you're saying. You're saying the person should be allowed to profit from a property and then they'll pay the taxes.

MR. PINKUS: I'm saying that at the time that they get the variance and then they go in to get a permit, the condition can be at the time the permit is granted that the taxes be paid within six months or there's some process you don't get the permit unless the taxes are paid, and at that point, between a developer or a user of a property, you can obtain the payment, because the user can go to settlement, the purchaser can go to settlement and pay the taxes that are due, because he now has the ability to develop his property.

COUNCILMAN CLARKE: All right. I hear you. I mean, I disagree with you. I think you should, at a minimum, make an agreement, particularly if you're a property owner if you're in a position to profit from that property.

MR. PINKUS: Someone has to make an agreement or pay the taxes in order to get the permit.

COUNCILMAN CLARKE: Okay.

COUNCILMAN KENNEY: Councilman Kelly.

COUNCILMAN KELLY: Thank you, Mr. Chairman.

I just have one quick question. Why is it that when a person purchases property in the City of Philadelphia, why can't they pay taxes each and every year that it's due? Now, what's happening here is, speculators evidently, they go in there, they buy properties, they don't pay the taxes, and as Councilman Clarke just alluded to, that it's more or less, Okay, we'll wait until we can get a variance, we can do something different with the building, we'll make a lot of money out of this thing, then we'll pay the taxes.

This is something that I don't think should be tolerated by this Council or anyone at this point.

MR. PINKUS: One, if you're talking real estate taxes, yes, that happens. Of course, the City has the ability to use the sheriff's sale process to foreclose and take the property, but on the other hand, that person when the property gets sold, it's not the one who is delinquent, it's the new purchaser who ends up paying the taxes because the purchaser has a development plan for that particular property. So the bad guy sort of does get off the hook, except the City gets paid taxes at the time the sale is made.

COUNCILMAN CLARKE: I don't think that you should participate in any process that allows you to benefit financially by basically being a tax deadbeat. I just don't think --

MR. PINKUS: I'm not suggesting and I'm not here to support tax deadbeats.

COUNCILMAN CLARKE: Okay.

COUNCILMAN KENNEY: Any other questions for this witness?

(No response.)

COUNCILMAN KENNEY: Thank you for your testimony.

MR. PINKUS: Thank you for hearing me.

COUNCILMAN KENNEY: Mr. Perleman, please. David Perleman.

(Witness approached witness table.)

COUNCILMAN KENNEY: Please identify yourself for the record.

MR. PERLEMAN: My name is David Perleman. I'm the President of the Building Industry Association, which I represent the region's residential home builders. Thank you, Chairman Kenney and members of the Rules Committee, for allowing me to speak today. I am here to testify today on Councilman Rizzo's Bill No. 090852, which would require that any person seeking a zoning variance must first certify that they are current in payments of all taxes.

The members of the BIA certainly sympathize with the intent of this legislation, as well as similar legislation that has been introduced over the years. It is extremely frustrating to read newspaper accounts about deadbeat developers who aren't paying their taxes, but still asking for help from the City government. It hurts the reputation of the vast majority of developers and builders who do indeed play by the rules, and especially given the City's severe economic crisis, we certainly understand the motivation behind the bill.

But we must testify in opposition to this legislation because of the many problems that every developer has had dealing with the Board of Revision of Taxes. Too often we find the BRT raising taxes on properties that are abated, assessing vacant lots as building structures are on them, charging occupancy taxes on vacant lots and mysteriously instituting back taxes when title reports have shown no taxes owed. The BRT often does not respond to phone calls, e-mails, visits to their office or appeals. Unfortunately, too often it takes developers months to resolve all potential or perceived issues even after paying their bills. And so until the BRT gets its act completely together, we cannot provide support for this legislation.

Further, our zoning lawyers tell us that this legislation is an unconstitutional taking of property rights. Just like any other creditor, the City must go to court to get a judgment, but until then, the owner of the property should have the ability to pursue all of the options available under the law and like any other citizen.

For these reasons, the members of the Building Industry Association ask that the Rules Committee hold Bill No. 090852, and instead we respectfully ask for Council to support for other measures that would make the development process easier and faster than it currently is. I'd like to thank you for your support in that.

I am a builder. I am a developer. I've been building in the City for ten years. I don't have a delinquent tax sitting here. All my taxes are paid.

It is a process for us to pay

our taxes. There is always, on an annual basis, issues with our taxes. Not just any one of them, but if I have to pick one, mostly the BRT tax.

What I read to you today was testimony that was written. I can tell you that as a developer and builder, a lot of these things are very prevalent in building. We are dealing with a tough economic situation in the City. We're dealing with a tough economic situation for builders and developers in the City. We're looking to grow this city. We're looking for the developers and builders to grow.

I've heard a lot of testimony here today. I understand we're looking to collect the taxes. We want the City to thrive by collecting their taxes. I just think by burdening a builder and developer that goes into an area and tries to develop a piece of property that is delinquent currently in its taxes can only help by bringing jobs to the City, getting those taxes finally paid, if they do get their zoning variance approved.

I have in many cases made sure that the City collected revenue. The transfer tax certainly collects revenue. Certainly if there's a project being developed and we have a zoning permit, we're creating jobs, because eventually we're going to be building that project. So all in all, we're collecting our taxes, we're creating economic development, and we're putting people back to work. So this bill does not allow us to accomplish that. It may just prolong the tedious process that is currently in L&I and Zoning.

Thank you.

COUNCILMAN KENNEY: Does the recent announcement from the Mayor that the freezing of all BRT action over the next two years change in any way your testimony relative to the BRT side of the problem?

MR. PERLEMAN: I think the

announcement and I think moving forward it could help, but the question that I pose is, when? I have hearings with the BRT on Thursday in reference to tax issues. So it's very difficult. It's very difficult.

COUNCILMAN KENNEY: Councilman Goode.

COUNCILMAN GOODE: Thank you, Mr. Chairman.

Good afternoon. I'm not sure what your recommendation is related to the original intent of the bill. How do we achieve the original intent of the bill?

MR. PERLEMAN: I don't know what the original intent of the bill is --

COUNCILMAN GOODE: To get our money.

MR. PERLEMAN: Right, is to get paid. I am assuming that tax delinquency is what the bill is for.

COUNCILMAN GOODE: I'm not sure

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I heard your recommendations related to the original intent of the bill.

MR. PERLEMAN: Well, my intent is is that -- our recommendation was not to have the zoning variance denied.

COUNCILMAN GOODE: But you don't have an alternative recommendation?

MR. PERLEMAN: Not at this point, other than I believe that when you're getting a zoning variance --

COUNCILMAN GOODE: That was my first question. The second question is, you believe that this Committee and this Council not endorsing doing business with tax delinquents is anti-development?

MR. PERLEMAN: It could be perceived that way.

COUNCILMAN GOODE: Not endorsing doing business with tax delinquents is anti-development?

MR. PERLEMAN: But here's my --

COUNCILMAN GOODE: I understand your perspective.

MR. PERLEMAN: No, but here's

my concern: There is a piece of vacant ground that is delinquent in taxes. I as a current taxpayer decides to put that piece of property under agreement. Knowing that if I get my zoning variance, in a month I go to settlement, and in 30 days, all of those delinquencies have been addressed.

COUNCILMAN GOODE: Past delinquencies.

MR. PERLEMAN: All the past delinquencies get addressed.

COUNCILMAN GOODE: Not necessarily future delinquencies?

MR. PERLEMAN: No, sir. The title -- normally when you --

COUNCILMAN GOODE: I understand that.

MR. PERLEMAN: -- transfer title on a piece of property, it is the title insurance responsibility to collect those delinquent taxes.

COUNCILMAN GOODE: You take control of a property by paying off someone else's taxes --

MR. PERLEMAN: That's correct.

COUNCILMAN GOODE: -- in order to start a new venture.

MR. PERLEMAN: Right.

COUNCILMAN GOODE: That is not guaranteed to pay taxes?

MR. PERLEMAN: That is correct.

COUNCILMAN GOODE: Okay.

MR. PERLEMAN: That is correct.

COUNCILMAN GOODE: And so you should be allowed to proceed with your business venture, mitigate your risk by only promising to pay someone's else's past taxes?

MR. PERLEMAN: Repeat that one more time, please.

COUNCILMAN GOODE: You should be able to proceed with your business venture, mitigate your risk in that business venture by only committing to paying someone else's tax delinquency. There's no guarantee that you're going to pay your taxes after that?

MR. PERLEMAN: No, but it is your responsibility. That is correct.

COUNCILMAN GOODE: But there's no guarantee you're going to pay your taxes after that?

MR. PERLEMAN: That is correct.

COUNCILMAN GOODE: Thank you.

COUNCILMAN KENNEY: Councilman Greenlee.

COUNCILMAN GREENLEE: Just real quickly. I know we've been at this a long time.

Mr. Perleman, you basically raised two issues, the legal issue, and I guess we just disagree on that, but on the issue of the BRT, you said you have hearings pending. If this bill is passed out today, I'm sure there'll be more discussion about some other things we might do. If an amendment was added that if you can show you have an appeal in this BRT, wouldn't that cover your concern?

MR. PERLEMAN: I think the

biggest part of the concern is, you apply for a zoning permit, you require a variance, the process is long and tedious.

COUNCILMAN GREENLEE: But that really doesn't --

MR. PERLEMAN: But it does, because now we're adding another element.

COUNCILMAN GREENLEE: I think the element is, you pay your taxes. That's not a big element to me. Or show that you have an agreement or that you've appealed to the BRT. That doesn't sound like a big deal.

MR. PERLEMAN: I respect that, and I'm not totally against trying to get the City paid. I'm not against the City getting paid.

COUNCILMAN GREENLEE: I hope not.

MR. PERLEMAN: I am not. But what I'm against is adding another four-month or five-month process that will stop people from investing in our city and our development process moving forward.

COUNCILMAN GREENLEE: Okay. I guess it's just a fundamental disagreement that asking people to pay their taxes is that a burdensome thing.

MR. PERLEMAN: It is not.

COUNCILMAN GREENLEE: And proving it, I don't think it's that -- I don't know. It just doesn't seem like that's that burdensome a thing.

MR. PERLEMAN: And I don't disagree with you.

MR. GREENLEE: Okay. Well, then what's the problem?

MR. PERLEMAN: The problem is --

COUNCILMAN GREENLEE: You just don't want anything else added; is that basically it?

MR. PERLEMAN: I think that time and in an effort -- here's where you have. You have an old owner, doesn't want to pay his taxes, doesn't have money to pay his taxes. His business did not work out. Whatever he decided to do on that piece of property as a business did not work out. So he's delinquent in his taxes. He's delinquent in his mortgage in his home probably. We don't know that. Okay. But what we do know is, the quicker we can get the process through in zoning to get developments approved, the quicker we can go to settlement and collect our back taxes. That's all I'm saying.

COUNCILMAN GREENLEE: And we're not sure those taxes will be collected, as Councilman Goode said, but okay.

COUNCILMAN KENNEY: Just in fairness, as far as the overall concept, that people paying their taxes in a bad economy, when everyone is on edge and people are losing their jobs and people pay their taxes, I understand the total morality issue and the fairness issue, but in some respects and despite where this bill will go, amended, effective date -- Councilman Goode and I were having this discussion -- I kind of understand at least the argument that in certain sections of our city where there is a desperate need for development, where properties have been dilapidated and delinquent and tax owed for years and years and years, a person that's coming in and wants to make an investment in that particular three or four streets and there's a plan of development that ultimately will pay our taxes to us and then create a development that creates jobs and additional tax ratables, I agree with Councilman Goode, there's no guarantee that going forward that doesn't become a deadbeat, but I think in an area where we're desperate for development, sometimes that risk may be worth taking. Do I think that a big-time developer who wants to do a project who intentionally doesn't pay his taxes should be given the benefit of that? No, but I do believe that in some areas of our city that hasn't seen really good development for years other than what the CDC people and others have been struggling to do, I think sometimes an argument can be made. Whether that argument is valid or not or accepted is another story, but I'm listening to you and I kind of understand what you're saying. I guess the issue that Councilmen Clarke and Goode and Greenlee have expressed is, should we allow that delinquent folk to enter into our -- conduct a governmental process that ultimately gets them out of their arrearage and makes them some money. So I guess on that end of it, that's the immoral side of it, but I still would like to see those neighborhoods that are struggling who have -- if a variance request on a delinquent property creates a development and a tax ratable and employment, then I can kind of understand some validity to what you're arguing.

I mean, this bill is probably going to get out of Committee. It's going to be amended to what the Administration has suggested in negotiation with Councilman Rizzo, but there is a point where you can understand some of the validity of what you're saying.

MR. PERLEMAN: Thank you.

COUNCILMAN KENNEY: Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Mr. Chair.

Mr. Chair, I actually share some of your concerns and I understand the challenges that are before all of us, and as a Councilperson that represents such an area that you referenced, the reality is that we've had difficulty on trying to figure out what we do with all this vacant property, and more often than not, although technically there's an owner, but the owner has basically abandoned any hopes of -- or we've abandoned any hopes of collecting any taxes off of that. One of the things that happens in those neighborhoods, the values are relatively low, so the taxes are allowed to accrue. And this is the thing that I have a problem with, where people sit on properties that are basically speculating, knowing that the taxes are only like $50 a year, and then Temple University decides to expand and then they benefit dramatically, when they intentionally allowed their property to sit and they had the ability to pay the taxes. And I know it's a double-edged sword, but I just think without this provision, I wouldn't be comfortable with the bill, that if you have the ability to make an agreement and then move ahead in the process of getting a variance, I think that's a reasonable compromise.

I mean, I understand and I agree with you, Councilman, the ability to pay all of that money, that's just not happening right now, but if you're going to make an agreement -- and I think the City has been somewhat reasonable in terms of its agreement process -- that we should be able to implement such a program. And you'll hear during the amendment process of the effective date. I understand that the Administration included that, and I think that as time goes on -- because I support the BIA. I try whenever possible to make sure you guys have opportunities in my district -- that there's time to fix some of the challenges associated with implementing the bill. So thank you.

COUNCILMAN KENNEY: Thank you very much.

Any other questions?

(No response.)

COUNCILMAN KENNEY: Thank you for your testimony.

MR. PERLEMAN: Thank you.

COUNCILMAN KENNEY: Are you testifying?

MR. POLLOCK: Yes.

COUNCILMAN KENNEY: Hold it. We have one before you.

2/9/10 - RULES - BILL 090704, etc.

Mr. Stewart?

I know who you are.

(Witness approached witness table.)

COUNCILMAN KENNEY: Please identify yourself for the record.

MR. STEWART: Sure, Councilman. My name is Rob Stewart. I live in Logan Square in Councilman Clarke's district, 113 Van Pelt Street. I'm very active with the Logan Square Neighborhood Association and also a new coalition of neighborhood groups called Neighborhoods Matter.

This legislation when it was presented to the Logan Square Neighborhood Association and at our coalition meeting, there was enthusiastic support. It is as simple as I think most Committee members have noted throughout the morning. This is about fairness. This is about people putting a priority on paying their taxes.

I pay my taxes. Most of our

neighbors do. I think that most developers, as the BIA representative just stated, does as well. For those that don't, this forces a conversation and a conversation that in this day and age is important, because we all lose when taxes aren't paid. We have to pay more. The City has less.

We had expressed and I had written you earlier in the day about expanding this to cover other types of City approvals. I understand that those amendments or those provisions were contained in what the Administration put forward. So it seems as though this bill has been improved.

This conversation about the complexities -- and we understand. We have drafted proviso agreements relating to for special use of properties where it's with the tenant and not the owner. We understand the complexities. These conversations can be had. Things can get worked out when in fact people put a priority on what they need to do in order to move forward, and it's as simple as that. People need to pay their taxes or at least have an agreement.

So I would urge you to not delay this bill and to move forward and think that the whole conversation that the City is having about the development process and about zoning reform will actually allow this provision to be implemented along with those and without too much disruption.

COUNCILMAN KENNEY: Thank you for your testimony. I agree with you on one hand and I slightly disagree with you on another, and, that is, it is simple that people should pay their taxes. It does get complicated when we're in an environment where people maybe even want to pay their taxes but have lost their job or have had catastrophic issues and they happen to be property owners or they happen to be -- and every situation is different. Although the fact that the taxes aren't paid, the situation is the same, and in certain neighborhoods and certainly like in Logan Square where vibrant and high taxpayers and that's a -- and we're happy to have you and we're happy that you have the ability to pay your taxes. I think in certain areas of our city, property has languished for years and needs to be developed, and some arguments can be made that allowing that property to increase in value so someone wants to have it and develop it and pay us our taxes after that, I understand that argument, too.

So I don't think the bill is going to be delayed. I think it's going to be amended and get out, but I think this is an important -- actually, lengthy but interesting conversation to have, because it has some of the elements of city life and development and where our future is going, but I do appreciate your testimony.

MR. STEWART: And I appreciate

your point, and I guess my only comeback is, we need to have standards for development and we need to have standards for developers. There is good development and then I think from a neighborhood perspective, we sometimes see bad development, and sometimes the bad development actually flows from a developer that doesn't have their act in gear, doesn't have things figured out, and paying your taxes is one of those, let's maybe canary in the coal mine.

COUNCILMAN KENNEY: I agree, and I think, again, as was testified earlier, there are other levels of obstacles that are put in the way of bad development, including good District Councilpeople and neighborhood civic associations who fight that and other types of approvals that are necessary. But I'm not going to belabor the issue, because we've had --

MR. STEWART: And I don't want to take time.

COUNCILMAN KENNEY: We have Mr. Pollock yet.

MR. STEWART: Yes. Well, I wouldn't want to hold him up yet.

But neighborhoods do matter and that the interaction in these conversations can often yield stronger development projects. So thank you.

COUNCILMAN KENNEY: Councilwoman Miller has a suggestion.

Mr. Pollock, would you please come up.

(Witness approached witness table.)

COUNCILWOMAN MILLER: I believe that Councilman Clarke and Councilman Greenlee did talk about provisos and those kind of attachments to zoning. And one of the things I want to suggest too is that we do offer conditional approvals based on payment of taxes. So we'll talk about it later. Councilman Rizzo will put it in writing.

Thank you.

COUNCILMAN KENNEY: Thank you, Councilwoman.

Please identify yourself for the record.

MR. POLLOCK: Mr. Chair, members of the Council and Committee, my name is Steve Pollock. I come here as an individual citizen who has practiced, I guess, in the vineyards of the neighborhoods for about 33 years in this town and was at one point a co-publisher of the Zoning Code when the City couldn't publish the Zoning Code and we co-published the Blue Code.

I come here -- and not usually do I come and testify in City Council when I see something happening to the Zoning Code, but coming here, having worn several hats in my career. As a member of the State Planning Board right now for the Commonwealth of Pennsylvania, I have yet to see anything in the Commonwealth of Pennsylvania where any other municipality has leveled something like this as a criteria for granting a zoning variance. One of the things that you have to look at here is the macro and the micro. I understand there are developers and we bash developers and we've bashed development and what's going on in a neighborhood. But since this is going to impact both residential as well as communities and commercial and the big bad developers, as we call them, you are going to have people that want to add the addition for their living room or their kitchen or they want to put up a fence or they want to put up a deck or a pool and they're going to get caught in the squeeze of what's happening with regard to whether or not the records at the Revenue Department are accurate. So I think what Councilperson Miller just suggested about possibly allowing people at least to get to the Board and then at least -- and then holding that up, that may be something that at least allows people to go. Because one of the other things that people do do is, they do pay fees to get to the Zoning Board. They do pay -- and you also do have -- so you pay a fee to be reviewed down below at L&I. You pay a fee to make an appeal. You pay a fee to make an accelerated appeal. If you have storm water management issues, you're paying fees to get reviewed by the Water Department. So it's not like the City is devoid of any income throughout this entire process, and it's not like somebody is trying to have to spend money to get through this process, even if it be the little person, not just the big bad developer.

We've got an in-fill. We're an older city. We have a lot of things that are not necessarily on grand scales of big projects, and I think that we're impacting people.

I also -- and you'll have the Law Department to deal with this, but I would strongly disagree with any kind of a change that puts this as a criteria for granting a variance. First of all, if you look at the City Charter, the City Charter specifically lays out that you can grant -- that the Zoning Board's jurisdiction is to grant variances or grant relief where there's a unique hardship to the property, not detrimental to the health, safety and welfare. These are not land use issue. This is not a land use issue. I think it violates not only the City Charter -- and this is, as I said, 50 million lawyers in the directory, so you'll get 50 million different opinions, but this is just one person's opinion who has been to the Supreme Court of Pennsylvania on a whole legal issue about who has standing and who is aggrieved in this city with regard to that. So I've seen provisions that have had to be stricken because City Council wants to do something, it may be good policy -- and I'm not questioning anybody's obligation and duty to pay taxes. What I'm questioning is making this something that is a criteria for the granting of variances. You won't find it in the municipality's Planning Code as one of the criteria which governs every municipality but Philadelphia. You won't find it in the zoning enabling act that set up the Philadelphia Zoning Code, the First Class City Charters Act that gives Philadelphia the power to even have local zoning laws. You won't find this criteria in it and you won't find it anywhere as granting variances.

So I know you've heard a lot. You've heard a lot about the micro levels and the macro levels with the big bad developers. The little person, if you've ever tried to deal with the Revenue Department in this town to know whether they have accurate records or not, that is something that also worries me as to what the tax clearance certificates, if you ever tried to get those things, and whether or not the burden gets put on the taxpayer where they may have been able --

actually paid the tax.

So I think that you're setting up a whole bureaucracy that will thwart or stymie or at least retard economic development or slow down economic development. I think you're putting a barrier up there for developers who are saying, in essence -- or even people that want to do something in their home, that are saying that the process has really become onerous in this town.

Now, I'm not saying do we want to give them a free pass. I think it's been pointed out to you, people have already cited the provision, it's 9-102(9) of the Zoning Code. Add the word "residents" to business and you've got it. It says no license or permit can be issued or renewed, issued or renewed, because I know the worry from Councilman Goode is that some people -- this is our one shot to get people. That provision is already in there, so it's sort of like, as I always say to some people, it's like Dorothy. Dorothy, you could always click your heels and go home. All you got to do is click your heels.

The provision is there already for you to do what you're trying to do, but I urge you not to put it in as a criteria for granting variances.

COUNCILMAN RIZZO: Point of information.

COUNCILMAN KENNEY: Councilman Rizzo.

COUNCILMAN RIZZO: Mr. Pollock -- and I'm using the language that you used -- do you consider a swimming pool a luxury?

MR. POLLOCK: No, I don't.

COUNCILMAN RIZZO: Above-ground swimming pool or an in-ground swimming pool behind your home is not a luxury?

MR. POLLOCK: I don't think some people consider it a luxury. I mean, I don't think I'm in the business of telling people whether anything is a luxury or not. I think we're in the business of people -- but I think a fence is not a luxury either. A deck is not a luxury.

COUNCILMAN RIZZO: I didn't question you about a deck.

MR. POLLOCK: An addition is not a luxury.

COUNCILMAN RIZZO: I didn't question you about a fence. Sure, there's times when people need swimming pools for medical reasons.

MR. POLLOCK: For therapy, sure.

COUNCILMAN RIZZO: Sure. But in most cases people have a swimming pool and it's considered a luxury. You don't think a person that spends many, many thousands of dollars to put a swimming pool should owe taxes?

MR. POLLOCK: I'm definitely not saying that, Councilman.

COUNCILMAN RIZZO: That's what you said.

MR. POLLOCK: I'm saying with

regard to the Zoning Code, I think that there are -- and I'm sure you've heard it from other people -- that there are other ways for you to obtain the goal you're achieving, but you also already have a provision at 9-102(9) of the Code that says no permit shall be issued if you owe any kind of City -- or license. And if you want to change it so it says -- I will give you that my read of it says it limits it to a business. So if you want to add it for anybody to make it universal, make it universal, but I think you've already got the provision.

COUNCILMAN RIZZO: You weren't here when many of my colleagues pointed out the problem with giving someone a zoning variance, and I heard Councilman Kenney, I heard Councilman Clarke, but there are times once the person gets a variance, they are very happy with that piece of paper, don't do a thing and sell it for a big, big profit, and that isn't fair.

MR. POLLOCK: Variances last for a year, and if you don't do anything, they expire. A lot of what's happening is, you get a lot of people who get a variance and then don't have the financial wherewithal or don't have the ability or -- in this market, we don't have to highlight what's happening in this market, because I know the state legislature is on the verge of extending the life of permits through legislation statewide. But you have situations where people don't go forward. What's happening in this town is that if you want to have -- if you have something where you want to consolidate a lot, if a homeowner were to buy the next-door lot because, one, he doesn't want to see some other kind of development -- I know if that's a luxury -- and maybe they want to use next door as a garden -- and that may be a luxury too, Councilman.

COUNCILMAN RIZZO: For a swimming pool.

MR. POLLOCK: But what happens with those people is, they do that, and now maybe with the Zoning -- not the Zoning Board, but this whole computer system tells them they have to go consolidate the lots. Okay. To consolidate the lots, you've got to go to the surveyor or the City surveyor or a public surveyor, pay for a survey, do all that, and then even if you don't go through with the purchase, they've compelled you to survey, consolidate the lots and file a deed or at least show that you're ready to file a deed and do all those things because the computer system is directing it.

So what I'm saying to you is, there are a lot -- you have to get into this whole system to understand what's going on down at ground level. And I don't mean just for the big bad big developer. I'm just talking about even the little homeowner. And that's what I'm worried about what you're doing here.

COUNCILMAN RIZZO: Thank you, Mr. Chairman.

COUNCILMAN KENNEY: Councilman Greenlee.

COUNCILMAN GREENLEE: Real quick. Thank you. I don't know, Mr. Pollock, why you keep talking about the big bad developer. I know you only walked in here a few minutes ago. Nobody is saying anything about big bad developers. All we're trying to get is to see if people could pay their taxes. We're not bashing developers or developments. I don't know why you keep saying that.

Just one question. It's a similar question I asked of Mr. Glancey. You said that there is no such law anywhere else in the state. It doesn't necessarily mean it's wrong, does it?

MR. POLLOCK: It doesn't mean it's right.

COUNCILMAN GREENLEE: Correct. But it doesn't mean it's wrong. So there's nothing you can say -- I mean, you can have your opinion, but there's nothing on record saying that what this bill is proposing is illegal, right?

MR. POLLOCK: No, but I had my opinion about 14-1807(1) about who is aggrieved and who has standing, and we finally -- it took us about five, six years, but we got up to the Supreme Court of Pennsylvania.

So, I mean -- but I don't want to see us put that kind of a burden on individuals and people that we just say, who cares what -- we passed them and then it's up to somebody else to take the challenge.

I mean, I understand where the problem is, you know, and far be it from me to say that somebody doesn't owe their taxes. Death and taxes, as they say, are the two certainties in our life. And so I want to help and want to see us do something that gets revenue into the City, gets people to live up to their obligations, but I don't think that this is the way to do it.

COUNCILMAN GREENLEE: Okay. Sometimes people disagree. Thank you.

MR. POLLOCK: Yeah.

COUNCILMAN KENNEY: Any other questions for this witness?

(No response.)

COUNCILMAN KENNEY: Seeing none, anyone else to testify on the bill?

(No response.)

COUNCILMAN KENNEY: Seeing none, it was a good discussion.

MR. POLLOCK: Thank you very much.

COUNCILMAN KENNEY: I'm glad everyone hung in there and had their say.

This will now end the public hearing of the Committee on Rules. We will now convene a public meeting.

The Chair recognizes Councilman Greenlee for a motion to amend Bill No. 090704.

COUNCILMAN GREENLEE: Thank

you, Mr. Chairman. I move the adoption of the amendment of Bill 090704.

(Duly seconded.)

COUNCILMAN KENNEY: It's been moved and seconded.

All in favor?

(Aye.)

COUNCILMAN KENNEY: There are none opposed.

Now I will recognize Councilman Greenlee for a motion on the amended bill.

COUNCILMAN GREENLEE: Thank you, Mr. Chairman. I move that Bill No. 090704, as amended, be reported out of this Committee with a favorable recommendation and move further the rules of Council be suspended to allow for first reading at our next session of Council.

(Duly seconded.)

COUNCILMAN KENNEY: It's been moved and seconded.

All in favor?

(Aye.)

COUNCILMAN KENNEY: There are none opposed. Bill No. 090704, as amended, will be reported out of this Committee favorably, with a request made for rules suspension to allow for first reading at our next Council session.

The Chair recognizes Councilman Goode for a motion to approve the amendment to 090927.

COUNCILMAN GOODE: Thank you, Mr. Chairman. I move that the amendment to Bill No. 090927 be approved.

(Duly seconded.)

COUNCILMAN KENNEY: It's been moved and seconded.

All in favor?

(Aye.)

COUNCILMAN KENNEY: There are none opposed. Bill No. 090927 will be amended accordingly.

The Chair recognizes Councilmember Miller for a motion on the amended Bill 090927.

COUNCILWOMAN MILLER: I move that 090927 be reported out of this Committee favorably as amended and a request for the rules of Council to be suspended.

(Duly seconded.)

COUNCILMAN KENNEY: Moved and seconded.

All in favor?

(Aye.)

COUNCILMAN KENNEY: Bill No. 090972, as amended, will be reported out of this Committee favorably and a request made for rules suspension to allow for first reading at our next Council session.

The Chair now recognizes Councilmember Clarke for the purpose of offering an amendment to Bill No. 090852 with an explanation.

COUNCILMAN CLARKE: Thank you, Mr. Chairman. First, before I make the motion, I'd like to note that in this particular amendment, there is an effective date that has been listed as January the 1st, 2011. I think that gives adequate time to address the numerous concerns that have been brought up today, make any improvements, if necessary. I think a number of us have some issues that we need to resolve, particularly as it relates to the ability to enforce such legislation and looking at all the other issues that have been brought up.

So with that, Mr. Chair, I move that the amendment to Bill No. 090852 be approved.

(Duly seconded.)

COUNCILMAN KENNEY: Moved and seconded.

All in favor?

(Aye.)

COUNCILMAN KENNEY: There are none opposed. Bill No. 090852 will be amended accordingly.

The Chair recognizes Councilmember Clarke for a motion on the amended bill.

COUNCILMAN CLARKE: Thank you, Mr. Chair. I move that Bill No. 090852, as amended, be reported out of Committee with a favorable recommendation, request for rules suspension as to allow reading at the next session of Council.

(Duly seconded.)

COUNCILMAN KENNEY: Moved and seconded.

All in favor?

(Aye.)

COUNCILMAN KENNEY: There are none opposed. Bill No. 090852, as amended, will be reported out of this Committee favorably and a request made for rules suspension to allow first reading at our next Council session.

Thank you very much for your attendance.

(Committee on Rules concluded at 12:30 p.m.)

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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on February 9, 2010, and that this is a true and correct transcript of same.

____

MICHELE L. MURPHY

RPR-Notary Public

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