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COUNCIL OF THE CITY OF PHILADELPHIA  
PUBLIC HEARING AND PUBLIC MEETING  
BEFORE COUNCIL COMMITTEE ON RULES

- - -  
Room 400, City Hall  
Philadelphia, Pennsylvania  
Weds., 12/8/99, 9:30 a.m.  
- - -

- BILL 960064 - Real estate signs.
- BILL 990331 - Jefferson Sq. Redevelopment Area
- BILL 990673 - Health Care Advocate
- BILL 990678 - Fifth St. Special Controls District
- BILL 990719 - Appeals to Zoning Board of Adjust.
- BILL 990729 - Boxes for Dist. News, Printed Material
- BILL 990760 - Main St./Manayunk Spec. Controls District
- BILL 990761 - Zoning of Residential Districts
- BILL 990812 - Exemption from Real Estate Taxes on New Construction
- BILL 990817 - Special People in the Northeast Inc.
- BILL 990844 - Zoning and Use Registration Permits
- BILL 990847 - Changing Zoning Designations on Philadelphia Zoning Maps
- BILL 990848 - Sale of Malt or Brewed Beverages
- BILL 990849 - Telephone Booths (Bill withdrawn.)

(Full text of all ordinances in body of transcript.)

- PRESENT: COUNCILWOMAN ANNA C. VERNA, Chair  
 COUNCILMAN DAVID COHEN  
 COUNCILMAN JAMES F. KENNEY  
 COUNCILMAN MICHAEL A. NUTTER  
 COUNCILMAN FRANK DICICCO  
 COUNCILMAN BRIAN J. O'NEILL  
 COUNCILMAN DARRYL L. CLARKE  
 COUNCILMAN W. THACHER LONGSTRETH

- - -  
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2

## I N D E X

	Page
3	Bill 990817
4	Donald Cramp, Chief Executive Officer . . . . . 5
	Hospitals & Higher Ed. Facilities Authority
5	David Lacino, Pres. & Chief Executive . . . . . 7
	Officer, Special People in the Northeast
6	Mr. McGrail (no title given). . . . . 9
	Bill 990847
7	Edgar Einhorn, Esquire. . . . . 10
	Richard Lombardo, City Planning . . . . . 16
8	
	Bill 990064
9	Lindsay Johnston, President . . . . . 19
	Greater Philadelphia Association of Realtors
10	Ann Rubin, President-elect . . . . . 21
	Greater Philadelphia Association of Realtors
11	Lenora Bersin, Center City Residents Assoc. . . . . 31
	Judith Eden, Center City Residents Assoc. . . . . 33
12	Melanie Lamond, Realtor . . . . . 42
	Bill 990678
13	Richard Lombardo, City Planning . . . . . 59
14	Brenda Frazier, Staff Attorney for C. Tasco . . . . . 82
	Marian Johnson, Councilwoman Tasco's Staff. . . . . 83
15	Richard Feder, Esquire, Law Department. . . . . 86
	Michael Sklaroff, Esq., Member of Bar . . . . . 90
16	
	Bill 990719
17	Richard Lombardo, City Planning . . . . . 61
	Otis Haigler, L&I Regulatory Affairs Mgr. . . . . 66
18	Gray Smith, South Street Neighborhood Assoc. . . . . 69
	Stanley Krakower, Counsel to Civic Groups . . . . . 72
19	Richard Feder, Esquire, Law Department. . . . . 76
	Bill 990729
20	Otis Haigler, L&I Regulatory Affairs Mgr. . . . . 92
21	Al Taubenberger, President. . . . . 94
	Northeast Philadelphia Chamber of Commerce
22	Michael Klauder, General Manger . . . . . 94
	Country Club Restaurant
23	
	Bill 990848
24	Councilman Darryl L. Clarke . . . . . 99
	Reverend William King, Calvary United Church . . . . . 105
25	Captain Dorsey, 23rd District . . . . . 114
	Gladys Mead, 29th St. Performing Arts Center . . . . . 120

1		
2	(Index, cont'd.)	Page
3	Bill 990844	
	Thomas Chapman, City Planning . . . . .	130
4	Stanley Krakower, Counsel to Civic Groups . .	132
	Gray Smith, South Street Neighborhood Assoc.	133
5	Richard Feder, Esquire, Law Department. . . .	134
6	Bill 990331	
	Noel Eisenstat, Redevelopment Authority . . .	157
7	Jeremy Newburg, Jefferson Square CDC. . . . .	170
	Peggy Brookens, St. John's Leadership Team. .	177
8	Mary Black, St. John's Leadership Team. . . .	181
	Irv Ackelsberg, Community Legal Services. . .	182
9	Kevin Price, Jefferson Square CDC . . . . .	197
10	Bill 990673	
	John Domzalski, Health Department . . . . .	199
11	Yvonne Tisdale, Phila. Unemployment Project	208
	Citizens for Consumer Justice Witness . . . .	212
12	J. Stein, Counsel, Community Legal Services	216
	Kevin Wigglesworth, DVHC . . . . .	219
13	Bernard Johnson, Health Family. . . . .	238
14	Bill 990812	
	Michael Nadol, Dir. of Finance . . . . .	247
15	David Glancy, Revision of Taxes . . . . .	254
	Steven Kline, Kline Company . . . . .	266
16	Ben Edison, Developer . . . . .	273
17	Bills 990760, 990761	
	Richard Lombardo, City Planning Commission	276
18	Patrick O'Neil, City's Environmental Counsel	303
	Robert McAlane, Namico . . . . .	317
19	Kay Smith, Manayunk Neighborhood Council . .	319
	Dan Netison, Developer . . . . .	322
20	Ed Weiner, Citizen . . . . .	324
	Virginia Restemeyer, Citizen . . . . .	328
21	Peter Kelson, Dranoff Properties . . . . .	332
	Michael Sklaroff, Cotton Street Landing, Ltd.	334
22	Stanley Krakower, Manayunk Neighborhood . .	345
	Council, Friends of Manayunk Canal,	
23	Sierra Club	
	Kathy Tomaski, Manayunk Neighborhood Council	368
24	Sarah A. Willig, PhD. . . . .	371
	Liz Terella, Manayunk Neighborhood Council	378
25	Darlene Macina, Friends of Fairmount Park	392

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Index, cont'd.)

Page

Wendy Lathrop, Land Surveyor and Planner . .	400
Ernest Cohen, Engineer . . . . .	438
Dorothy Berner, Riverkeeper . . . . .	442

1

2

## P R O C E E D I N G S

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COUNCIL PRESIDENT VERNA: Good morning everyone. This is the public hearing of the Committee on Rules. I would ask that the clerk to read the title of Bill No. 990817.

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THE CLERK: An ordinance declaring that it is desirable for the health, safety, and welfare of the people in the area served by Special People in the Northeast, Incorporated, a Pennsylvania nonprofit corporation, for the Hospitals and Higher Education Facilities Authority of Philadelphia to participate in the financing of certain projects for Special People in the Northeast, Incorporated.

16

17

18

COUNCIL PRESIDENT VERNA: Good morning. Please identify yourself for the record and proceed with your testimony.

19

20

MR. CRAMP: Good morning, good morning. How nice it is to see you all again.

21

22

23

24

25

COUNCIL PRESIDENT VERNA: Thank you.

MR. CRAMP: My name is Donald Cramp. I serve as chief executive officer of the Hospitals and Higher Education Facilities Authority.

May I proceed with my testimony?

1 12/8/99 RULES - BILL 990718

2 COUNCIL PRESIDENT VERNA: Please.

3 MR. CRAMP: Thank you very much.

4 I wish to make a very brief  
5 introductory statement in support of the proposed  
6 bill before you this morning.

7 On May 10, 1999 a representative for  
8 Special People in the Northeast attended the  
9 Hospitals and Higher Education Facilities  
10 Authority of Philadelphia's Board of Directors  
11 meeting seeking the Authority's assistance in a  
12 financing. The Special People in the Northeast's  
13 application was accepted by the Authority Board.

14 A public Tax Equity and Fiscal  
15 Responsibility Act, the TEFRA hearing, on behalf  
16 of the Special People in the Northeast, was held  
17 on September 10, 1999 in our boardroom, in  
18 accordance with the published newspaper  
19 advertisement. Today, we are very pleased  
20 together of assisting the Special People of the  
21 Northeast, Inc. and the many people associated  
22 with this outstanding organization.

23 In closing, I would like to express  
24 deep appreciation at this time of the year for the  
25 Rules Committee to convene and to consider this

1 12/8/99 RULES - BILL 990718

2 bill.

3 Thank you very much.

4 COUNCIL PRESIDENT VERNA: Thank you.

5 Would someone describe for the record  
6 SPIN and what services they offer, please.

7 MR. LACINO: Yes. My name is David  
8 Lacino (ph.), and I'm the president and chief  
9 executive officer of Special People in the  
10 Northeast, Incorporated.

11 It is a nonprofit corporation, a  
12 subcontractor to the City of Philadelphia. And  
13 our mission is to support individuals with mental  
14 disability from infancy through senescence.

15 The organization is almost 30 years  
16 old. It serves some 1600 people annually, and it  
17 has an array of services, starting with infant  
18 stimulation, day care, preschool services,  
19 employment opportunities, actual handicapped  
20 employment, and residential programs, as well as  
21 wraparound therapeutic services for families in  
22 the home and people residing in their natural  
23 family setting.

24 The agency serves all of Philadelphia,  
25 but the major focus of its service is from Olney

1                   12/8/99 RULES - BILL 990718  
2 north, to the Bucks County line, and out to the  
3 River and the Montgomery line.

4                   Is there any other information you  
5 would need?

6                   COUNCIL PRESIDENT VERNA: Now, this  
7 bill would authorize improvements to SPIN  
8 facilities?

9                   MR. LACINO: That's correct. It's a  
10 \$5.6 million tax-exempt financing. Roughly  
11 \$1.1 million would be financing for two new  
12 commercial sites on Drummond Road, which are  
13 needed to support the therapeutic staff, the  
14 training initiatives of the agency, and the  
15 support personnel for the adult services, the  
16 residential programs.

17                   Almost \$3.8 million of the money is  
18 refinancing all of the commercial debt in the  
19 agency, which is the result of two other  
20 commercial properties and home in which the  
21 residents live.

22                   And, finally, there is a \$700,000  
23 piece. We are cooperating with the City of  
24 Philadelphia for this year's expansion, and six  
25 new homes will be identified, and those homes will

1                   12/8/99 RULES - BILL 990718  
2           require another ordinance and coming back before  
3           City Council. They have not yet been identified  
4           yet.

5                   But the financing is all a part of that  
6           package, and that's what the money will be used  
7           for.

8                   COUNCIL PRESIDENT VERNA: Thank you.  
9           Thank you very much.

10                   Any questions from members of the  
11           committee?

12                   (No questions.)

13                   COUNCIL PRESIDENT VERNA: Thank you  
14           very much, and thank you for all the wonderful  
15           work that you do.

16                   MR. LACINO: Thank you.

17                   COUNCIL PRESIDENT VERNA: Do we have  
18           anyone else to testify on this bill?

19                   MR. MCGRAIL: Good morning.

20                   COUNCIL PRESIDENT VERNA: Good morning.

21                   MR. MCGRAIL: Mr. Chairman and members,  
22           if you see fit to vote this out, I would  
23           appreciate a suspension of the rules.

24                   COUNCIL PRESIDENT VERNA: Thank you.

25                   MR. MCGRAIL: And happy holidays.

1 12/8/99 RULES - BILL 990847

2 COUNCIL PRESIDENT VERNA: Thank you.

3 Same to you.

4 COUNCIL PRESIDENT VERNA: Mr. Cramp, do  
5 you have any other bills?

6 MR. CRAMP: No, we do not. We are  
7 concluded.

8 COUNCIL PRESIDENT VERNA: Thank you.

9 MR. CRAMP: Thank you.

10 COUNCIL PRESIDENT VERNA: The next bill  
11 being called for consideration is Bill No.  
12 990847. Will the clerk please read the title of  
13 that bill.

14 THE CLERK: An ordinance to amend the  
15 Philadelphia Zoning Maps by changing the zoning  
16 designations of certain areas of land located  
17 within an area beginning at a point on Penn Street  
18 140 feet northeast Christopher Columbus Boulevard  
19 and extending 624 feet along said Penn Street,  
20 then extending to the Delaware River.

21 COUNCIL PRESIDENT VERNA: Good morning.

22 MR. EINHORN: Good morning.

23 COUNCIL PRESIDENT VERNA: Please  
24 identify yourself for the record.

25 MR. EINHORN: Yes. I'm Edgar Einhorn,

1                   12/8/99 RULES - BILL 990847  
2           and I represent the purchasers of this property,  
3           which also is known as Piers 35, 36,37 -- Piers 36  
4           through 39 north.

5                   COUNCIL PRESIDENT VERNA: I'm sorry.  
6           You originally said 35?

7                   MR. EINHORN: I'm sorry. I'm  
8           incorrect. It's Piers 36, 37, 38, and 39 north.

9                   COUNCIL PRESIDENT VERNA: Mr. Einhorn,  
10          please proceed.

11                  MR. EINHORN: This property is  
12          approximately nine and a half acres and was  
13          occupied by the former Riverfront Theater. My  
14          clients have it under an agreement of sale and  
15          will be going to closing in January.

16                  Their intent is that they would like to  
17          develop the property for residential purposes.  
18          There are no definite plans now, but their intent  
19          is to put up single-family dwellings along the  
20          river's edge portion and in the center to put a  
21          mid-rise structure of apartments approximately  
22          ten, twelve stories.

23                  They also would like to have some  
24          commercial uses, mainly to facilitate the people  
25          living there -- like a commissary, dry cleaner,

1 12/8/99 RULES - BILL 990847

2 some offices, restaurants, things like that.

3 And that is their intent at this point,  
4 purely to develop it for residential purposes.

5 COUNCIL PRESIDENT VERNA: Thank you.

6 Do we have anyone from City Planning  
7 present?

8 COUNCILMAN NUTTER: Madam Chair, I  
9 could find all of the City Planning people 'cause  
10 they're in my office right now.

11 COUNCIL PRESIDENT VERNA: Well, we need  
12 someone to testify on this.

13 MR. EINHORN: I know that City Planning  
14 met on this last Thursday, and Mr. Chapman advised  
15 me that they had approved it.

16 COUNCIL PRESIDENT VERNA: Well, I would  
17 like someone from City Planning to testify for the  
18 record.

19 MR. EINHORN: Are there any questions  
20 that I can answer?

21 COUNCIL PRESIDENT VERNA: I beg your  
22 pardon?

23 MR. EINHORN: Are there any questions  
24 that you would like me to answer?

25 COUNCIL PRESIDENT VERNA: Are there any

1 12/8/99 RULES - BILL 990847

2 questions of Mr. Einhorn from the committee?

3 The Chair recognizes Councilman Kenney.

4 COUNCILMAN KENNEY: Good morning, Mr.  
5 Einhorn.

6 MR. EINHORN: Good morning.

7 COUNCILMAN KENNEY: Could you give me  
8 an idea -- maybe I didn't hear your testimony, but  
9 how many residential units are planned for this  
10 location?

11 MR. EINHORN: Right now, the intent is  
12 to put up about 80 single-family dwellings.

13 COUNCILMAN KENNEY: On what sized  
14 lots?

15 MR. EINHORN: What they would be would  
16 be similar what are on Pier 3 and Pier 5, mainly  
17 six-story buildings, with two-level single-family  
18 on each level, so you would have three levels of  
19 single-family in these six-story buildings.

20 COUNCILMAN KENNEY: Are all the  
21 structures multifamily? Are there any  
22 single-family structures?

23 MR. EINHORN: No, no.

24 COUNCILMAN KENNEY: Okay.

25 MR. EINHORN: I have a conceptual plan

1 12/8/99 RULES - BILL 990847

2 that's been drawn. City Planning has this mounted  
3 for you.

4 There's a conceptual plan that's been  
5 drawn that shows the location of the six-story  
6 single-family structures and an approximate idea  
7 of where they would put the mid-rise structure.

8 COUNCILMAN KENNEY: Okay. Are you a  
9 part of the group that's doing the work or the --

10 MR. EINHORN: No, I'm counsel for the  
11 investment group that's doing it.

12 COUNCILMAN KENNEY: And they currently  
13 own the property?

14 MR. EINHORN: Yes. They own several  
15 pieces of property in the City. They own the One  
16 East Penn Square building.

17 COUNCILMAN KENNEY: I'm sorry. They  
18 currently have control, site control, over this  
19 parcel now?

20 MR. EINHORN: Yes. And we have a  
21 letter that I presented to Councilman DiCicco  
22 consenting by the present owners, the Tabises  
23 (ph.), the rezoning of this bill.

24 COUNCILMAN KENNEY: Oh, this is the  
25 Tabis property?

1 12/8/99 RULES - BILL 990847

2 MR. EINHORN: Yes.

3 COUNCILMAN KENNEY: Okay, fine. What  
4 is your client's timeframe on construction?

5 MR. EINHORN: Hard to say.

6 COUNCILMAN KENNEY: Just general.

7 MR. EINHORN: It depends on financing.

8 I would assume they would probably like to do  
9 something next year.

10 COUNCILMAN KENNEY: Okay, great.

11 MR. EINHORN: Their intent is to move  
12 ahead with it as soon as possible. As I said,  
13 they've already been meeting with an architect to  
14 get some ideas conceptual ideas of what to do with  
15 it, and actual groundbreaking all would depend on  
16 how they get their financing lined up.

17 COUNCILMAN KENNEY: Fine, thank you.

18 I think this kind of project is -- I've  
19 had discussions with Councilmember DiCicco about  
20 this, and these are tremendous projects which  
21 continue to extend the Center City waterfront into  
22 -- probably more north than south because of the  
23 commercial and industrial nature of the southern  
24 port, but the extending of the northern waterfront  
25 district with residential properties is a

1 12/8/99 RULES - BILL 990847

2 tremendous --

3 MR. EINHORN: Absolutely, and this is  
4 the first time something's going north of Spring  
5 Garden, and I think it would be a great impetus to  
6 the whole area if we can get this going.

7 COUNCILMAN KENNEY: Great, good luck.

8 MR. EINHORN: Thank you very much.

9 COUNCIL PRESIDENT VERNA: Thank you,  
10 Mr. Einhorn.

11 Mr. Lombardo, we are now considering  
12 Bill No. 990847.

13 MR. LOMBARDO: Good morning, Madam  
14 Chair and members of the committee. My name is  
15 Richard Lombardo, from the Planning Commission,  
16 here today to speak on Bill 990847. I'll try to  
17 brief 'cause I know you have a very extensive day.

18 But this is bill is a bill to rezone  
19 approximately 9.4 acres of former the Riverfront  
20 Dinner Theater from G2 industrial C3 commercial.  
21 You'll remember back a number of years ago when  
22 the Planning Commission did a number of plans for  
23 the riverfronts, both the lower Schuykill and  
24 upper Schuykill, central and lower Delaware.

25 In the central and the edges of the

12/8/99 RULES - BILL 990847

1 north and the edges of the south, the Commission  
2 recommended that ultimately those piers would no  
3 longer be needed for industrial or port-related  
4 business; it should be rezoned to C3 commercial.  
5 A number years ago, we did the south end. We did  
6 where Walmart and Home Depot is, all the way down  
7 to Snyder Avenue; we rezoned all that C3  
8 commercial. This bill would rezone the area north  
9 of Poplar Street to C3 commercial.  
10

11 If we had had time at the end of the  
12 administration, we would have probably recommended  
13 these -- a larger bill that also would have  
14 encompassed other property along the riverfront,  
15 which -- what it does now is, it sort of jumped up  
16 from Dave and Busters up several blocks to this  
17 site, but still the stuff in between, including  
18 the incinerator, is still zoned industrial. We  
19 would have recommended the whole riverfront in  
20 that area to be zoned to C3 commercial. We  
21 believe that that is a district that would allow  
22 mixed-use development, similar to what is proposed  
23 here.

24 And for the record, we would recommend,  
25 as of the Commission meeting of December 2, 1999,

1                   12/8/99 RULES - BILL 990847

2           that Bill 990847 be approved.

3                   COUNCIL PRESIDENT VERNA: Thank you.

4                   And, Mr. Lombardo, I assume that there  
5           have been community meetings regarding this  
6           change?

7                   MR. LOMBARDO: I believe there was a  
8           meeting held with Northern Liberties, and our  
9           community planners tell us that they are -- I  
10          wouldn't say they supported it, but they had no  
11          objection to this. I think they actually are  
12          supportive of this proposal; they have no  
13          objection.

14                   COUNCIL PRESIDENT VERNA: Thank you.

15                   Are there any questions from members of  
16          the committee?

17                   (No questions.)

18                   COUNCIL PRESIDENT VERNA: Thank you.

19                   Thank you, Mr. Einhorn.

20                   MR. EINHORN: Thank you very much.

21                   COUNCIL PRESIDENT VERNA: The next bill  
22          to be considered is Bill No. 990064. Will the  
23          clerk please read the title of that bill.

24                   THE CLERK: An ordinance amending Title  
25          9 of the Philadelphia Code, entitled "Regulation

1                   12/8/99 RULES - BILL 990064  
2           of Businesses, Trades, and Professions," by  
3           amending Chapter 9-600, entitled "Service  
4           Businesses," and by amending Section 9-608,  
5           entitled "Real-Estate Signs," by amending the  
6           terms and conditions pursuant to the time period  
7           real-estate signs may remain upon premises  
8           containing single or multifamily dwellings and by  
9           deleting Subsection (2), relating to prohibited  
10          signs, all under certain terms and conditions.

11                   COUNCIL PRESIDENT VERNA: Do we have  
12          anyone to testify on Bill 26?

13                   Please approach the witness table,  
14          identify yourself, and proceed with your  
15          testimony.

16                   (Lindsay Johnston comes forward.)

17                   MR. JOHNSTON: Good morning.

18                   COUNCIL PRESIDENT VERNA: Good morning.

19                   MR. JOHNSTON: I'm Lindsay Johnston. I  
20          am the president of the Greater Philadelphia  
21          Association of Realtors.

22                   Would you like me to go ahead and make  
23          the statement?

24                   COUNCIL PRESIDENT VERNA: Please  
25          proceed, mm-hmm.

1 12/8/99 RULES - BILL 990064

2 MR. JOHNSTON: It's good to see you all  
3 again.

4 COUNCIL PRESIDENT VERNA: Thank you.

5 MR. JOHNSTON: As you know, this is not  
6 my first time in front of this august body.

7 Without getting into too much history,  
8 I would like to reiterate that we have made every  
9 effort to meet with Members of Council to discuss  
10 these issues. The Members of the Center City  
11 Residents Association, who are opposed to our  
12 moving forward with this bill, have no-showed us  
13 at meetings and have also stood you up at  
14 meetings, claiming a certain inconvenience.

15 We believe that our issues and their  
16 issues are like comparing apples and oranges. We  
17 are still, however, willing to meet with them and  
18 discuss the issues that they have regarding their  
19 Bill 51, I believe, which they want certain  
20 restrictions on the length of signs up in Center  
21 City, etc.

22 What I would really like to discuss  
23 today is the fact that, as we have given you,  
24 we've provided you briefs in the past, and now we  
25 have something from the City Solicitor that

1 12/8/99 RULES - BILL 990064

2 states, again, that clearly, any law prohibiting  
3 these signs is unconstitutional.

4 And so what we ask again is that you  
5 pass this legislation, you allow the signage, and  
6 that you don't force us to institute a lawsuit  
7 against the City that the City cannot win.

8 COUNCIL PRESIDENT VERNA: Thank you.

9 Please identify with the record and  
10 proceed with your testimony.

11 MS. RUBIN: I'm Ann Rubin, I'm  
12 President-elect of the Greater Philadelphia  
13 Association of Realtors and Chair of the  
14 Legislative Committee, and I have been involved  
15 with working with Council on this for about four  
16 or five years now.

17 We initially came to Council to talk  
18 about this. It was brought before Council, it  
19 never got out of committee. We then sought legal  
20 counsel, and our legal counsel explored this  
21 extensively and advised us that we should move  
22 forward with a suit against the City, that it was  
23 unconstitutional, and that we could win this for  
24 sure; that it has been proven in other cities,  
25 which I can cite if you want, we've supplied all

12/8/99 RULES - BILL 990064

1 this to you. We chose, rather than going through  
2 that route, which we felt would cost the taxpayers  
3 unneeded money, to come back to Council with that  
4 information, and ask for this to go around again,  
5 and here we are.  
6

7 The issues that have been brought up by  
8 the Center City area have been old issues that we  
9 have been trying to work with them on signage. It  
10 is separate and apart from the issue of whether we  
11 can place a "sold," the word "sold" on the signs  
12 that already exists. Constitutionally, it our  
13 right, it is the right of the citizens to be able  
14 to advertise that. If they want to talk about  
15 size of signs, if they want to talk about length  
16 of time, we're happy to work with Council and with  
17 the residents and work on something that's right  
18 and good for everybody.

19 We have tried to set up meetings, under  
20 the advice of Council. The meetings have been  
21 scheduled, the people that are opposing this bill,  
22 for wrong reasons, have chosen not to show up,  
23 have not returned calls. It is a struggle.

24 We are prepared to move forward with a  
25 lawsuit in the year 2000 and win this. We would

1                   12/8/99 RULES - BILL 990064  
2           prefer that Council just lift the ban and move  
3           this forward in the simplest and easiest way for  
4           everybody. And that is what we are stressing for  
5           the last time in front of Council, because our  
6           stand is that we have the constitutional right to  
7           do this. Your City Solicitors have supported  
8           that. We'd like to work together with you and  
9           move this forward now -- or see you in court.

10                   COUNCIL PRESIDENT VERNA: Thank you.

11                   (Applause.)

12                   COUNCIL PRESIDENT VERNA: The Chair  
13           recognizes Councilman Kenney.

14                   COUNCILMAN KENNEY: Thank you, Madam  
15           President, and thank you, members of the Realty  
16           community for being here.

17                   As you see on Bill No. 26, it says that  
18           Mr. Kenney introduced this by request. And at the  
19           time, and I still believe at the time then and I  
20           still believe now, that the request that was being  
21           made was a reasonable request for an industry that  
22           does a lot of good work in Philadelphia, and that  
23           is an important part of our economic life blood  
24           here in the City of Philadelphia. They are the  
25           people who kind of put their best foot forward to

1 12/8/99 RULES - BILL 990064

2 promote the city, to have people move into the  
3 city, to make sure that neighborhoods remain  
4 stable.

5 And one of the things that they have  
6 discovered, as a result of their experiences, is  
7 that the stability of neighborhoods relative to a  
8 1970s ban on sold signs, which originally was  
9 intended to stop the block-busting practices of a  
10 few unscrupulous Realtors and land speculators  
11 was, in fact, having the reverse effect of  
12 destabilizing neighborhoods because community  
13 people who lived in the community would see sale  
14 sign after sale sign, without any understanding or  
15 knowledge of what the end result of that effort  
16 sale was, whether someone had bought that property  
17 or whether someone was moving into the property,  
18 or if it was going to remain vacant.

19 I believed at the time, and I believe  
20 now, that the simple placement of a sold strip  
21 across the existing sales sign, which would remain  
22 -- in my experience, those signs remain on the  
23 property until the day of settlement. The day of  
24 settlement comes, the people move in, the sign  
25 comes down. There's no reason to keep a sold

1                   12/8/99 RULES - BILL 990064  
2           sign, sales sign, or any other sign on a property  
3           after the property's been settled and the new  
4           neighbors have moved in.

5                   As a result of concerns expressed by  
6           the Center Residents Association, which, I  
7           believe, are legitimate concerns about the issues  
8           of the size of signs, the types of signs that  
9           protrude from buildings, the length of times that  
10          for-rental signs stay up, and the whole panoply of  
11          issues relative to signage in Center City, I  
12          believe were realistic and reasonable issues that  
13          were raised by these community groups.

14                  In that regard, we tried on many  
15          occasions to set up meetings and to deal with  
16          these issues together. We wanted to try to give  
17          relief to the industry, the real-estate industry,  
18          on the sold sign ban issue, but at the same time  
19          wanted to resolve those issues of size and length  
20          of time and all those other issues that were  
21          plaguing Center City and the residents and their  
22          concerns. For some reason or another -- and I  
23          can't figure out to this day why -- we were not  
24          able to get that effort completed.

25                  Where we sit here today is with a bill

1 12/8/99 RULES - BILL 990064

2 that's been worked on for, come February 8th, for  
3 four long years, with all of the efforts that have  
4 been undertaken to try to resolve everybody's  
5 problem. I don't think it's fair to this  
6 particular industry, considering the fact that  
7 what they're asking for is not intrusive. They're  
8 not asking to expand their ability to place signs  
9 anywhere, they're not asking for the ability to  
10 make the signs bigger or put them out in the  
11 public right-of-way; what they're asking to do is  
12 to remove a ban that will allow people in the  
13 neighborhood to understand that houses are being  
14 turned over, that people are coming into the  
15 neighborhood, that the neighborhood's remaining  
16 vibrant, and that's all they have asked for.

17 Now, as a result of my request of the  
18 City Solicitor's Office, we find today, and we  
19 will ask that the letter from Stephe  
20 Franklin-Suber be placed into the record on her  
21 opinion that the ban on sold signs, period, is  
22 unconstitutional. And it's very clear in her  
23 lengthy opinion that it is unconstitutional.  
24 (Copy of City Solicitor's opinion letter not  
25 provided to stenographer).

1                   12/8/99 RULES - BILL 990064

2                   I don't know what the result of this  
3 bill is going to be today; I would like to see it  
4 get out of committee. If it gets out, it gets  
5 out; if it does, it doesn't. But what I would  
6 suggest to you is that if it doesn't get out of  
7 committee, is to utilize the opinion of the City  
8 Solicitor to start to do it anyway, and if the  
9 City then cites you for that, then you have at  
10 least some request for remedy from the courts,  
11 which I think you'll be successful in.

12                   I want to compliment the real-estate  
13 industry on their fortitude and patience and their  
14 continuing desire to talk to people about these  
15 issues. And, you know, I've gotten some  
16 information back from various sources in Council  
17 that there are now new members of Council who may  
18 be close to it, people that weren't involved in  
19 any of the discussions but now have an opinion  
20 that they're opposed to certain elements of the  
21 bill or the fact that it affects their district.  
22 And I don't know where we're going to go by the  
23 end of this particular hearing, but I want to  
24 compliment you and commend you and thank you for  
25 the effort that you've made to get reasonable

1 12/8/99 RULES - BILL 990064

2 redress and attention of this legislative body to  
3 an issue affecting your industry.

4 Again, I don't know what the end of  
5 it's going to be, but I do think you have the  
6 legal footing now to proceed with getting what you  
7 wanted in the first place without our help, if  
8 that is the case, but I just wanted to thank you  
9 for your continued patience. And, hopefully, it  
10 will work out, but if not, then I expect to see  
11 sold signs in neighborhoods letting people know  
12 that properties are changing hands, people are  
13 moving in, and the city is not a constant flight  
14 of residents out to the suburbs.

15 So I thank you for your time.

16 MR. JOHNSTON: Councilman Kenney, I  
17 appreciate your comments and thank you for your  
18 advocacy of our position.

19 To reiterate -- and I'm not trying to  
20 school anyone here, but there is an oath of office  
21 that says that you will uphold the Constitution,  
22 and this -- as cited by this opinion, the failure  
23 to pass this bill is almost a dereliction of duty  
24 in that why would they force us -- why would City  
25 Council force us into civil disobedience when it's

1                   12/8/99 RULES - BILL 990064  
2           clearly stated that forbidding sold signs is  
3           unconstitutional. There are a host of court cases  
4           and decisions stating that.

5                   So it would seem that Council would  
6           want to just go ahead and that, We have no right  
7           to stop this, we can't stop this, we'll approve  
8           this.

9                   COUNCILMAN KENNEY: Well, in addition,  
10          my desire, in addition to removing the sold sign  
11          ban and giving you some relief, was to address the  
12          serious problems that face Center City and other  
13          areas of the city. When it comes to the size of  
14          signs and the length of time, I mean, I was  
15          willing to allow neighborhood groups to write a  
16          specific bill that we would all agree on, to say  
17          that this is going to be the end of these large  
18          A-frame protruding signs from walls, things that  
19          are really esthetically ugly, and we're going to  
20          miss this opportunity, at least at this point in  
21          time, to do any of that, based on lack of  
22          cooperation.

23                   MS. RUBIN: And for the record, there  
24          was a bill written that addressed the concerns of  
25          the Center City residents, that we said we were

1 12/8/99 RULES - BILL 990064

2 happy with. And when we said we were happy with  
3 it, all of a sudden, the Center City residents  
4 weren't happy with that bill anymore.

5 So I want you to know that -- make it  
6 clear that this is not the only place that we have  
7 tried to address this issue. We have, over the  
8 past four years, been more than willing to sit  
9 down and talk about it and to agree to what we  
10 thought they wanted until we agreed.

11 And, also, I'd like to ask, for the  
12 record, you all have copies of petitions. We have  
13 a very large Realtor community that cannot afford  
14 to take the time off, unfortunately, to come down  
15 here every time there's a hearing, but we have  
16 asked and in a very short time circulated  
17 petitions, and I would like to make sure that that  
18 gets on the record, that you know that there's a  
19 large population that does support what our  
20 efforts are. (Copy of petition not provided to  
21 stenographer.)

22 MR. JOHNSTON: And last but not least,  
23 I would like to mention that, for instance, the  
24 University City Community Council has unanimously  
25 passed a resolution favoring this bill.

1 12/8/99 RULES - BILL 990064

2 We bring issues in front of the Council  
3 that are not only Realtor-driven issues, but we  
4 are a consumer advocacy group, and the issues that  
5 we bring in front of you and look for your help  
6 with help, we believe, not only help our industry  
7 but also help the citizens of Philadelphia.

8 COUNCILMAN KENNEY: Well, I certainly  
9 think you've done your done best, so we'll see  
10 what happens.

11 MR. JOHNSTON: Thank you.

12 MS. RUBIN: Thank you for all your  
13 support.

14 COUNCIL PRESIDENT VERNA: Thank you.

15 I believe earlier I saw a member or two  
16 from the Center City Residents Association. If  
17 they're in the room and would care to testify,  
18 please approach the witness table.

19 (Center City Resident Association  
20 representatives come forward.)

21 COUNCIL PRESIDENT VERNA: Good  
22 morning.

23 MS. BERSIN: Good morning. Thank you  
24 for the opportunity. I'm Lenora Bersin (ph.),  
25 President of Center City Residents Associates, and

1                   12/8/99 RULES - BILL 990064  
2           Judith Eden, who is the Co-chair of our Zoning  
3           Committee.

4                   I've never heard us accused of not  
5           being present before, but we're here today. We  
6           understand that there is a --

7                   COUNCIL PRESIDENT VERNA: Excuse me.  
8           Would you pull the microphone closer to you,  
9           please.

10                   MS. BERSIN: We understand this is a  
11           complex issue. We also understand that Councilman  
12           Kenney and other Councilmen have moved to try to  
13           be fair to everyone, and we understand and hope  
14           that it will happen that there will be an amended  
15           version to the bill that will say that no person  
16           shall erect or place a sold sign upon any premise  
17           containing a single or multifamily dwelling in the  
18           area bounded by Market and South, the Schuylkill  
19           River, and Delaware River, at least half of which  
20           is our territory.

21                   And we just wanted to come up to thank  
22           Council for their concerns, to say that we are  
23           always willing to talk to people, and we're here  
24           today to support the amendment and support your  
25           efforts.

1 12/8/99 RULES - BILL 990064

2 COUNCIL PRESIDENT VERNA: Do you have a  
3 copy of the amendment?

4 MS. BERSIN: Yes, I have a copy of the  
5 amendment.

6 COUNCIL PRESIDENT VERNA: May we have a  
7 copy, please? (Copy of amendment not provided to  
8 stenographer.)

9 Miss Eden, did you want to testify?

10 MS. EDEN: I don't think that it's  
11 necessary. We did understand that the amendment  
12 that the president of CCRA just referred to was to  
13 be introduced today.

14 COUNCIL PRESIDENT VERNA: Okay. Are  
15 there any questions from members of the committee?

16 The Chair recognizes Councilman Cohen.

17 COUNCILMAN COHEN: Could you repeat  
18 your statement, again, please. You said you  
19 didn't understand or you did understand?

20 MS. EDEN: The Center City Residents  
21 Association and, for that matter, the Society Hill  
22 Civic Association, were told that an amendment  
23 would be offered to the bill before you today that  
24 would exclude Center City, from the Schuylkill to  
25 Delaware Rivers, from Market to South Street.

1 12/8/99 RULES - BILL 990064

2 And we came here today prepared to  
3 testify in favor of that amendment. We've not yet  
4 actually heard any of you place the amendment in  
5 the record.

6 COUNCILMAN COHEN: And if that  
7 amendment were adopted as part of this bill, then  
8 would the Center City Residents Association  
9 support the bill, as amended?

10 MS. EDEN: We would support it as  
11 amended.

12 MS. BERSIN: We would. Yes, sir, yes,  
13 sir. 'Cause everybody has different needs.

14 COUNCIL PRESIDENT VERNA: The Chair  
15 recognizes Councilman DiCicco.

16 COUNCILMAN DICICCO: Thank you, Madam  
17 Chair.

18 Miss Eden, could you give me the  
19 boundaries of the Center City Residents  
20 Association?

21 MS. EDEN: Our boundaries are Broad to  
22 the Schuylkill River, Market to South.

23 COUNCILMAN DICICCO: In the amendment,  
24 the amendment calls for the boundaries to go from  
25 Market Street to South, from the Schuylkill to

1 12/8/99 RULES - BILL 990064

2 Delaware River. That's the east side of Broad  
3 Street --

4 MS. EDEN: Yes. Those --

5 COUNCILMAN DICICCO: Excuse me. Which  
6 is the district that I represent.

7 And to the best of my knowledge,  
8 although I have been inundated with lots of mail  
9 concerning this issue, I don't recall anyone from  
10 either Society Hill Civic Association,  
11 (unintelligible) West Civic Association, Queen  
12 Village, or any of the other areas that would come  
13 under this amendment opposing the bill or asking  
14 for this amendment.

15 MS. EDEN: Well, we did not --

16 COUNCILMAN DICICCO: Could you -- I'd  
17 like to know how you got to these boundaries.

18 MS. EDEN: We did not prepare this  
19 amendment.

20 COUNCILMAN DICICCO: Okay.

21 MS. EDEN: We were told that Councilman  
22 Kenney had prepared this amendment and was  
23 introducing it.

24 COUNCILMAN DICICCO: Okay, thank you.

25 COUNCIL PRESIDENT VERNA: The Chair

1 12/8/99 RULES - BILL 990064

2 recognizes Councilman Kenney.

3 COUNCILMAN KENNEY: Thank you, Madam  
4 Chair.

5 There has been and there is discussion  
6 relative to the submission of this amendment in an  
7 effort to try to come to some unanimity amongst  
8 the Council as it relates to the passage of this  
9 bill. I haven't gotten anything official, but as  
10 a result of this being circulated around Council,  
11 there have been one or two other Councilmembers  
12 that have now indicated that they may want to have  
13 their districts opted out of the bill, so we could  
14 potentially wind up with a bill where we have  
15 Councilmembers taking their districts out so that  
16 the bill is of little, if any, value.

17 Now, you know, I would still intend and  
18 hope to introduce the amendment, but if it does  
19 create a circumstance where District Council  
20 Councilmembers are now excising their districts  
21 from the bill, the bill in effect of no importance  
22 or no use, and that's why I'm suggesting at some  
23 point that if that happens, that the Realty  
24 Association take the City Solicitor's opinion and  
25 start doing it anyway and see if City then cites

1 12/8/99 RULES - BILL 990064

2 them, and then I think they have some opportunity  
3 for relief.

4 I think the sad part, again, as I said  
5 earlier, is that without the ability to discuss  
6 and to negotiate, you know, we could have come to  
7 a conclusion at this point in time and hopefully  
8 make everybody as happy as possible.

9 So, I mean -- and secondly, the  
10 amendments themselves are usually submitted at the  
11 meeting level, not the hearing level. So the  
12 discussion of the amendment is on the record now.  
13 And if it's offered, it will be offered in the  
14 meeting, if the bill moves at all, because there's  
15 some -- there's some concern as to the ability to  
16 move the bill in toto relative to some  
17 Councilmembers' now concern over their districts  
18 not being excluded, so I mean, it's getting a  
19 little muddier as we go along.

20 MS. EDEN: Well, on the basis of our  
21 belief that this amendment would be offered, we  
22 did not intend to testify against the bill in  
23 toto, but we are, of course, prepared to do that  
24 now, if you wish.

25 COUNCILMAN KENNEY: Well, my

1 12/8/99 RULES - BILL 990064

2 understanding is that if the amendment goes in,  
3 you're for it; if it doesn't, you're against it.

4 MS. BERSIN: That's correct.

5 MS. EDEN: Right. And we're certainly  
6 hoping that there will be a future opportunity to  
7 address the issue of real-estate signs in a more  
8 generic way.

9 COUNCILMAN KENNEY: That was my hope  
10 over the last four years.

11 MS. EDEN: Well, it's been our hope  
12 too, and we have not been invited to any meetings  
13 but one in several years, and that was in less  
14 than 24 hours' notice in October. So I would  
15 assume that a lot of miscommunication has been  
16 occurring.

17 MS. BERSIN: We shouldn't argue about  
18 it. We're ready to come, we want to come, and we  
19 want to talk about it.

20 COUNCILMAN KENNEY: Fine, thank you.

21 COUNCIL PRESIDENT VERNA: Thank you  
22 very much.

23 Are there any questions from any  
24 members of the committee?

25 (No questions.)

1 12/8/99 RULES - BILL 990064

2 COUNCIL PRESIDENT VERNA: Thank you.

3 Do we have anyone else to testify on  
4 Bill 26?

5 Please approach the witness table and  
6 again identify yourself for record, please.

7 MS. RUBIN: Ann Rubin, President-elect,  
8 GPAR, Chair of the legislative committee.

9 I'd just like to say that when we  
10 understood that there was opposition from groups  
11 about the ban on the sold signs, we discussed with  
12 Councilman Kenney amending that area of the city  
13 with the idea that before we came back here, we  
14 were going to sit down to discuss with them what  
15 the issues were and how we could work with them.  
16 And that never happened.

17 And our feeling is as strong as it was  
18 before, and even stronger now that we've come back  
19 from the City Solicitor's Office, that this ban  
20 should be lifted across the city and that no areas  
21 should be excluded. And in the concerns that they  
22 have about signage, we are ready, willing, and  
23 able to sit down and work those issues out, which  
24 are separate from this.

25 COUNCIL PRESIDENT VERNA: The Chair

1 12/8/99 RULES - BILL 990064

2 recognizes Councilman Cohen.

3 COUNCILMAN COHEN: I'm just trying to  
4 understand some of the discussion.

5 You heard the testimony from the Center  
6 City residents, that they've only been invited to  
7 one meeting that was a couple years ago and that  
8 they were only given 24 hours' notice.

9 MS. RUBIN: Councilman Cohen, that is  
10 inaccurate. We actually had met with them a  
11 couple of years ago over this -- I'm saying "a  
12 couple," but I would really need to check our  
13 records for exact dates because I don't want to  
14 quote dates, but we did meet to discuss the issues  
15 at one point.

16 And there was a bill -- I believe it  
17 was, at the time, Councilman Fernandez introduced  
18 the bill based on their concerns and the meeting  
19 that came out of that. When the bill came up,  
20 again, they were opposed to it at that point. We  
21 were very confused.

22 After the last round when this came to  
23 the Rules Committee a month and a half ago or so,  
24 we tried to set up a meeting in more than 24  
25 hours' notice. In fact, we tried on several

1                   12/8/99 RULES - BILL 990064  
2                   occasions, and one, if not more, of those efforts  
3                   was through Councilman Kenney's office to get the  
4                   meeting together. They were going to get back to  
5                   us, we'll call you back to confirm. We never got  
6                   calls back. Times were set, then they had to be  
7                   cancelled.

8                   So I'm not sure where the  
9                   miscommunication is, but we're very clear that  
10                  many, many efforts over several years, and in  
11                  particular over the last month and a half, were  
12                  made to meet with the groups that were concerned  
13                  with this bill.

14                  MR. JOHNSTON: And their last position  
15                  was that we would have to agree to disagree, but  
16                  that they would not meet with us. So we have made  
17                  every effort to --

18                  COUNCILMAN COHEN: When was that, sir?

19                  MS. RUBIN: The past month.

20                  MR. JOHNSTON: It was within the last  
21                  six weeks.

22                  COUNCILMAN COHEN: And do you know  
23                  which group it was?

24                  MR. JOHNSTON: It was the Center City  
25                  Residents Association.

1 12/8/99 RULES - BILL 990064

2 Councilman Cohen, I am going to let  
3 someone --

4 COUNCILMAN COHEN: 'Cause I've never  
5 found community groups to be unfriendly to  
6 meetings. It seems to me that generally, the  
7 complaint against community groups is they want  
8 too many meetings. And I don't like to see  
9 aspersions, you know, on groups, which I think are  
10 not rightfully made.

11 MR. JOHNSTON: And so that this is not  
12 hearsay, I'd like to introduce Melanie Lamond  
13 (ph.), a fellow Realtor from Urban Realtors in  
14 University City, who has had conversations and who  
15 can give you firsthand information.

16 MS. LAMOND: I spoke to Lenore Bersin  
17 -- it was probably around Halloween -- on the  
18 phone, and she said that we would just have to  
19 agree to disagree on that this, that their  
20 organization had taken its stand two years ago and  
21 that she wasn't interested in anecdotal evidence  
22 or any other arguments that I might make that this  
23 bill was good for the benefit of the City and the  
24 City's residents. She said that they taken their  
25 position and they didn't plan to change it.

1 12/8/99 RULES - BILL 990064

2 COUNCILMAN COHEN: It sounded to me  
3 this morning that that's not the position  
4 currently, whatever it may have been at that time.

5 I think the parties are ready, I think  
6 we ought to try to move. Whether it's now or at  
7 the beginning of the new session, we ought to try  
8 to get a consensual agreement; that would be my  
9 position.

10 MS. RUBIN: Councilman --

11 COUNCILMAN COHEN: It's clear to me at  
12 this point, whatever the history may have been --  
13 and I'm not familiar with that, not having been  
14 involved in any way at all on that issue -- I  
15 think maybe we are at a point where we can get  
16 agreement, and that's always the best way to  
17 achieve a result.

18 MS. RUBIN: Councilman Cohen, we are  
19 absolutely willing to work on an agreement on the  
20 signage issue; that issue is separate and apart  
21 from the ban on the sold signs, it always has  
22 been. They tried to tie it to this. To work  
23 things out, we were agreeable to continue, but we  
24 are no longer agreeable. They are two separate  
25 issues.

1 12/8/99 RULES - BILL 990064

2 What we are asking for is our  
3 constitutional right to change the words that  
4 exist on our signs from "for sale" to "sold," to  
5 "sale pending," to "under agreement," to "under  
6 contract," to indicate that these properties are  
7 moving, that the communities are vital, and we are  
8 not changing the signage in any way by doing that  
9 other than changing a word.

10 The issues that the Center City  
11 Residents Association have are about length of  
12 time that the signs are up, about the size of the  
13 signs, about location. It is separate and apart  
14 from this issue, and we are more than willing to  
15 discuss that with them and to come to terms that  
16 are agreeable and work.

17 COUNCILMAN COHEN: Sounds to me as if  
18 the willingness to talk and refusal to talk have  
19 shifted sides.

20 I have to tell you, I did not see the  
21 City Solicitor's opinion until this morning. I'm  
22 not sure that I agree with it at all. I have not  
23 had time to completely read it. I saw the  
24 conclusion. It is contrary to the opinion I've  
25 always had. I'm ready to reconsider my opinion

1                   12/8/99 RULES - BILL 990064  
2           after I read the City Solicitor's opinion and have  
3           had an opportunity to study it.

4                   I don't understand, if that's the City  
5           Solicitor's opinion, why that opinion has not been  
6           rendered a long, long time ago. But I would like  
7           an opportunity to study it. So I cannot accept at  
8           this time the City Solicitor's opinion as being  
9           the last word on the law. It may be, but it may  
10          also not be.

11                  I'm just urging all of the parties to  
12          try to, at this point, come to an agreement.  
13          Apparently, people are now ready, from both sides,  
14          to talk. And I don't think there ought to be any  
15          difficulty with arriving at that kind of an  
16          agreement.

17                  So I'm just suggesting that we take a  
18          little extra time and move ahead. And I think  
19          we're probably going to get a consensual  
20          agreement, particularly if the City Solicitor's  
21          opinion appears to be one that Councilmembers can  
22          accept.

23                  MS. RUBIN: I agree with you. I'm not  
24          sure why it's here in front of you now, but just  
25          for the record, when we first brought this up, we

1                   12/8/99 RULES - BILL 990064  
2           did come with the opinion of our legal counsel,  
3           based on their research, that it was  
4           unconstitutional and that we had a right to move  
5           on that. And that information was provided to  
6           Council and to the committee at that time.

7                   There has been many discussions, both  
8           in a forum like this and in your individual  
9           offices, about these matters, and we appreciate  
10          your open-door policy and always being willing to  
11          listen to us.

12                   But I can't reiterate enough that the  
13          issues of the signage that are the concerns of the  
14          residents groups have nothing to do with what we  
15          are talking about here.

16                   COUNCILMAN COHEN: Well, I don't -- I'm  
17          not sure you're right as to that.

18                   MS. RUBIN: Well, you're welcome to  
19          question that, but the issues that I understand  
20          they have are about the size of signs, about the  
21          locations of signs, about the length of time that  
22          signs are up. And none of those things are what  
23          we are discussing when we discuss the ban on sold  
24          signs.

25                   When we discuss the ban on sold signs,

1 12/8/99 RULES - BILL 990064

2 we're talking about the ability to change a word  
3 on a sign to indicate to the community that the  
4 neighborhoods are vital and moving forward. And  
5 both our private counsel and the City Solicitor's  
6 Office have agreed, based on their research, that  
7 we have a the Constitutional right to that. I can  
8 cite cities where they have gone to court and won,  
9 and that's where we're at with this. And to  
10 continue to tie these two together is fruitless.

11 MR. JOHNSTON: Councilman Cohen --

12 COUNCILMAN COHEN: Well, that's not the  
13 understanding I have.

14 MR. JOHNSTON: Sir, I'm sorry I didn't  
15 bring my props today, but basically, if you can  
16 imagine that this were an 18-by-24-inch  
17 residential sale sign, and across the top of it,  
18 it said "sale," all we're talking about is taking  
19 a little tag that says "sold" and sticking it on  
20 top of the salesign.

21 In residential real estate, the sold  
22 sign is not permitted. In commercial real estate,  
23 the sold sign has always been permitted. In  
24 residential real estate, a sign cannot exceed an  
25 18-by-24 or an 18-by-36-inch size. In commercial

1 12/8/99 RULES - BILL 990064

2 real estate, a size can be larger.

3 The issues that the Center City  
4 Residents Association has are with commercial  
5 real-estate signs, protruding signs, V signs, the  
6 length that they're up, the certain rental signs  
7 that seem to be up in perpetuity. Nothing to do  
8 with putting a sold-sign sticker on a residential  
9 sales sign.

10 And to reiterate what Ann has said, the  
11 City Solicitor's opinion is based on  
12 (unintelligible) vs. Willingboro, New Jersey, and  
13 certain other cases that we have provided briefs,  
14 and she's basically reviewed these briefs and  
15 said, It's here. This went all the way to the  
16 Supreme Court, it's unconstitutional. You do not  
17 have a leg to stand on. And that is why we are so  
18 adamant in our position here.

19 The Center City Residents Association,  
20 I have a hard time with them today acting like  
21 they're ready to talk because, I guarantee you, we  
22 have called them every day, and they have not been  
23 willing to talk. They have dis-ed us, and we are  
24 tired of their attitude, and we're frankly tired  
25 of their attitude in stopping you from moving

1 12/8/99 RULES - BILL 990064

2 forward. What we need is progress here.

3 COUNCILMAN COHEN: Well, I'm suggesting  
4 that the way to get progress is, now that the  
5 parties are indicating -- all parties are  
6 apparently are indicating that they're prepared to  
7 sit and talk and discuss, and I'm not --

8 MR. JOHNSTON: They're saying that to  
9 you that they're willing to talk; they're saying  
10 to us that they're not.

11 COUNCILMAN COHEN: I don't get that  
12 impression at all.

13 COUNCIL PRESIDENT VERNA: I'm sorry.  
14 You're going to have to identify yourself so that  
15 the stenographer knows who's speaking.

16 MS. LAMOND: I'm sorry. Melanie Lamont  
17 reiterate.

18 I'd also like to reiterate that the  
19 Realtors are not here in the largest part for the  
20 Realtors; we're here because the City of  
21 Philadelphia has lost, depending on what report  
22 you read, anywhere from 8 to 12 percent of its  
23 population in the last 10 years. We can't afford  
24 to lose -- we as a city, not we as Realtors, can't  
25 afford to lose our population.

1 12/8/99 RULES - BILL 990064

2 Putting up the sold signs proves to  
3 people that the city is viable. That proves to  
4 the newcomer who drives around the city and drives  
5 into the suburban counties that the suburban  
6 counties are not the only places where people are  
7 buying.

8 As it is now, if they go around  
9 Philadelphia, they'll see those sold signs on  
10 commercial properties, so they won't realize that  
11 sold signs are illegal on residential properties.  
12 And they will go into in the neighborhoods --  
13 they'll go into South Philadelphia or West  
14 Philadelphia or Mt. Airy, Chestnut Hill, they'll  
15 go into any of those places and they'll never see  
16 a sold sign in a neighborhood. And they'll make  
17 the assumption that this is not a healthy place to  
18 invest their money, and they'll go to the  
19 suburbs. We can't afford that to happen anymore.

20 It's for that reason that the Board of  
21 Realtors has been working on this for so many  
22 years. We can't afford to take more time to talk  
23 and keep losing more population while we're doing  
24 this. We need to get sold signs on properties as  
25 soon as possible to be able to prove the viability

1                   12/8/99 RULES - BILL 990064  
2           of our city. And we're willing to do that for the  
3           city for free; it wouldn't cost you anything to  
4           have us put out positive PR.

5                   COUNCILMAN COHEN: Well, it seems to me  
6           that no matter what the history has been,  
7           precisely at the time that the other side is  
8           willing to talk, you're saying No, we don't want  
9           to talk now.

10                   MS. RUBIN: No, excuse me. We're not  
11           saying that we don't want to talk. We are saying  
12           that we absolutely do want to talk, but the issues  
13           that are there to discuss are separate from the  
14           sold sign.

15                   And I'd like to just piggyback on one  
16           point that Melanie made that I think needs to be  
17           made. The consumers, the public as a whole out  
18           there have no clue that there's a ban on sold  
19           signs. All of the surrounding communities of  
20           Philadelphia, all of the townships and  
21           municipalities are permitted to put sold signs on  
22           their signs when a property goes under agreement  
23           people. And people in Philadelphia that go out of  
24           the city borders see that.

25                   And when my clientele's property goes

1                   12/8/99 RULES - BILL 990064  
2           under agreement, the first thing they usually ask  
3           me is, Well, why haven't you put a sold sign up  
4           yet? And then I explain to them that I'm not  
5           allowed to by law. And they say, Well, then how  
6           will people know that this is a good block to live  
7           on?

8                   And so I think Council needs to  
9           understand that we are very well-educated on this  
10          because this is what we do for a living, but the  
11          public doesn't. And Melanie's right, when people  
12          drives through the city, it looks like everything  
13          is for sale and nothing's moving, but when they go  
14          out of into the suburban communities, it looks  
15          like everything's selling. And the reality is,  
16          the City is doing well in real estate right now  
17          but we have no way of showing that.

18                   So I ask that you put this to a vote  
19          today, and we can either move forward together on  
20          the ban on sold signs, or we will move forward  
21          with our attorneys in court.

22                   MR. JOHNSTON: And I would like to  
23          thank Council for listening to our position and  
24          make a vote.

25                   COUNCILMAN COHEN: Could I ask a

1 12/8/99 RULES - BILL 990064

2 question of the witnesses?

3 What is your position, if this  
4 amendment is adopted; do you support the bill? I  
5 was told that there was an understanding that --

6 MS. RUBIN: Yes, yes.

7 COUNCILMAN COHEN: -- if an amendment  
8 was introduced, there was going to be no problem  
9 with bill because there was going to be an  
10 amendment introduced that everybody had agreed  
11 to. I have no idea what that amendment was or who  
12 had agreed to it.

13 MS. RUBIN: Yes.

14 COUNCILMAN COHEN: So I'm surprised by  
15 the extent of this debate and the fact that there  
16 still seems to be disagreement.

17 MR. JOHNSTON: We will agree to it and  
18 we will continue to attempt to have dialogue with  
19 the Center City Residents Association to move  
20 forward and resolve their issues.

21 COUNCILMAN COHEN: I think that would  
22 be very good.

23 MS. RUBIN: And as the Legislative  
24 Chair for the Committee and from the Board, I'd  
25 like to say that we will agree to it with no other

1                   12/8/99 RULES - BILL 990064  
2           amendments coming on board, and with the  
3           understanding that we want to meet with the Center  
4           City Residents Association to discuss their  
5           signage issues and come to resolve once and for  
6           all on this.

7                   COUNCIL PRESIDENT VERNA: The Chair  
8           recognizes Councilman DiCicco.

9                   COUNCILMAN DICICCO: Thank you, Madam  
10          Chair.

11                   For the record, as it relates to the  
12          amendment to Bill No. 960064, I would like the  
13          record to reflect that I'm requesting that we  
14          remove from the amendment the east side of Broad  
15          Street to the Delaware River, from South Street to  
16          Market Street, from that amendment. (Copy of  
17          amendment not provided to stenographer.)

18                   MR. JOHNSTON: That works for us.

19                   COUNCIL PRESIDENT VERNA: So how would  
20          the amendment read?

21                   COUNCILMAN DICICCO: The amendment  
22          would read, "No person shall erect or place a sold  
23          sign upon any premises containing a single or  
24          multifamily dwelling in the area bounded by Market  
25          and South, Broad Street west to the Schuylkill

1 12/8/99 RULES - BILL 990064

2 River."

3 COUNCILMAN COHEN: Could I ask if the  
4 Center City residents -- do they have a  
5 representative still here? Would that amendment  
6 be acceptable -- just to your organization?

7 COUNCILMAN DICICCO: Point of order,  
8 Madam Chair.

9 COUNCIL PRESIDENT VERNA: Excuse me.

10 COUNCILMAN DICICCO: I would just like  
11 to address that question.

12 The area that I am deleting from the  
13 amendment is the area that is in my district, the  
14 west side is in Councilmember Clarke's district.  
15 And the Center City Residents Association  
16 represents the area west of Broad, so their area  
17 would still be included in the amendment.

18 COUNCILMAN COHEN: All right. I just  
19 want to make sure the Center City residents  
20 understand that. Would you come forward for a  
21 moment just for the record, so. . .

22 MS. BERSIN: That answers the needs of  
23 the Center City Residents Association.

24 COUNCIL PRESIDENT VERNA: I'm sorry,  
25 Miss Bersin, you're going to have to identify

1 12/8/99 RULES - BILL 990064

2 yourself.

3 MS. BERSIN: Lenora Bersin, President  
4 of Center City Residents Association.

5 We believe that that amendment  
6 satisfies our problems. We came to speak of our  
7 problems, and we do not wish to speak for other  
8 people's views.

9 We've, of course, heard from Realtors  
10 in our area too, and they support us in that small  
11 area. And that's what we want to talk about.  
12 We'd be glad to talk whenever about the other  
13 problems, which we think are problematic in size  
14 and other issues, and I think that perhaps there's  
15 more agreement on that.

16 COUNCILMAN COHEN: Very good. Thank  
17 you.

18 COUNCIL PRESIDENT VERNA: Thank you.  
19 The Chair recognizes Councilman  
20 O'Neill.

21 COUNCILMAN O'NEILL: Yes, Madam Chair.  
22 I'm glad that some people agreed on  
23 getting their area out of this bill. I would ask  
24 for an amendment to be added to this amendment,  
25 taking my entire district out of this bill.

1 12/8/99 RULES - BILL 990064

2 I do not want sold signs in my  
3 district. I thought it was working really well  
4 for the last how many years. People would like to  
5 do away with sales signs if they could, but they  
6 realize that's not possible.

7 MS. RUBIN: Madam President?

8 COUNCIL PRESIDENT VERNA: Yes.

9 MS. RUBIN: Ann Rubin again.

10 Councilman O'Neill, I appreciate your  
11 concern for the district, and correct me if I'm  
12 wrong but I don't remember that you've been here  
13 for any of the testimony over these past four  
14 years on this.

15 COUNCILMAN O'NEILL: I don't have to be  
16 here for any testimony, Miss Rubin, and I resent  
17 the implication that I haven't been involved in  
18 this. We did this bill years ago. Nothing has  
19 changed as far as the residents of my district are  
20 concerned, Realtors notwithstanding, okay?

21 MS. RUBIN: Okay, I just want to bring  
22 back to the Council's attention that you do have  
23 in your hands petitions signed by the real-estate  
24 community in the Northeast section of Philadelphia  
25 that do business there that speak to the buyers

1                   12/8/99 RULES - BILL 990678  
2           and sellers up there that do support this bill.

3                   And, again, we want the bill passed  
4           with no additional amendments.

5                   COUNCIL PRESIDENT VERNA: Are there any  
6           other questions from members of the committee?

7                   (No further questions.)

8                   COUNCIL PRESIDENT VERNA: Is there  
9           anyone else who wants to testify on Bill 26?

10                  (No response.)

11                  COUNCIL PRESIDENT VERNA: Thank you all  
12           very much.

13                  MR. JOHNSTON: Thank you.

14                  COUNCILMAN COHEN: Thank you.

15                  COUNCIL PRESIDENT VERNA: The clerk  
16           will please read the title of Bill No. 990678.

17                  THE CLERK: An ordinance amending Title  
18           14 of the Philadelphia Code relating to zoning and  
19           planning by amending Chapter 14-1600, entitled  
20           "Miscellaneous," by adding a new Section 14-1617,  
21           entitled "Fifth Street Special District Controls,"  
22           under certain terms and conditions.

23                  COUNCIL PRESIDENT VERNA: Is there  
24           anyone here from the City Planning Commission to  
25           testify on this bill?

1 12/8/99 RULES - BILL 990678

2 MR. LOMBARDO: Good morning, Madam  
3 Chair and members of the committee. My name is  
4 Richard Lombardo of the City Planning Commission.

5 I'm actually not here to testify on  
6 this bill. In the rush, with all the that are  
7 bills being heard at the end of the administration  
8 we did not consider this -- the Commission did not  
9 consider this bill, so we have no position of the  
10 Planning Commission on this bill.

11 I mean, what I understand about the  
12 bill is that the Councilwoman put this in at the  
13 request of neighbors and business people along  
14 Fifth Street, but unfortunately, I can't make a  
15 recommendation from the Planning Commission one  
16 way or the other on this bill.

17 COUNCIL PRESIDENT VERNA: Prohibiting  
18 wholesale vending. Can somebody give me an  
19 explanation as to what "wholesale vending" is?

20 MR. LOMBARDO: Wholesale vending would  
21 be not be selling to the ultimate consumer, the  
22 customer. You know, a wholesale operation would  
23 more likely be selling in case lots or in larger  
24 quantities, though, to retailers, as opposed to  
25 selling to customers. For example, some of these

1 12/8/99 RULES - BILL 990678

2 -- again, every neighborhood has these cash-and-  
3 carry food operations.

4 COUNCIL PRESIDENT VERNA: Do we know  
5 how many wholesale vending businesses there are on  
6 Fifth Street?

7 MR. LOMBARDO: I have no idea. A lot  
8 of the area covered in this overlay is zoned  
9 residential so I assume there's no commercial  
10 activity going on in those properties.

11 I think that there have been some  
12 wholesale uses granted by the Zoning Board for a  
13 variance in this area where this has been  
14 protestants and the Zoning Board is still granting  
15 them over the protestants, and that may be what's  
16 generating this bill.

17 COUNCIL PRESIDENT VERNA: Do you know  
18 if the Law Department has been consulted on this  
19 issue?

20 MR. LOMBARDO: I do not know. I'm  
21 sorry, we prepared this bill at the request of the  
22 Councilwoman's office. You know, we do a drafting  
23 service for any Member of Council. And I don't  
24 know if then the Councilwoman sent it to the Law  
25 Department or not. You know, I don't know what

1 12/8/99 RULES - BILL 990719

2 her normal practice is once we prepare a bill and  
3 give it to her.

4 COUNCIL PRESIDENT VERNA: All right.

5 Do we have anyone else to testify on this bill?

6 (No response.)

7 COUNCIL PRESIDENT VERNA: May I suggest  
8 that we go over this until such time as we contact  
9 Councilwoman Tasco's office to get more  
10 information on it.

11 The next bill being called for  
12 consideration is Bill No. 990719. The clerk will  
13 read the title of the bill.

14 THE CLERK: An ordinance amending  
15 Section 14-1705 of the Philadelphia Code, entitled  
16 "Appeals to Zoning Board of Adjustment," by  
17 providing that appeals to the Zoning Board of  
18 Adjustment shall not stay proceedings in  
19 furtherance of the action appealed from, under  
20 certain terms and conditions.

21 MR. LOMBARDO: Good morning, again,  
22 Madam Chair and Councilmembers, members of the  
23 committee. My name is Richard Lombardo from the  
24 City Planning Commission, here today to testify on  
25 Bill 990719.

1                   12/8/99 RULES - BILL 990719

2                   This bill amends Section 14-1705,  
3           dealing with appeals to the Zoning Board of  
4           Adjustment. The purpose of this bill is to  
5           clarify that an appeal to the Zoning Board of  
6           Adjustment does not stay other proceedings against  
7           property owner or business operator who has been  
8           cited for code violations.

9                   Currently, the language of the Code  
10           creates an ambiguity as to whether court  
11           proceedings, such as an action to enforce a  
12           cease-operation order, should move forward once an  
13           applicant has an appeal to the Zoning Board. It  
14           is the intention of this bill to clarify those  
15           provisions so that other proceedings can continue  
16           to take place when the applicant proceeds to the  
17           Zoning Board.

18                   Basically, you may have a property  
19           that, among other violations it has, it has also a  
20           zoning violation -- it didn't get a use  
21           registration permit, they don't have an  
22           appropriate setback or they didn't get a zoning  
23           permit for an addition, and because the  
24           regulations construed to say, If you file for your  
25           zoning appeal, it stays the Department from taking

1                   12/8/99 RULES - BILL 990719  
2           other actions, and I think this bill is to clarify  
3           that, that if there are separate other issues not  
4           related the to the Zoning Board appeal, that those  
5           can move forward while you resolve your one  
6           problem with the Zoning Board of Adjustment, or  
7           try to resolve it.

8                   And this bill was introduced by  
9           Councilman DiCicco and -- Councilmember DiCicco  
10          and Councilmember Nutter. And for the record, the  
11          Planning Commission, on December 2, 1999,  
12          recommends approval of this bill.

13                   COUNCIL PRESIDENT VERNA: Are there any  
14          questions from members of the committee?

15                   The Chair recognizes Councilman Cohen.

16                   Mr. Lombardo, please stay with us.

17                   COUNCILMAN COHEN: I'd just like to  
18          know if there's going to be any witnesses  
19          testifying on the bill. It sounds good to me, but  
20          I'd like to hear what brought this about.

21                   COUNCIL PRESIDENT VERNA: Do we have  
22          any witnesses to testify on this bill?

23                   COUNCILMAN COHEN: Or other  
24          Councilmembers.

25                   COUNCIL PRESIDENT VERNA: The Chair

1 12/8/99 RULES - BILL 990719

2 recognizes Councilman Nutter.

3 COUNCILMAN NUTTER: Thank you, Madam  
4 Chair. Thank you, Councilman Cohen for the  
5 question. And I do believe that there are a  
6 couple of community people here to testify.

7 What brought about this particular bill  
8 is the common experience that many of us have  
9 wherein a person builds or constructs or does  
10 something to their property with no permits  
11 usually and proceeds to do whatever it is that  
12 they do, the neighbors complain to their  
13 Councilperson, contact L&I, they send a person out  
14 and, yes, they are in violation of a Zoning Code.

15 The current code, the way it operates,  
16 that person then goes to get their permits. They  
17 are then, of course, denied because the proper  
18 zoning's not in place. They then appeal to the  
19 Zoning Board of Adjustment.

20 The current code is constructed such  
21 that the moment you appeal to the Zoning Board, it  
22 effectively stays any action, enforcement action,  
23 by L&I against that person. So they get a free  
24 ride now to continue doing what they've doing,  
25 even though they now fully know -- even if they

1                   12/8/99 RULES - BILL 990719  
2           didn't know. They have now applied for permits,  
3           so they clearly know that they are in violation of  
4           the Zoning Code and they continue to use the  
5           premises in that fashion, while L&I has to sit  
6           twiddling their thumbs, waiting for an appeal to  
7           go through the Zoning Board.

8                   To get to the Zoning Board, the Zoning  
9           Board takes the testimony, community opposition.  
10          They tell them, Go back and have some meetings.  
11          That goes on for a month or so, then they come  
12          back. Then the person, maybe they lose at Zoning,  
13          the applicant. Then they naturally have a right  
14          to appeal to the Common Pleas Court. But they  
15          continue to use the premises in an illegal  
16          fashion. And, again, the Licenses and Inspections  
17          is prevented from doing anything with that person.

18                   This bill seeks to prevent that kind of  
19          practice. People use the system generally because  
20          it's easier to ask forgiveness than it is to ask  
21          permission.

22                   COUNCILMAN COHEN: I think you  
23          described a very common complaint among people out  
24          in the communities.

25                   COUNCILMAN NUTTER: Thank you. Thanks,

1 12/8/99 RULES - BILL 990719

2 Councilwoman.

3 COUNCIL PRESIDENT VERNA: Good  
4 morning.

5 MR. HAIGLER: Good morning.

6 COUNCIL PRESIDENT VERNA: Please  
7 identify yourself for the record and proceed with  
8 your testimony.

9 MR. HAIGLER: Good morning, Council  
10 President Verna and members of the committee. I  
11 am Otis Haigler, Jr., Legislative and Regulatory  
12 Affairs Manager for the Department of Licenses and  
13 Inspections.

14 Today I'm here to provide testimony on  
15 Bill No. 990719, amending Section 14-1705 of the  
16 Philadelphia Zoning Code by providing that appeals  
17 to the Zoning Board of Adjustments shall not stay  
18 proceedings in the furtherance of the actions  
19 appealed from.

20 The Department of Licenses and  
21 Inspections has serious concerns regarding our  
22 ability to enforce the requirements of this bill.  
23 As written, the bill would require that Licenses  
24 and Inspections continue its enforcement actions  
25 against persons who are in violation of the zoning

1 12/8/99 RULES - BILL 990719

2 code, even if the person has exercised their right  
3 to appeal the violation.

4 Currently, as stipulated under the  
5 present requirements of the Code, Section 14-1705,  
6 Subsection 4, the Department's policy has been to  
7 stay its enforcement of the action which  
8 precipitated the issuance of the refusal and  
9 appeal to the Zoning Board. The reason for this  
10 was to afford the appellant the opportunity to  
11 address their grievance of the City's requirement  
12 before the proper administrative board that has  
13 the power to grant a variance to waive the refused  
14 use or requirement.

15 In areas where the continued use or  
16 activity constitutes an immediate threat to public  
17 health, safety or general welfare, the Department  
18 has proceeded with its enforcement action, in the  
19 interest of protecting public health, safety, and  
20 welfare.

21 This provision is in line with the  
22 other provisions of the Philadelphia Code that are  
23 enforced by Licenses and Inspections and has been  
24 universally enforced for other issues such as  
25 building, fire and business regulatory.

1                   12/8/99 RULES - BILL 990719

2                   Under the Administrative Code Section  
3                   A-805.2 of the Philadelphia Administrative Code,  
4                   it states that "an appeal shall not constitute a  
5                   stay of proceedings by the Department or Fire  
6                   Department, where either Department finds and  
7                   certifies in writing that the violation is  
8                   intentional or that there exists a condition of  
9                   immediate danger or hazard to health, safety or  
10                  welfare, which requires immediate compliance."

11                  This provision applies to all of the  
12                  technical codes that are enforced by the  
13                  Department, including the Zoning Code.

14                  Bill 990719, if enacted, would generate  
15                  additional hardship for property owners and  
16                  businesses that are seeking legal relief from our  
17                  requirements. It will also cause confusion within  
18                  the Department, due to the simultaneous actions of  
19                  the Department related to enforcement and appeals.

20                  As an example, currently, if the issue  
21                  that precipitated the variance request is stayed,  
22                  we do not prosecute the matter in the court system  
23                  until the Board handling of the appeal or the  
24                  Board handling of the appeal renders a decision.

25                  Under the provision of Bill 990719, we

1                   12/8/99 RULES - BILL 990719  
2           would have to proceed with prosecuting the matter  
3           in the court system, which, in turn, could issue  
4           an order in favor of the City or appellant, or the  
5           court could remand the case back to the Department  
6           until a decision is made on the appeal.  Either  
7           way, the bill will tie up the court schedule with  
8           cases that have been, and can be, handled  
9           administratively by the Zoning Board of  
10          Adjustment.

11                   The Department of Licenses and  
12          Inspections strongly urges Council to withdraw or  
13          table this bill until such time that the bill can  
14          be fully studied to determine the impact it will  
15          have on our department and the public that we  
16          serve.

17                   Thank you.  I'll be happy to answer any  
18          questions that you may have at this time.

19                   COUNCILMAN NUTTER:  None.  Just -- next  
20          witness.

21                   MR. GRAY:  Good morning, members of  
22          City Council and the committee.  I do want to --  
23          I'm Gray Smith, and I'm the Zoning and Code  
24          Enforcement Chairman of the South Street  
25          Neighborhood Association, where we have almost

1                   12/8/99 RULES - BILL 990719  
2           daily some zoning controversy that comes up,  
3           including those similar to the scenario that  
4           Councilman Nutter defined.

5                   And when I first saw this bill, because  
6           of the difficulty in the language and because it  
7           seems to be aimed at a specific problem rather  
8           than at many problems that exist both in the  
9           procedures of the Zoning Board as well as the  
10          enforcement capabilities of Licenses and  
11          Inspections, which, although Mr. Haigler brags  
12          about them, I would question as being so  
13          efficient.

14                   Our initial concern was that the amount  
15          of work that would be imposed upon community  
16          organizations and the Zoning Board, particularly  
17          of a legal nature, would be enlarged by the nature  
18          of this ordinance, because it requires legal  
19          decisions to be made by the Zoning Board, which  
20          may impose too much of a burden on them, since  
21          they are not a judicial body, essentially. On the  
22          other hand, Councilman Nutter's concern is our  
23          concern, and we agree that the language that is in  
24          the bill right now will help resolve that problem.

25                   I believe, however, not with changing

12/8/99 RULES - BILL 990719

1 the bill or the language in the bill, that we need  
2 to also focus on another scenario, which I had  
3 discussed with Councilman Nutter last night, when  
4 we finally got a chance to talk about this bill.  
5 And that was that was when Licenses and  
6 Inspections issues a permit for zoning over the  
7 counter, without a hearing, for a use that may  
8 actually be prohibited in a zoning area -- and  
9 it's happened many, many times, particularly when  
10 there's zoning overlays, and there's a lot of  
11 those now, which many examiners don't seem to be  
12 familiar with at L&I. And the community sees a  
13 business open up which is adverse to the community  
14 and is prohibited by the Zoning Code, the  
15 community then has to file an appeal to the Zoning  
16 Board because efforts through the Department of  
17 Licenses and Inspections' enforcement tend to be  
18 very defensive rather than aggressive on behalf of  
19 the community, because, after all, L&I's the one  
20 who issued the permit.

22 So once one appeals, the business  
23 continues to operate. There is no stay because --  
24 and in this bill and, I guess, because of the  
25 inaction of L&I, there is no stay against that

1                   12/8/99 RULES - BILL 990719  
2           business operating. And it could take as many as  
3           five to six months to achieve a rejection of that  
4           zoning permit.

5                   And all I'm saying today is that we  
6           need to incorporate, in perhaps another ordinance  
7           or another amendment at a future date, some  
8           language that deals with that scenario as well.

9                   And I do want to thank Councilman  
10          DiCicco, who's our City Councilperson, and  
11          Councilman Nutter, who both probably are extremely  
12          aggressive in zoning issues on behalf of the  
13          community, for introducing this bill.

14                   MR. KRAKOWER: Good morning, members of  
15          City Council, if I may.

16                   COUNCILMAN COHEN: Identify yourself  
17          for the record, please.

18                   MR. KRAKOWER: All right. My name is  
19          Stanley Krakower. I'm a lawyer who represents a  
20          number of civic associations, community groups,  
21          residents groups, etc., in land-use matters  
22          throughout the City, particularly with regard to  
23          zoning.

24                   The problem that's involved in this  
25          amendment to Section 17-05 is one that I deal with

12/8/99 RULES - BILL 990719

1 frequently. I, first of all, wholeheartedly  
2 concur with the objective which Councilman Nutter  
3 and Councilman DiCicco seek to obtain via this  
4 bill, but like Mr. Smith, I have questions as to  
5 whether the exact language by which the bill seeks  
6 to do it is -- tends to be successful at it, and  
7 may raise some additional side problems.  
8

9 My concern is twofold. Number one,  
10 where a permit is issued across the counter to an  
11 applicant, it should not be issued for any one of  
12 a number of reasons. The civic associations  
13 become the appellant to the Zoning Board to have  
14 that permit stricken. During the interim time, as  
15 the bill now -- the language of the act now  
16 stands, at least it appears, whether it's intended  
17 legally or not, it appears to prevent continuing  
18 permits from being issued to that zoning permit  
19 holder.

20 What you have frequently is, a zoning  
21 permit is issued and then, before that permit  
22 holder can get building permits, the appeal is  
23 taken and puts a halt to that. Now, here, the  
24 bill would make it clear that in the interim,  
25 while the matter is pending to get to the Zoning

1 12/8/99 RULES - BILL 990719

2 Board, the permit holder can continue to get  
3 building permits or even start construction,  
4 though there may be some risks to that. But I  
5 just think that the procedure should be made more  
6 clear than it is right now.

7 I also have a concern as to whether  
8 simply amending the Zoning Code will have the  
9 effect in Municipal Court where, frequently, L&I  
10 is engaging in an enforcement action against some  
11 violation of the Zoning Code or the building  
12 code. And then when you get to Municipal Court,  
13 the judges stay the action on request of the  
14 defendant because there is a matter pending -- an  
15 appeal is pending before the Zoning Board. So  
16 that while it's before the Zoning Board, there can  
17 be no continued prosecution before Municipal  
18 Court.

19 Well if there's not something done with  
20 regard to the rules of Municipal Court and with  
21 regard to that type of procedure, as I look at  
22 this bill, it talks about -- I think the exact  
23 language is the action -- let me see if I have a  
24 draft of that proposal.

25 It doesn't appear to me to be clear

1                   12/8/99 RULES - BILL 990719  
2           enough that it will impact on the Municipal Court  
3           enforcement action, and I would like to see the  
4           language tightened up to make sure that it  
5           addresses the very problem it's intended to  
6           address.

7                   So my only concern is that while I  
8           wholeheartedly agree with the purposes for which  
9           the change is being sought, the purpose both by  
10          Councilman DiCicco and Councilman Nutter, I have  
11          questions as to whether the language is fine-tuned  
12          sufficiently to do that. And perhaps the answer  
13          could be that the improvement that we get out of  
14          this bill could then be further improved by a  
15          subsequent amendment at another time, if we wanted  
16          to do that.

17                   The language that I'm talking about  
18          says that an appeal to the Zoning Board of  
19          Adjustment shall not stay any proceedings in  
20          furtherance of the action appealed from. And  
21          that's my concern -- that in furtherance of the  
22          action appealed from, it may not be clear enough.

23                   Thank you.

24                   COUNCILMAN NUTTER: Madam Chair?

25                   COUNCIL PRESIDENT VERNA: Yes?

1 12/8/99 RULES - BILL 990719

2 COUNCILMAN NUTTER: A couple of  
3 important items have been raised by the community  
4 people at the table, and I'd like to ask if Richie  
5 Feder from the City's Law Department could come up  
6 and provide both explanation and some  
7 clarification and what the actual implementation  
8 of the law is.

9 COUNCIL PRESIDENT VERNA: By all  
10 means. Mr. Feder?

11 (Richard Feder comes forward.)

12 COUNCILMAN NUTTER: Mr. Feder, before  
13 you begin, Madam Chair, I also want to at least  
14 put on the record that Councilman DiCicco and I  
15 have, somewhat amazingly, been working on the same  
16 issue at the same time, unknown to each other.  
17 And not only because of our common experience with  
18 this particular issue, but as a result of  
19 conversations with other staff people at L&I,  
20 these issues were raised to us as problems for  
21 them.

22 So -- I mean, I heard the testimony  
23 earlier. I respect Mr. Haigler, and I know he  
24 comes from the legislative affairs side of the  
25 house, but there are at least some individuals in

1                   12/8/99 RULES - BILL 990719  
2           L&I who, I guess, are on the front lines of this  
3           action, who the Councilman and I have had  
4           discussions with. And some of this emanates from  
5           discussions with people in L&I. So, I mean, we'll  
6           get that situation straightened out.

7                   But, Mr. Feder, can you respond to the  
8           issues as raised by Mr. Smith and by Mr. Krakower.

9                   MR. FEDER: Certainly. Thank you,  
10          Councilman. Thank you, Madam Chair. My name is  
11          Richard Feder, I'm the Chief Deputy for  
12          Legislation in the City Solicitor's Office. I'd  
13          like to clarify that I'm not here to testify in  
14          favor of the bill or against the bill; I'm here to  
15          answer questions to explain the bill.

16                  COUNCILMAN NUTTER: We understand.

17                  MR. FEDER: The bill, as currently  
18          drafted, would clarify -- because there apparently  
19          has been uncertainty as to what the code currently  
20          provides. The bill would clarify that if L&I were  
21          to issue a notice of violation or a cease-  
22          operations order against a building owner or a  
23          developer who is engaging in some conduct that is  
24          in violation of the Zoning Code, this bill makes  
25          clear that if the building owner or developer

1 12/8/99 RULES - BILL 990719

2 appeals from the cease-op, or appeals from the  
3 notice of violation, that appeal does not stay  
4 L&I's authority to continue with its enforcement  
5 action against the building owner or against the  
6 developer.

7 Mr. Krakower did posit a slightly  
8 different situation, which is not covered by this  
9 bill technically. I don't think bill changes the  
10 law with respect to Mr. Krakower's situation.  
11 What Mr. Krakower posited is the situation where  
12 someone has been denied a permit, and they appeal  
13 from the denial of the permit. And I believe that  
14 the issue that Mr. Krakower raised is whether the  
15 appeal from the denial of a permit would prevent  
16 L&I from taking enforcement action. And I don't  
17 believe this bill says one way or the other on  
18 that -- although I don't believe there is anything  
19 in the Code currently that prevents L&I from  
20 taking action enforcement against that owner if,  
21 in fact, the permit was properly denied, and they  
22 shouldn't be going ahead with the action.

23 COUNCILMAN NUTTER: Mr. Feder, let me  
24 just ask you, I guess, kind of a jurisdictional  
25 question.

1 12/8/99 RULES - BILL 990719

2 You stated earlier that you're the  
3 Chief Deputy for Appeals and Legislation; is that  
4 correct?

5 MR. FEDER: That's correct.

6 COUNCILMAN NUTTER: And do you work  
7 with the attorneys who actually represent L&I in  
8 their various proceedings, either before  
9 administrative agencies or in the courts?

10 MR. FEDER: I certainly work with them,  
11 although I am not one of them.

12 COUNCILMAN NUTTER: I understand that.  
13 And you provide advice to them from time to time  
14 about these kinds of activities.

15 MR. FEDER: We consult with each other  
16 regularly.

17 COUNCILMAN NUTTER: Okay, I appreciate  
18 it. Thank you.

19 COUNCILMAN COHEN: Mr. Feder, in your  
20 opinion, would this create any particular  
21 enforcement difficulty in Licenses and Inspections  
22 if this amendment were adopted?

23 MR. FEDER: Councilman, that puts me in  
24 an awkward position. It borders on a policy  
25 question.

1 12/8/99 RULES - BILL 990719

2 I can tell you that this would  
3 authorize L&I to take enforcement action against  
4 owners who currently have appeals pending in the  
5 Zoning Board. Whether that would be difficult for  
6 L&I, I really have to defer to L&I and to this  
7 committee.

8 COUNCILMAN COHEN: Okay, very good.

9 COUNCILMAN NUTTER: But I can talk  
10 about policy issues. And, Councilman, you're well  
11 aware that oftentimes, what people do to avoid  
12 action by L&I is immediately run to the Zoning  
13 Board and file their appeal and now hold  
14 themselves out as "you can't touch me." And as  
15 long as I'm in front of the Zoning Board or have a  
16 case going, it's "L&I, sorry, you can't do  
17 anything to me."

18 And that is the issue that we're trying  
19 to resolve and get some closure on, because people  
20 are using the system essentially against us.

21 COUNCILMAN COHEN: Well, I think, as I  
22 see it now, the pluses of this bill far outweigh  
23 the negatives, and that's the reason I wanted to  
24 ask Mr. Feder if he knew, and I appreciate his  
25 answer, you know, whether this would create

1                   12/8/99 RULES - BILL 990719  
2           insuperable difficulties. I don't see why it  
3           should.

4                   And you can't explain to constituents,  
5           and it does not appear to be a right thing to  
6           permit what clearly seems to have been an illegal  
7           grant of a permit. According to the Zoning Code,  
8           you can't permit that to permit somebody to take  
9           advantage of that grant and to continue to  
10          operate.

11                   And so I think, on balance, this -- we  
12          ought to do this. It may very well be that the  
13          issues raised by Gray Smith and Sandy Krakower  
14          should require further consideration by City  
15          Council because, there may be other imperfections,  
16          and we are charged with responsibility to the  
17          Zoning Code. It's our problem, City Council's  
18          problem to deal with it.

19                   COUNCILMAN NUTTER: Thank you.

20                   COUNCIL PRESIDENT VERNA: Thank you.

21                   Any other questions from members of the  
22          committee?

23                   (No further questions.)

24                   COUNCIL PRESIDENT VERNA: Do we have  
25          anyone else to testify on this bill?

1 12/8/99 RULES - BILL 990719

2 (No response.)

3 COUNCIL PRESIDENT VERNA: May we please  
4 go back to 990678 that was introduced by  
5 Councilwoman Tasco? I understand there's a member  
6 of her staff here that will testify on the bill.

7 (Brenda Frazier comes forward.)

8 COUNCIL PRESIDENT VERNA: Good  
9 morning. Please identify yourself for the record  
10 and proceed with your testimony.

11 MS. FRAZIER: Good morning. Good  
12 morning, Madam Chair and members of the Rules  
13 Committee. My name is Brenda Frazier, staff  
14 attorney for Councilwoman Marian Tasco. And with  
15 me is Miss Marian Johnson. She conducts many of  
16 the zoning cases at the Zoning Board of  
17 Adjustment, and brought this case to the  
18 Councilwoman's attention.

19 Last year, the Councilwoman held  
20 hearings on the proliferation of wholesale  
21 businesses within the Fifth Street Corridor. Many  
22 of the neighbors and residents of the area came to  
23 testify that their services were being curtailed  
24 by the influx of wholesale businesses. This bill  
25 is a result of many of those -- of that

1                   12/8/99 RULES - BILL 990678  
2           discussion. I refer you to the legislative  
3           findings that were detailed for the rationale for  
4           this bill.

5                   The Councilwoman asked that you approve  
6           the bill and refer it out of committee.

7                   COUNCIL PRESIDENT VERNA: Thank you.

8                   MS. FRAZIER: Thank you.

9                   COUNCIL PRESIDENT VERNA: Miss Johnson,  
10          do you care to testify?

11                  MS. JOHNSON: Good morning, Madam Chair  
12          Lady and others present. I would just like to add  
13          that I am also from Councilwoman Tasco's staff,  
14          and I do the zoning and hear the L&I matters for  
15          the Councilwoman.

16                  And many times, it's kind of  
17          complicated because you have people from the  
18          residential neighborhoods who come to us because  
19          they have complaints regarding the wholesale  
20          operations in their area, and their main reason  
21          for complaining is because the wholesale  
22          operations lock them out of actually shopping in  
23          their corridor. If they are not purchasing in  
24          quantity, they're not permitted to make their  
25          purchases that they would normally make in the

1 12/8/99 RULES - BILL 990678

2 neighborhood.

3 We have a number of zoning applications  
4 for wholesale that we have had to be involved in,  
5 and we have opposed them strongly. We are still  
6 continuing to oppose them, but it's a difficult  
7 battle because, along the Fifth Street Corridor, I  
8 think because there are several that are already  
9 in place, other illegal wholesalers tend to just  
10 jump on the bandwagon.

11 We've had meetings with them, they've  
12 made commitments about all kinds of ways they  
13 would stop wholesaling, but they have not lived up  
14 to that, so it is truly a problem in the 9th  
15 Councilmatic District, especially on the Fifth  
16 Street Corridor.

17 COUNCIL PRESIDENT VERNA: Did you ask  
18 the City Solicitor for an opinion on this? I just  
19 don't know if it's legal to prohibit the granting  
20 of variances.

21 MS. FRAZIER: This is a bill that has  
22 been reworked several times, and the Planning  
23 Commission did work on it for us and develop it,  
24 and that this was comparable to several other  
25 bills that were introduced in other districts,

1                   12/8/99 RULES - BILL 990678  
2           that this was just a restriction for this  
3           particular area and doesn't affect any other part  
4           of the City.

5                   COUNCILMAN COHEN:   Madam Chair?

6                   COUNCIL PRESIDENT VERNA:   The Chair  
7           recognizes Councilman Cohen.

8                   COUNCILMAN COHEN:   May I just ask the  
9           last speaker, are you saying there have been other  
10          bills in the City banning wholesale vending?

11                   MS. FRAZIER:   This is not wholesale  
12          vending.  That is wholesale vending in retail  
13          areas, where there are mainly stores that the  
14          residents would prefer a dry-cleaner, they would  
15          like to have dry-cleaners and small shops for  
16          cosmetics and different kinds of things that are  
17          not accommodated by wholesale.

18                   COUNCILMAN COHEN:   Is Mr. Feder still  
19          here?

20                   COUNCILWOMAN VERNA:   Yes, he is.

21                   COUNCILMAN COHEN:   From the City Law  
22          Department?  I wonder if he would approach the  
23          table.

24                   COUNCIL PRESIDENT VERNA:   He's just  
25          reading the bill now.

1 12/8/99 RULES - BILL 990678

2 MS. FRAZIER: This is just for the C2  
3 areas, which are commercial areas that are  
4 bordering residential areas.

5 COUNCILMAN COHEN: I think our problem  
6 is, we don't know whether the City has the power  
7 to, say, ban toy stores somewhere, or to ban a  
8 specific kind of business that is not, say, like a  
9 pornographic shop or something, and we -- let's  
10 see what the Law Department says.

11 MS. FRAZIER: Okay.

12 COUNCILMAN COHEN: Mr. Feder, I  
13 understand you're reading the bill at the present  
14 time.

15 MR. FEDER: That's correct,  
16 Councilman. I always try to do that before I give  
17 you an opinion.

18 (Laughter.)

19 COUNCILMAN COHEN: Okay.

20 MR. FEDER: Councilman, I'm sorry,  
21 could --

22 COUNCIL PRESIDENT VERNA: Miss Frazier,  
23 maybe you could tell us how many wholesale  
24 businesses there are in this particular area, in  
25 the Fifth Street Special District.

1 12/8/99 RULES - BILL 990678

2 MS. FRAZIER: We have some that have  
3 grown up that have not been approved by the Zoning  
4 Board of Adjustment. Probably from the Boulevard  
5 to Olney, there may be a half a dozen.

6 COUNCIL PRESIDENT VERNA: Mm-hmm. But  
7 does this bill prohibit the granting of variances  
8 from the provisions of the bill?

9 MS. FRAZIER: No, it's the granting of  
10 variances from the stated requirements for C2  
11 commercial district. That is the -- the idea is  
12 that the commercial districts are basically there  
13 to support and provide economic possibilities for  
14 the residents, and that when the wholesale -- for  
15 example, wholesale hats or wholesale electronics,  
16 this detracts from the opportunities for the -- to  
17 support the community.

18 COUNCIL PRESIDENT VERNA: Mr. Feder?

19 MR. FEDER: Thank you, Madam  
20 President. I'm Richard Feder, from the City  
21 Solicitor's Office.

22 I believe you asked me -- I'm sorry  
23 could you repeat the question? Councilman Cohen,  
24 did you have a particular concern about this  
25 bill? I'm sorry.

1 12/8/99 RULES - BILL 990678

2 COUNCILMAN COHEN: Yeah, we were  
3 wondering, does the City have the power to enact  
4 this kind of bill, to enforce it?

5 MR. FEDER: It is our view that,  
6 certainly, within a defined area, as opposed to  
7 citywide, Council has the legal party to prohibit  
8 certain uses within a defined area. And in terms  
9 of prohibiting the granted variances, I would  
10 construe that provision to say, "The Zoning Board  
11 shall not grant variances unless there's some  
12 constitutional reason to require a variance." For  
13 instance, if a property owner were able to come in  
14 and say that the denial of a wholesale -- the  
15 right to do so wholesale business is a complete  
16 taking of my property and this would violate my  
17 fifth-amendment constitutional right not to have  
18 my property taken, then I would construe this bill  
19 to say that a property owner still has the right  
20 to make that case to the Zoning Board.

21 But absent the constitutional taking, I  
22 believe Council does have the power to say, in  
23 certain instances, that no variances shall be  
24 granted. At least I'm not prepared to tell you  
25 that you don't have that power at that time.

1 12/8/99 RULES - BILL 990678

2 COUNCIL PRESIDENT VERNA: Thank you.

3 Are there any other questions?

4 COUNCILMAN COHEN: I conclude from your  
5 statement that you're saying at this point in  
6 time, as far as your understanding is concerned,  
7 Council would have the power to pass this bill.

8 MR. FEDER: At think moment, I don't  
9 know if -- I have looked into these issues in the  
10 past in related bills, but to be honest with you,  
11 Councilman, I have not looked at this bill before  
12 five minutes ago.

13 But from my general understanding of  
14 the zoning law, I don't know any reason why  
15 Council couldn't prohibit this. I don't want to  
16 mislead you.

17 COUNCILMAN COHEN: Yes.

18 MR. FEDER: It is possible we could go  
19 back to the office and I could discuss this issue  
20 with --

21 COUNCIL PRESIDENT VERNA: Mr. Feder, do  
22 you mind staying at the witness table? I believe  
23 there is someone else that wants to testify on  
24 this bill.

25 Please approach the table, identify

1                   12/8/99 RULES - BILL 990678  
2           yourself for the record, and proceed with your  
3           testimony.

4                   (Witness comes forward.)

5                   MR. SKLAROFF: Yes. My name is Michael  
6           Sklaroff. I'm a member of the Bar.

7                   I didn't come here to testify on this,  
8           but I would suggest that the Law Department be  
9           asked to address the specific question as to  
10          whether City Council can impair the power of the  
11          Zoning Board of Adjustment to grant variances in  
12          light of the City Charter.

13                  MR. FEDER: We would be certainly happy  
14          to look into that. I believe -- I'm doing this  
15          from memory -- that the Charter says that variance  
16          power shall be done pursuant to ordinances, but I  
17          would really have to look into that. Mr. Sklaroff  
18          obviously has a concern, and I mean, I'd be happy  
19          to go back and look at that and discuss it with  
20          the Solicitor.

21                  COUNCIL PRESIDENT VERNA: Well, I think  
22          that's important. I think it's important that you  
23          do that before we pass this bill.

24                  COUNCILMAN COHEN: We could move the  
25          bill out of committee and hold it until we get the

1 12/8/99 RULES - BILL 990678

2 opinion.

3 COUNCILWOMAN VERNA: Mm-hmm, the City  
4 Solicitor's opinion.

5 All right. Any other --

6 MS. FRAZIER: That would be most  
7 appreciated.

8 COUNCIL PRESIDENT VERNA: Pardon me?

9 MS. FRAZIER: We would appreciate it if  
10 you could move it out and have the vote pending  
11 our decision.

12 COUNCILMAN COHEN: Yes.

13 COUNCIL PRESIDENT VERNA: Fine, thank  
14 you very much.

15 MS. FRAZIER: Thank you so much.

16 COUNCIL PRESIDENT VERNA: Is there  
17 anyone else to testify on this bill?

18 (No response.)

19 COUNCIL PRESIDENT VERNA: Seeing none,  
20 I would ask the clerk to please read the title of  
21 Bill No. 990729.

22 THE CLERK: An ordinance amending  
23 Section 9-211 of the Philadelphia Code, entitled  
24 "Boxes for the Distribution of News and Printed  
25 Material," by adding additional locations to the

1                   12/8/99 RULES - BILL 990729  
2           designated program area, including the 1700 block  
3           of Cottman Avenue, under certain terms and  
4           conditions.

5                   COUNCIL PRESIDENT VERNA: Again, I  
6           wanted ask that you identify yourself for the  
7           record, please.

8                   MR. HAIGLER: Good day, Council  
9           President Verna and members of the committee. I  
10          am Otis Haigler, Jr., Legislative and Regulatory  
11          Affairs Manager for the Department of Licenses and  
12          Inspections.

13                   Today, I am here to provide testimony  
14          on Bill No. 990729, amending Section 9-211 of the  
15          Philadelphia Code by adding additional locations  
16          to the designated program area, including the 1700  
17          block of Cottman Avenue, under certain terms and  
18          conditions.

19                   The Department of Licenses and  
20          Inspections offers no objections to the enactment  
21          of Bill No. 990729.

22                   COUNCIL PRESIDENT VERNA: Thank you.

23                   Any questions from members of the  
24          committee?

25                   (No questions.)

1 12/8/99 RULES - BILL 990729

2 COUNCIL PRESIDENT VERNA: Do we have  
3 anyone else to --

4 COUNCILMAN DICICCO: Madam Chair?

5 COUNCIL PRESIDENT VERNA: The Chair  
6 recognizes Councilman DiCicco.

7 COUNCILMAN DICICCO: Thank you.

8 Just for the record, Mr. Haigler just  
9 had a sidebar with Councilmember O'Neill, and I  
10 think it would important to advise the applicants  
11 of the newsstands that will be covered in this  
12 bill about the requirements for the materials of  
13 newly-constructed newsstands. And also, I think  
14 it be beneficial for them to understand what we're  
15 attempting to do.

16 Oh, I apologize -- I thought it was a  
17 part of the newsstands.

18 MR. HAIGLER: This is the honor boxes.

19 COUNCILMAN DICICCO: Just the honor  
20 boxes. Okay, I apologize and I withdraw that.

21 Thank you.

22 COUNCIL PRESIDENT VERNA: Okay, do we  
23 have anyone else to testify on this bill? Please  
24 approach the witness table.

25 (Witnesses come forward.)

1 12/8/99 RULES - BILL 990729

2 COUNCILMAN DICICCO: Please identify  
3 yourself for the record.

4 MR. TAUBENBERGER: Yes, I will. My  
5 name is Al Taubenberg, T-A-U-B-E-N-B-E-R-G-E-R,  
6 President of the Northeast Philadelphia Chamber of  
7 Commerce.

8 MR. KLAUDER: Good morning. My name is  
9 Michael Klauder, K-L-A-U-D-E-R, general manager of  
10 the Country Club Restaurant on 1818 Cottman  
11 Avenue.

12 COUNCIL PRESIDENT VERNA: Pull the  
13 microphone closer to you. And before you do that,  
14 the noise level is much too high in the room. We  
15 could just about hear the witnesses. So if you  
16 want to engage in conversation, please do so in  
17 the corridor. Thank you.

18 Please repeat your name again.

19 MR. KLAUDER: Yes, ma'am. My name is  
20 Michael Klauder, K-L-A-U-D-E-R, and I'm general  
21 manager of Country Club Restaurant, located at  
22 1717 Cottman Avenue.

23 COUNCIL PRESIDENT VERNA: Thank you.

24 MR. TAUBENBERGER: Madam Chair, we also  
25 have two sets of pictures for the committee, just

1                   12/8/99 RULES - BILL 990729  
2           to look at what this looks like visually and to  
3           have an idea what were talking about.

4                   COUNCIL PRESIDENT VERNA: Thank you.  
5           Someone will get them.

6                   MR. TAUBENBERGER: Okay.

7                   MR. KLAUDER: The problem that we have  
8           with the honor boxes is, they were put there  
9           without permission, and we're located next to  
10          Northeast High School, with 3500 students, and to  
11          our east is Woodrow Wilson Junior High, with 1500  
12          students. And almost daily, the students go by  
13          before and after school and open the honor boxes  
14          and throw the papers up in the air and cause a  
15          problem with litter and a mess, and it causes  
16          damage to our business.

17                   Also, it prevents patrons from parking  
18          on Cottman Avenue because it makes it difficult  
19          for them to get out of their cars with the  
20          proliferation of all the news boxes there.

21                   COUNCIL PRESIDENT VERNA: Thank you.

22                   Any questions from members of the  
23          committee?

24                   The Chair recognizes Councilman  
25          DiCicco.

1 12/8/99 RULES - BILL 990729

2 COUNCILMAN DICICCO: I'm sorry, sir. I  
3 didn't get your name.

4 MR. KLAUDER: Mike Klauder.

5 COUNCILMAN DICICCO: Claude?

6 MR. KLAUDER: Klauder.

7 COUNCILMAN DICICCO: Mr. Klauder, have  
8 you attempted to contact any of the owners of the  
9 vending boxes and asked for them to remove them or  
10 --

11 MR. KLAUDER: We have in the past, but  
12 without success.

13 COUNCILMAN DICICCO: Without success.

14 Okay, I was just having a conversation  
15 again with Councilmember O'Neill about an honor  
16 box legislation that we passed in Council not too  
17 long ago. We're in the phase of the pilot program  
18 in Center City to create some uniformity in the  
19 way these boxes are placed out there. I'll speak  
20 further to Councilmember O'Neill. There might be  
21 an opportunity here to erect one of those corrals  
22 in and around the facility that would maybe make  
23 this a little more uniform, so I'll work with you  
24 on that.

25 But you have not -- no one, obviously,

1                   12/8/99 RULES - BILL 990729

2           has decided to remove these boxes. Have you tried

3           contacting Licenses and Inspections?

4                   MR. KLAUDER: No, I have not.

5                   COUNCILMAN DICICCO: And I would also

6           suggest that maybe contact you through

7           Councilmember O'Neill's office, the Streets

8           Department, because there are ways and means by

9           which sometimes we can have these boxes removed.

10                  MR. KLAUDER: The problem is, they just

11           suddenly appear. Like, one day there's two, the

12           next day, there's eleven.

13                  COUNCILMAN DICICCO: I'm very well

14           aware of that. Thank you.

15                  COUNCIL PRESIDENT VERNA: Thank you.

16                  Any other questions from members of the

17           committee?

18                  (No further questions.)

19                  COUNCIL PRESIDENT VERNA: Do we have

20           anyone else to testify on this bill?

21                  (No response.)

22                  COUNCIL PRESIDENT VERNA: Thank you

23           very much.

24                  MR. TAUBENBERGER: I just wanted to

25           briefly say real quick that the photos clearly

1 12/8/99 RULES - BILL 990848

2 state how bad the situation is.

3 COUNCIL PRESIDENT VERNA: Yeah, we can  
4 see that.

5 MR. TAUBENBERGER: There are eleven  
6 boxes there that interfere with parking and so on,  
7 and we really would appreciate it if this bill  
8 would be passed so these things could be removed  
9 and regulated.

10 Council President, thank you.

11 COUNCILWOMAN VERNA: Thank you very  
12 much.

13 The next bill being called for  
14 consideration is Bill No. 990848.

15 THE CLERK: An ordinance amending Title  
16 9 of the Philadelphia Code relating to the  
17 regulation of businesses, trades, and professions  
18 by amending Chapter 9-2000, entitled "Sale of Malt  
19 or Brewed Beverages," to further regulate and  
20 restrict the operation of businesses that sell  
21 malt or brewed beverages, under certain terms and  
22 conditions.

23 COUNCIL PRESIDENT VERNA: The Chair  
24 recognizes Councilman Clarke.

25 (Councilman Clarke comes forward as a

1 12/8/99 RULES - BILL 990848

2 witness.)

3 COUNCIL PRESIDENT VERNA: Good  
4 morning. Please identify yourself for the record  
5 and proceed with your testimony.

6 COUNCILMAN CLARKE: Good morning, Madam  
7 Chair. My name is Darryl L. Clarke, Councilperson  
8 for the 5th Councilmatic District. I'd like to  
9 thank you for this opportunity to testify on  
10 behalf of this bill, and I'll be as brief as  
11 possible.

12 Essentially, I introduced this  
13 ordinance to remedy one of the major problems that  
14 severely affects one of the neighborhood  
15 throughout the city, but particularly low-income  
16 communities with large minority populations. In  
17 many of these neighborhoods, establishments to  
18 sell malt liquor, also called "stop-and-go's,"  
19 tend to create public nuisances.

20 The people who will testify after me,  
21 community leaders and police officers, will  
22 describe these nuisances and how they affect the  
23 everyday life of citizens and neighborhoods trying  
24 to turn around and maintain cleanliness and order.

25 Frequently, stop-and-go's are the

12/8/99 RULES - BILL 990848

1 centers of criminal activity. Drug dealers stand  
2 out in front of them, people drink beer in front  
3 of these stores, crap games are played on the  
4 sides of these establishments. The number of  
5 people loitering in front of these stop-and-go's  
6 essentially create a concentrated air of negative  
7 activity that frightens many people in the  
8 communities in which they exist.

10 To compile the situation, the  
11 stop-and-go's frequently market a strong or more  
12 potent version of malt liquor targeted to minority  
13 communities. This enhanced malt liquor is both  
14 difficult to find in middle-income and  
15 non-minority communities, but very easy to find in  
16 virtually every low-income minority community.  
17 Worse yet, our neighborhoods are already targeted  
18 with concentrated numbers of bars that sell even  
19 more potent liquor.

20 Unfortunately, these stop-and-go's also  
21 market items to children, while maintaining items  
22 typical of a small corner store -- for example,  
23 individually-wrapped candies and toys and arcade  
24 games. Many minority and low-income communities  
25 are also lined with sexually suggestive posters

1                   12/8/99 RULES - BILL 990848  
2           exhorting patrons to buy alcohol. This is a  
3           frightening contradiction that is still all too  
4           common.

5                   To add insult to injury, advertisements  
6           for this enhanced malt liquor appear in radio and  
7           magazine advertisements whose primary audience is  
8           dominated by teenagers. It seems to many that  
9           these marketing practices encourage children to  
10          purchase malt liquor and beer illegally.

11                   This marketing technique is even more  
12          concerning when these stop-and-go's are located  
13          within close proximity to schools. In my  
14          district, there are many examples. Across from  
15          Dobbins High School, at 22nd and Lehigh, there's a  
16          store that's frequented by students and people  
17          wishing to buy beer. There's another one at the  
18          corner of Dover and Cecil B. Moore, in between  
19          29th and 30th Streets that's right across from the  
20          Kelly Elementary School. And it goes on.

21                   Sadly, around each of these locations  
22          exists several other stop-and-go's that sell beer  
23          while children walk home to and from school.  
24          Moreover, in many neighborhoods throughout  
25          Philadelphia, many schools are within blocks of

1 12/8/99 RULES - BILL 990848

2 many places that sell malt liquor.

3 With an aggressive marketing campaign  
4 that is directly primarily directed towards  
5 minorities, this enhanced malt liquor floods our  
6 neighborhoods. These establishments create an  
7 create ongoing --

8 COUNCIL PRESIDENT VERNA: Councilman,  
9 excuse me. I think you deserve a little more  
10 respect than you are getting.

11 Again, I am going to suggest that the  
12 noise level is much too high. Anyone having  
13 conversations will please do so in the corridor.

14 I'm sorry.

15 COUNCILMAN CLARKE: Thank you, Madam  
16 Chair.

17 COUNCIL PRESIDENT VERNA: I'm sorry,  
18 please proceed.

19 COUNCILMAN CLARKE: Okay.  
20 Unfortunately, existing State law generally  
21 prohibits municipalities and counties from  
22 regulating malt liquor establishments in a way  
23 that treats places that sell malt liquor  
24 differently than those that do not. However,  
25 State Senator Shirley Kitchen is willing to offer



1 12/8/99 RULES - BILL 990848

2 committee?

3 What is the penalty to the property  
4 owner if he does not comply?

5 COUNCILMAN CLARKE: Well, there are  
6 currently regulations associated with some of the  
7 nuisances. Right now, we have not a set a  
8 penalties for the particular noncompliance of this  
9 bill.

10 COUNCIL PRESIDENT VERNA: Okay. And  
11 it's my understanding that we have Captain Cynthia  
12 Dorsey here to testify?

13 COUNCILMAN CLARKE: Yes, we have  
14 Captain Dorsey, and we have several  
15 representatives from the community.

16 COUNCIL PRESIDENT VERNA: All right.  
17 Would captain Dorsey please approach the witness  
18 table?

19 (Captain Dorsey comes forward.)

20 COUNCILMAN CLARKE: Capital Dorsey is  
21 taking care of a little personal situation at this  
22 moment.

23 (Laughter.)

24 COUNCIL PRESIDENT VERNA: All right.  
25 And while we're waiting for Captain Dorsey, may I

1 12/8/99 RULES - BILL 990848

2 suggest that Reverend William King approach the  
3 witness table?

4 (Reverend King comes forward.)

5 REVEREND KING: Good morning.

6 COUNCILWOMAN VERNA: Good morning,  
7 Reverend.

8 REVEREND KING: Good morning. How are  
9 you?

10 COUNCIL PRESIDENT VERNA: Fine, thank  
11 you.

12 REVEREND KING: I'd like to begin by  
13 saying that I support the proposed amendments to  
14 this ordinance, and I want to thank Councilman  
15 Clarke for offering these amendments.

16 But I am also -- I would like to also  
17 say that I've been here since about 9 o'clock, and  
18 I'm a little disappointed in that all of the  
19 chairs were filled with Councilpeople at that  
20 time. And up until about maybe 15, 20 minutes  
21 ago, it now appears that there are only three  
22 Councilmembers that are at the table, which  
23 indicates to me that there doesn't seem to be a  
24 whole lot of interest or concern in this issue.  
25 And I would like to submit that this is a very

12/8/99 RULES - BILL 990848

1 important issue, especially when we consider the  
2 fact that so many of the crimes that are committed  
3 in our community are a direct result of alcohol  
4 and drugs.  
5

6 I'd like to also identify myself. I am  
7 Reverend William L. King. I'm the minister of  
8 Calvary United Church, at 29th and Lehigh.

9 Let me say that the problems that these  
10 activities create are monumental. Our young  
11 people are very important -- or should be very  
12 important to us. And anything that's going to  
13 impact on their lives and help to mold them, it  
14 seems to me that we ought to all be very concerned  
15 about it.

16 I'm sure that all of you are aware of  
17 the brutal murder that just took place in our  
18 community just a few days ago of this eminent  
19 journalist, and I'm sure that when you look at the  
20 perpetrator, somewhere in his background, you're  
21 going to find something to do with drugs and  
22 alcohol. So it seems to me that anything at all  
23 that's going to try to help impact and improve the  
24 quality of life in our communities, we all ought  
25 to be very concerned about it.

1 12/8/99 RULES - BILL 990848

2 Having these stop-and-go's in our  
3 communities impacts on our young people because,  
4 at a very young age, as they enter these places,  
5 they see these beverages dispensed, they see  
6 people partaking of them, and it begins to  
7 influence them.

8 I have a youth center in my church, and  
9 many of the young people that I come in contact  
10 with, they smoke pot, they drink these malt  
11 liquors, and together, they get a high that's  
12 unbelievable. They're out of their minds; half  
13 the time, they don't know what they're doing  
14 themselves because of this.

15 Now, I understand -- I watched Elliot  
16 Ness and all of that stuff about how we tried to  
17 control alcohol during the '30s, etc., '20s, and I  
18 know there are people who say we can't regulate  
19 mortality and all of that, but I do believe that  
20 we need to make some effort -- this is just one  
21 small effort -- at trying to control the situation  
22 that has a tremendous effect on our young people.

23 All of you are well-educated and  
24 intelligent people, and I know that you realize  
25 that we are all influenced in one way or another

12/8/99 RULES - BILL 990848

1 by our environment, the things that we come in  
2 contact with, especially when we're young and  
3 impressionable. So it seems to me that this one  
4 small step here will go a long way with trying to  
5 help change some of the behavior that exists in  
6 our community.  
7

8 Now, you already have -- this ordinance  
9 is already on the books. Part of the problem  
10 today, however, is the enforcement. We need -- we  
11 need our law enforcement people to be sensitive to  
12 this and to try to help them in whatever way they  
13 can -- and I think that they can be a big help  
14 without further exacerbating the situation by  
15 causing confrontations.

16 But, certainly, with the young people  
17 hanging out in front of these places, it does  
18 create a real problem, and I would appreciate your  
19 consideration of these amendments and for you to  
20 seriously consider how important and what an  
21 important factor it may be in trying to help the  
22 clergy who, we often are criticized because we  
23 don't do enough, and it makes it very difficult  
24 for us to do our jobs when we can't get support of  
25 our authorities in trying to undo some of the

1 12/8/99 RULES - BILL 990848

2 situations that exist in our community.

3 One of the worst things -- and I don't  
4 know if any of you are clergy, but one of the  
5 worst things that I've had to face is trying to  
6 administer to a family who has lost a loved one  
7 because some kid got high, stole the car, and  
8 caused an accident and took their loved one from  
9 them. We all sympathize perhaps with the  
10 youngster, and we can say it was an accident, but  
11 the impact and the hurt and the pain that it  
12 causes the family is something that the minister  
13 has to try to deal with. And believe me, it is  
14 very difficult.

15 Thank you for this opportunity to come  
16 and share my views, and I appreciate your  
17 attention. And I'm happy to see that some of the  
18 other members have joined you at the table.

19 COUNCIL PRESIDENT VERNA: Thank you,  
20 Reverend.

21 (Applause.)

22 COUNCIL PRESIDENT VERNA: Reverend,  
23 Reverend, why don't you wait a moment, please.

24 The Chair recognizes Councilman Kenney,  
25 but before I do recognize him, Reverend, I do want

1                   12/8/99 RULES - BILL 990848  
2           to thank you for your patience in waiting to  
3           testify, and this is an issue that we have all  
4           been concerned about, and there have been, I know,  
5           more than one bill that was introduced by  
6           Councilman Kenney.

7                   And I agree with you that we could pass  
8           all the bills in the world, but if they're not  
9           enforced, they're just a useless piece of paper.

10                   REVEREND KING: Correct.

11                   COUNCIL PRESIDENT VERNA: At this time,  
12           I would like to recognize Councilman Kenney.

13                   COUNCILMAN KENNEY: Thank you, Madam  
14           Chairperson.

15                   Reverend, I just to give you a little  
16           bit of history on what the Council's been doing  
17           over the past eight years as it relates to what I  
18           believe is a scourge on the communities of our  
19           city, and more clearly, a scourge in the minority  
20           communities of our city as opposed to some of the  
21           other areas of our community.

22                   Back in my first term, starting in  
23           1992, I was successful in getting a piece of  
24           legislation passed which required zoning approval  
25           for any new takeout-beer delicatessens that were

1 12/8/99 RULES - BILL 990848

2 to be opened or were intended to be opened in our  
3 city. To my knowledge, because of that zoning  
4 bill, I don't believe that any new ones have been  
5 approved. What we have basically are the scourge  
6 of the existing ones that have been there.

7 Part of what I learned in dealing with  
8 this problem is that there's a lot of money to be  
9 made, and a lot of money that's being made. And  
10 sadly, that money is not only being made by people  
11 who are taking it out of our communities, but many  
12 of the people who own these operations do not even  
13 live in the City of Philadelphia, but simply only  
14 their relationships to the city is their bank  
15 deposit bag.

16 And on one occasion, I drove from  
17 Allegheny Avenue from 29th Street down at Mercy  
18 Tech to Broad and Allegheny, and I counted ten  
19 different take-out-beer delicatessens in the space  
20 of that many blocks.

21 One of the things I wanted to caution  
22 you about is, our efforts to really come down on  
23 these operations landed us in federal court, if  
24 you could believe it or not, but the City of  
25 Philadelphia, along with myself, were sued by the

1                   12/8/99 RULES - BILL 990848  
2           Beverage Association that represents the people  
3           who own these operations in federal court. We  
4           shut down a large number of them, based on zoning  
5           violations that we believe existed. The court  
6           reversed our efforts and allowed those operations  
7           to stay open, sad to say.

8                   The other problem that we face in  
9           dealing with the governance of this issue the  
10          absolute right, or the absolute perceived right,  
11          of the State to monitor and to have jurisdiction  
12          over the sale of alcoholic beverages.  
13          Take-out-beer delicatessens were not intended when  
14          they passed the law allowing you to serve a beer  
15          in a delicatessen. Basically, what was envisioned  
16          was a kind of a restaurant setting where someone  
17          would come in for, say, a corned beef sandwich,  
18          sit down in the normal place, have the sandwich,  
19          and be able to have a beer or two.

20                   What they did was take those -- what  
21          are called e-licenses, which are State licenses  
22          for those types of operation, and created a corner  
23          grocery store, with four walls of refrigerators,  
24          stocked top to bottom with what I call "liquid  
25          crack," which is what it is. There is no reason

1                   12/8/99 RULES - BILL 990848  
2           for anyone in the world for anyone to need to  
3           drink brewed beverages with the high alcohol  
4           content that some of these beverages have. I  
5           mean, a regular Budweiser or any other  
6           traditionally sold beer does not come close to the  
7           amount of alcohol that's in these large bottles of  
8           malt liquor.

9                   So I commend you for your continued  
10          efforts, I commend Councilmember Clarke for his  
11          efforts in this regard, but I want to tell you  
12          something you probably already know: There's a  
13          lot of money being made, there's going to be a lot  
14          of lawyers running around, trying to stop us from  
15          doing what we're trying to do. And I never  
16          believed that the federal court really should give  
17          some -- they said it was unconstitutional for us  
18          to regulate and to try to shut down some of these  
19          operations. So I just wanted to alert you to the  
20          opposition that's going to come about, but I'm  
21          sure, with your faith in God, you'll continue on.

22                   Thank you.

23                   REVEREND KING: Thank you.

24                   COUNCIL PRESIDENT VERNA: Thank you,  
25          Reverend.

1 12/8/99 RULES - BILL 990848

2 Are there any questions or comments  
3 from members of the committee of Reverend King?

4 (No questions.)

5 COUNCIL PRESIDENT VERNA: Thank you  
6 again, Reverend.

7 REVEREND KING: Thank you.

8 COUNCIL PRESIDENT VERNA: Captain  
9 Dorsey?

10 (Captain Dorsey comes forward.)

11 CAPTAIN DORSEY: Good morning.

12 COUNCIL PRESIDENT VERNA: Good morning.

13 CAPTAIN DORSEY: Thank you for the  
14 opportunity to speak here today.

15 Let me tell you a little bit about the  
16 23rd District. I've been Captain of the 23rd  
17 District since June 15th of this year.  
18 Demographically, it's bonded: on the north, by  
19 Montgomery; on the south, by Poplar; and on the  
20 east, by Tenth Street; and on the west, 33rd  
21 Street. It's a small slice of Philadelphia, it's  
22 only 1.3 square miles, primarily neighborhoods  
23 with approximately like 30,000 to 35,000 people,  
24 95 percent of which are minorities.

25 I did some research, and what I came up

12/8/99 RULES - BILL 990848

1 with is, there are approximately 11 liquor-on-  
2 the-go establishments in this small, congested  
3 area, which, in my opinion, is far too many.  
4 Residents here are often in need of governmental  
5 financial and police service. But if they need  
6 alcoholic beverages -- and that's in addition to  
7 the other bars and things they have. Alcoholic  
8 beverages are readily available to them and also  
9 the State stores.  
10

11 I looked from January to August of  
12 1999. There were approximately 350 calls for  
13 service in the areas where these 11 establishments  
14 were, and they ranged from everything  
15 disturbances, to disorderly crowds, hospital  
16 cases, a person with a gun, and lost property.  
17 And that's 350 calls where the police could be  
18 providing service, and they have to go and answer  
19 calls in or around these establishments.

20 Many of the locations are grouped  
21 together. On Ridge Avenue, I counted four within  
22 a one-block radius and that is too many. Also, on  
23 the 2800 block of Girard Avenue, within a  
24 one-block radius, there are two of them.

25 The problems -- the unique problems

12/8/99 RULES - BILL 990848

1 that they bring, 40 ounces is a lot of beer,  
2 that's a lot of beer for someone to consume. And  
3 these malt liquors have a high percentage of  
4 alcohol in them. When you drink 40 ounces of  
5 beer, you are going to have to take care of your  
6 bodily functions. The problem is, the mindset is,  
7 patrons, when they purchase the beer, don't  
8 believe that they have to go home to use the  
9 facilities, so if they can't use the facilities  
10 inside, we have a problem with public urination.  
11 That's one of the things.

12 It also encourages gambling on the  
13 highway because encourages people to hang out on  
14 the corps or outside of the establishments.

15 Now, we have beat officers on Ridge --  
16 I have a beat officer on Ridge Avenue. So what  
17 that does is, that discourages them from hanging  
18 outside, because the officer won't tolerate it.  
19 Especially if they're engaged in any illegal  
20 activity, they know they're going to be arrested.  
21 Sometimes they go inside of the establishments,  
22 and that doesn't make things any better, because  
23 there are people coming in, there are children  
24 coming in.  
25

1                   12/8/99 RULES - BILL 990848

2                   Also, children coming from school have  
3 to pass by these establishments. They're  
4 intimidated, and it's a bad role model for the  
5 kids to see.

6                   It also -- you have seniors who do most  
7 of their shopping in North Philadelphia. They  
8 shop on Ridge Avenue, they shop on Cecil B. Moore  
9 Avenue. Sometimes they're intimidated by these  
10 people hanging out, even though they don't think  
11 they're anything wrong. They're violating the  
12 open-container laws -- we have open-container laws  
13 here. They think that as long as it's in a paper  
14 bag and concealed, but that's against the law.

15                  You have disorderly crowds, gambling on  
16 the highway, as I said. Sometimes it's coupled  
17 with the illegal use of narcotics.

18                  There's littering -- where do you put  
19 the 40-ouncers or the bags or the food that you  
20 eat? Do you throw it in the trash or do you just  
21 litter the streets? You litter the street with  
22 it. So there are disorderly conducts,  
23 confrontations with the officers, because they  
24 really don't believe that they're doing anything  
25 wrong.

1 12/8/99 RULES - BILL 990848

2 Something like this has been in the  
3 community for many years. It's accepted behavior  
4 by some of the people that patronize these places.

5 So these are the problems that the  
6 police encounter in dealing with these malt-liquor  
7 establishments. And the thing is that it is  
8 bringing big money in. And that's the problem.

9 COUNCIL PRESIDENT VERNA: Thank you.

10 The Chair recognizes Councilman Kenney.

11 COUNCILMAN KENNEY: Captain, thank you  
12 very much for your testimony.

13 You may be aware of this, but if not,  
14 I'd like to make a suggestion to you. Every year,  
15 liquor licenses are renewed, they need to be  
16 renewed by the Commonwealth of Pennsylvania. One  
17 of the problems that we faced when we dealt with  
18 Councilman DiCicco a couple of times on some  
19 problem bars, one of the problems that we face in  
20 dealing with the license renewal effort to have  
21 the license denied for that year is the way in  
22 which the police incident reports are written.

23 Often, when an officer arrives on the  
24 scene and there's a confrontation on the highway  
25 with the proximity of the take-out-beer

12/8/99 RULES - BILL 990848

1  
2 delicatessen, the 48 Form, or the incident report,  
3 is not written clearly as to the specific address  
4 of the location of the location. So if your  
5 supervisors, yourself, your supervisors and your  
6 line squad people can specifically write the  
7 address for each service call of the particular  
8 take-out-beer delicatessen, that creates a volume  
9 of evidence that this is, in fact, a nuisance bar  
10 and should not be reason stated.

11 I know the officers are, you know,  
12 doing a great job and they're out there, and  
13 sometimes if the fight or the altercation is on  
14 the sidewalk outside of the place, the 48 is not  
15 written clearly that it is a specific address that  
16 relates to the take-out-beer deli. And what  
17 happens is, even though we go to court or we go in  
18 front of the hearing examiner of the State and we  
19 have a wealth of incidents of requests for service  
20 at a location, the lawyers for the liquor licensee  
21 basically say, Well, wait, that's not our  
22 location, that's on the highway, that's in the  
23 street, that's across the street.

24 So if we can continue to try to focus  
25 those incident reports on a specific address, it

1                   12/8/99 RULES - BILL 990848

2           builds a much better case again the licensee when

3           it comes for renewal.

4                   CAPTAIN DORSEY:   Okay.

5                   COUNCILMAN KENNEY:   Thank you.

6                   CAPTAIN DORSEY:   Thank you.

7                   COUNCIL PRESIDENT VERNA:   Are there any

8           other questions or comments from member of the

9           committee?

10                   (No questions.)

11                   COUNCIL PRESIDENT VERNA:   Captain,

12           thank you very much.

13                   CAPTAIN DORSEY:   Thank you.

14                   COUNCIL PRESIDENT VERNA:   Do we have

15           anyone else to testify on this bill?

16                   (Witness come forward.)

17                   COUNCIL PRESIDENT VERNA:   Good morning.

18                   (Witness comes forward.)

19                   COUNCIL PRESIDENT VERNA:   Good morning.

20                   MS. MEAD:   Good morning.

21                   COUNCIL PRESIDENT VERNA:   Please

22           identify yourself for the record and proceed with

23           your testimony.

24                   MS. MEAD:   My name is Gladys Mead

25           (ph.), and I have an organization, the 29th Street

1                   12/8/99 RULES - BILL 990848  
2           Community Services Center for Performing Arts, and  
3           a CDC.

4                   And I'm now getting a building  
5           renovated on 29th Street, which is not too far  
6           from one of these stop-and-go's, and I have at  
7           least about 30 or 40 children that goes up and  
8           down that area in the summertime. We have a great  
9           big festival on 29th Street that carries almost  
10          2,000 people in two blocks.

11                  And I don't think that we should have  
12          another stop-and-go in our area. We're trying to  
13          build up our area and trying to make it liveable  
14          for the people that's in there now, especially for  
15          the senior citizen, because there's a lot of  
16          senior citizens around there, and they're afraid  
17          to go out at night, they're afraid to walk -- to  
18          even sit on their porches. And it's a hazard to  
19          the whole community.

20                  Now, like they said, there's a lot of  
21          money dribbling around with these things, but  
22          there's drugs involved in that, and they can't  
23          seem to control the people that goes in and out of  
24          these stop-and-go's. They give them anything they  
25          want and then they stay in their little

1 12/8/99 RULES - BILL 990848

2 institution and do whatever they have to do.

3 And they're a nuisance to the  
4 community. At all hours of the night, they're up  
5 and down 29th Street and on Lehigh Avenue raising  
6 a lot of fuss. And it's deteriorating from the  
7 community. So we are trying to build our  
8 community up, and we really don't need another one  
9 of those establishments in our community.

10 Now, with me and my organization, this  
11 performing arts, I have a multiculture center, and  
12 I'm looking for the best sort of people to come  
13 there, and they will not attend my center if we  
14 have this sort of thing in our community. So a  
15 lot of the folks that have lived in our community  
16 have left, but they're coming back, and we're  
17 trying to keep it going so that we could have a  
18 decent and respectable center and a decent and a  
19 respectable community.

20 Now, when I have my festival, everybody  
21 comes out, I invite everybody from the city -- I  
22 know you got some mailing from me. And they have  
23 come, the Mayor has been, the -- all of 'em. Even  
24 I've invited you, Miss Lane (sic).

25 But you know, you need to be - the

1 12/8/99 RULES - BILL 990848

2 community is -- we're trying to build it up, and  
3 we really don't need these stop-and-go's. And  
4 them guys that's on the corner, they throw those  
5 bottles anywhere, they smoke them cigarettes and  
6 throw them on the street, and it's just a regular  
7 hazard.

8 So I hope that you will feel free and  
9 find it in your hearts not to have this kind of a  
10 nuisance in our neighborhood at this time.

11 COUNCIL PRESIDENT VERNA: Fine, thank  
12 you.

13 MS. MEAD: Thank you.

14 COUNCIL PRESIDENT VERNA: Thank you so  
15 very much for coming in and for your patience and  
16 testimony.

17 Are there questions from members of the  
18 committee?

19 (No questions.)

20 COUNCIL PRESIDENT VERNA: Thank you  
21 very much.

22 MS. MEAD: Thank you.

23 COUNCIL PRESIDENT VERNA: Councilman  
24 Clarke, I believe you have amendments to offer.

25 COUNCILMAN CLARKE: Yes, I do.

1 12/8/99 RULES - BILL 990848

2 Before that, I'd like to thank  
3 Councilman Kenney for sharing his experiences with  
4 us today. He told me earlier about some of the  
5 problems associated with what he had attempted to  
6 do earlier. And because of that, we felt it was  
7 probably more prudent to attempt to regulate some  
8 of the operations, as opposed to regulating the  
9 sale.

10 As I indicated, State Senator Kitchen  
11 is working on legislation at the State level that  
12 will enable us to further regulate something here  
13 locally. And, hopefully, that will pass, and I  
14 appreciate your support on that and in sharing  
15 that experience with us.

16 As indicated, Madam Chair, I do have a  
17 couple of amendments to this particular bill.  
18 Would you like me to read them?

19 COUNCIL PRESIDENT VERNA: Councilman,  
20 yes. Do you mind taking the witness table because  
21 I do have a copy of it? Does everybody have a  
22 copy of the proposed amendments?

23 (Copy of amendments not provided to  
24 stenographer.)

25 COUNCIL PRESIDENT VERNA: It's really

1 12/8/99 RULES - BILL 990848

2 not very clear. Does everyone have a copy?

3 Please proceed.

4 COUNCILMAN CLARKE: I actually informed  
5 my able legal assistant --

6 COUNCIL PRESIDENT VERNA: Okay.

7 COUNCILWOMAN CLARK: I asked him to  
8 provide the assistance on making it somewhat  
9 clear.

10 COUNCIL PRESIDENT VERNA: Great, okay.

11 COUNCILMAN CLARKE: Actually, what we'd  
12 like to do is, I'm going to delete a couple of the  
13 proposed amendments. On your pink bill, on Page  
14 2, there's --

15 COUNCIL PRESIDENT VERNA: I think  
16 there's some on Page 1.

17 COUNCILMAN CLARKE: No.

18 COUNCIL PRESIDENT VERNA: Amending the  
19 Title of the Philadelphia Code.

20 COUNCILMAN CLARKE: No, we've told we  
21 can't amend that particular title, so we're just  
22 going to amend --

23 PRESIDENT VERNA: That's right, but how  
24 about Section 1?

25 COUNCILMAN CLARKE: We're going to

1 12/8/99 RULES - BILL 990848

2 leave that. We're just going to do Page 2, on the  
3 pink, on the top.

4 COUNCIL PRESIDENT VERNA: Okay.

5 COUNCILMAN CLARKE: Where it reads --  
6 after where it reads, "is under proper  
7 supervision," we want to also "add parent and  
8 guardian" to an adult person.

9 And also, at the top, the initial  
10 paragraph, we want to delete the italics, after  
11 "combined gross sales of both food and all  
12 beverages and. . ." delete that italics.

13 COUNCIL PRESIDENT VERNA: Okay, so what  
14 we're doing there is deleting "and card all  
15 patrons who enter. . ."?

16 COUNCILMAN CLARKE: Just deleting the  
17 italics. That should actually come off the bill.

18 COUNCIL PRESIDENT VERNA: We should  
19 remove the italics?

20 COUNCILMAN CLARKE: Yeah.

21 COUNCILMAN COHEN: (Off mike,  
22 inaudible.)

23 COUNCILMAN CLARKE: That stays, yes.

24 And we want to delete both sections (i)  
25 and (j), at the recommendation of the Law

1 12/8/99 RULES - BILL 990848

2 Department.

3 COUNCIL PRESIDENT VERNA: Okay.

4 COUNCILWOMAN CLARK: And also, we want  
5 to insert after "shall request to see  
6 identification to confirm ages of all patrons who  
7 are not minors who enter the premises and appear  
8 to be under the age of 25 years old." And that's  
9 after where the old italics were.

10 You can't hear me? I'm sorry.

11 And last, I'd like to insert as Section  
12 3. The terms -- I'm sorry, actually as Section  
13 2: "The terms of this ordinance shall not apply  
14 to any establishments that have a distributor  
15 Class D on imported distributor Class D license  
16 from the Pennsylvania Liquor Control Board." And  
17 the purpose is to exempt wholesale liquor sales  
18 from beer distributors.

19 COUNCIL PRESIDENT VERNA: We're  
20 deleting (f), and (g) will become (f)?

21 COUNCILMAN CLARKE: We're keeping (f),  
22 we are keeping (f).

23 COUNCILWOMAN VERNA: Wait a minute. I  
24 though (f) is deleted.

25 COUNCILMAN CLARKE: No, we're going to

1 12/8/99 RULES - BILL 990848

2 keep (f).

3 COUNCIL PRESIDENT VERNA: Wait a  
4 minute. I'd like Mr. DeMarco to come over so  
5 that. . .

6 THE CLERK: Right, (f) stays.

7 COUNCIL PRESIDENT VERNA: Please  
8 proceed.

9 So them (f) stays in the form. That  
10 it's?

11 COUNCILMAN CLARKE: Yes.

12 THE CLERK: Right?

13 COUNCILMAN CLARKE: Yes.

14 COUNCIL PRESIDENT VERNA: And (g)  
15 remains (g).

16 All right, please continue. Letter (h)  
17 will be. . . regularly clean tables and floors of  
18 the establishment. Then you're deleting --

19 COUNCILMAN CLARKE: (i) and (j).

20 COUNCIL PRESIDENT VERNA: (i) and (j).

21 COUNCILMAN CLARKE: And then we're  
22 adding to Section 2, a no. 3 insert.

23 COUNCIL PRESIDENT VERNA: So (i) then  
24 becomes "comply with all relevant provisions of  
25 the Philadelphia Code"?

1 12/8/99 RULES - BILL 990848

2 COUNCILMAN CLARKE: Yes, right.

3 COUNCIL PRESIDENT VERNA: I think that  
4 what I'd like you to do is maybe a member of your  
5 staff and Mr. DeMarco could sit with the Chief  
6 Clerk to make sure that we have all of these  
7 amendments in the appropriate places.

8 COUNCILMAN CLARKE: Sure. Thank you,  
9 Madam President.

10 COUNCILWOMAN VERNA: Thank you.

11 Now, Councilman, I understand that Bill  
12 No. 990849 is also your bill?

13 COUNCILMAN CLARKE: Yes. I'm going to  
14 ask the deputy to withdraw it.

15 COUNCIL PRESIDENT VERNA: Thank you.

16 COUNCILMAN CLARKE: You're welcome.

17 COUNCIL PRESIDENT VERNA: Thank you  
18 very much.

19 COUNCILMAN CLARKE: Thank you.

20 COUNCIL PRESIDENT VERNA: At this time,  
21 I would ask the clerk to please read the title of  
22 Bill No. 990844.

23 THE CLERK: An ordinance amending title  
24 14 of the Philadelphia Code, entitled "Zoning and  
25 Planning," by Amending Section 14-1703 relating to

1                   12/8/99 RULES - BILL 990844  
2           zoning and use registration permits to provide the  
3           Department of Licenses and Inspections must deny  
4           certain zoning or use registration permit  
5           applications that are made within a certain period  
6           of time after a substantially similar application  
7           was finally denied, and to provide for appeals of  
8           such denials, all under certain terms and  
9           conditions.

10                   COUNCILMAN KENNEY: Good morning.  
11           Please identify yourself for the record and  
12           proceed.

13                   MR. CHAPMAN: Good morning, Mr.  
14           Chairman and members of the committee. For the  
15           City Planning Commission, my name is Thomas  
16           Chapman.

17                   This bill would amend Section 14-1703  
18           of Section 1703 of the Philadelphia Zoning Code  
19           relating to appeal of the Zoning Board of  
20           Adjustment. It's my understanding that this bill  
21           will codify --

22                   COUNCILMAN KENNEY: Mr. Chapman, could  
23           you speak up just a little bit.

24                   MR. CHAPMAN: Sorry. It's my  
25           understanding that this bill would codify

12/8/99 RULES - BILL 990844

1 long-standing regulations of the Department of  
2 Licenses and Inspections and the Zoning Board of  
3 Adjustment. These regulations have provided that  
4 once an application to the Zoning Board has been  
5 refused, an applicant must wait a year to file the  
6 same or a substantially similar application to the  
7 Board. Under the provisions of this bill, an  
8 applicant may appeal a denial under what has been  
9 known as the "one-year rule to the Zoning Board of  
10 adjustment." This bill would place what currently  
11 are regulations actually into the Zoning Code.

12 I think the aim of this bill is so that  
13 once it -- I guess, more than anything else, it's  
14 to help community groups so that they don't have  
15 to continue to come back to the Zoning Board over  
16 and over again to oppose a same application within  
17 the same year. At least that's my understanding  
18 of what the aim of this bill is.

19 And for the record, on December 2,  
20 1999, the Planning Commission recommended that  
21 Bill No. 990844 be approved.

22 COUNCILMAN KENNEY: Thank you very much  
23 for your testimony.

24 Any questions for this witness?  
25

1 12/8/99 RULES - BILL 990844

2 (No questions.)

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

5 Please approach the table.

6 (Mr. Krakower returns to the witness  
7 table.)

8 MR. KRAKOWER: Thank you, Councilman  
9 Kenney and members of the Committee. I'm Stanley  
10 Krakower, and I've introduced myself before.

11 I'd just like to say a few words on  
12 behalf of this bill and make one slight suggested  
13 modification. That is that when the L&I stamps --  
14 and I think the bill provides for an actual stamp  
15 to say "one-year rule." That if that could also  
16 provide the date on which the one-year would  
17 expire so that people will know whether there is  
18 one month to go or eleven months to go or whatever  
19 so that civic associations don't have to keep  
20 dealing with the same thing over and over again.

21 So when the stamp that is referred to  
22 in this bill is stamped on there, could it say,  
23 "one year date of January of 2002," or whatever  
24 the date is. I think that would be helpful.

25 Basically, I think the bill is needed.

1 12/8/99 RULES - BILL 990844

2 It does codify an existing practice, but it will  
3 make it more clear to the zoning community. And  
4 for that reason, I would support the bill.

5 COUNCILMAN KENNEY: Thank you very much  
6 for your testimony.

7 (Gray Smith returns to witness table.)

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

10 MR. GRAY: Good morning again,  
11 Councilman and members of the committee. I am  
12 Gray Smith, Chairman of the Zoning and Code  
13 Enforcement Committee of the South Street  
14 Neighborhood Association.

15 Whereas the problem that is described  
16 and the basis of this ordinance does not  
17 frequently occur in the South Street Corridor,  
18 where we do have frequent zoning issues that  
19 arrive, it does happen occasionally; and as a  
20 result, it causes our organization, which is  
21 strictly volunteer, to participate in numerous  
22 hearings on a particular issue.

23 And so we believe that this ordinance  
24 would help us significantly in not having to  
25 continue to come back to zoning hearings on the

1                   12/8/99 RULES - BILL 990844  
2           same issue when refilings are made under  
3           essentially false pretensions. And we applaud the  
4           adoption of the bill should you do so.

5                   COUNCILMAN KENNEY: Thank you very much  
6           for your testimony.

7                   Are there any questions for these  
8           witnesses?

9                   (No questions.)

10                  COUNCILMAN KENNEY: Seeing none, thank  
11           you very much.

12                  Mr. Feder, please.

13                  (Richard Feder returns to the witness  
14           table.)

15                  COUNCILMAN KENNEY: Good morning.  
16           Please identify yourself.

17                  MR. FEDER: Good morning, Councilman.  
18           Richard Feder, from the City Solicitor's Office.

19                  COUNCILMAN KENNEY: Please proceed.

20                  MR. FEDER: Councilman Nutter asked me  
21           just to appear to explain what this bill does and  
22           answer any questions in terms of clarification.

23                  Candidly, I believe that Mr. Chapman,  
24           from the Planning Commission, did a very good job  
25           of what it does. I'm not sure I have anything to

1 12/8/99 RULES - BILL 990844

2 add, unless there are some questions about that,  
3 although Mr. Haigler may have some comments.

4 COUNCILMAN KENNEY: The Chair  
5 recognizes Councilman Nutter.

6 COUNCILMAN NUTTER: Thank you, Mr.  
7 Chairman.

8 Mr. Feder, this is not a policy  
9 question. This is an application question or an  
10 implementation question. There is a concern, and  
11 we will hear more from L&I. The Department is  
12 under the impression, for some reason, that this  
13 bill will somehow impact a person who files an  
14 application with L&I, they are denied that  
15 application because they're not in compliance with  
16 the Zoning Code, they naturally then appeal to the  
17 Zoning Board.

18 The Department is apparently concerned  
19 that the person, either because of community  
20 meetings or whatever the case may be, during that  
21 time, would not be able to file an amended  
22 application, that they would somehow now be  
23 subject to the one-year rule; as opposed to the  
24 intention, which is to file your application and  
25 if you're denied, you appeal to the Zoning Board

1 12/8/99 RULES - BILL 990844

2 of Adjustment, and you have your case.

3 And what happens with some people is,  
4 they lose at the Zoning Board and then they  
5 appeal, as is their right, to the court of Common  
6 Pleas, and then they subsequently file a new  
7 application two weeks later with the Zoning Board.  
8 The community is then left in a position of having  
9 to fight with the person in the courts and deal  
10 with the new application at the Zoning Board.  
11 That is a situation that we are trying to deal  
12 with.

13 If you could provide any clarification  
14 as to what the bill does and what it does not do  
15 or hamper someone's efforts to amend their  
16 application at the Department while their appeal  
17 is still pending at the Zoning Board, that would  
18 be helpful.

19 MR. FEDER: Councilman, I believe the  
20 bill does everything that you just described,  
21 although there may be one slight area of  
22 confusion, which, if there is confusion, we can  
23 amend the bill, depending on what the committee  
24 wants.

25 If an applicant applies for a zoning

1                   12/8/99 RULES - BILL 990844  
2           permit and it is denied, and regardless of whether  
3           they appeal or they don't appeal, they  
4           subsequently realize that a small change in their  
5           application would make the application be granted.

6                   COUNCILMAN NUTTER: Right.

7                   MR. FEDER: One could read this bill to  
8           say that if that new application is still  
9           substantially similar to the first one, L&I has to  
10          deny that second application, stamp it "denied,  
11          one-year rule," and --

12                   COUNCILMAN NUTTER: The second  
13          application -- that application -- the second  
14          application to the first application, which never  
15          actually went to the Zoning Board.

16                   MR. FEDER: Right.

17                   COUNCILMAN NUTTER: Is that what you're  
18          saying?

19                   MR. FEDER: Right. If the first  
20          application is denied --

21                   COUNCILMAN O'NEILL: When you say it's  
22          denied, is that --

23                   MR. FEDER: Denied by L&I, okay?  
24          Regardless of whether it's appealed or not.

25                   COUNCILMAN NUTTER: Gotcha.

1 12/8/99 RULES - BILL 990844

2 MR. FEDER: If it's appealed or not  
3 appealed.

4 COUNCILMAN NUTTER: Right.

5 MR. FEDER: But I'm going to say it  
6 applies either way.

7 COUNCILMAN NUTTER: Right.

8 MR. FEDER: Two months later, the  
9 applicant realizes, I'm only entitled to a 12-foot  
10 deck, not a 13-foot deck and they make a slight  
11 change.

12 COUNCILMAN NUTTER: Right.

13 MR. FEDER: But that new application is  
14 still substantially similar to the first one.

15 Under this ordinance, even though that  
16 second application would be one in which they're  
17 entitled to a permit, L&I would have to stamp that  
18 second application "denied, one-year rule," and  
19 the applicant would have to appeal to the Zoning  
20 Board and claim materially changed circumstances,  
21 and in that case, the changed circumstances would  
22 be "I fixed my application."

23 COUNCILMAN NUTTER: Is it fair to say,  
24 though -- I mean, your example, which is a good,  
25 one would come about in the strictest of reading

1                   12/8/99 RULES - BILL 990844  
2           of this particular provision. And, one, we could  
3           at least make it clear on the record that that  
4           certainly was never the intention of the bill, and  
5           I don't think that you and I, in working on this,  
6           ever discussed the possibility of that particular  
7           scenario. Is that accurate?

8                   MR. FEDER: I don't recall all of the  
9           discussions, and you've also had discussions with  
10          some of my colleagues. So I would say that if  
11          you're --

12                   COUNCILMAN NUTTER: I understand. But  
13          that scenario's never been presented to me, and  
14          that's my testimony.

15                   MR. FEDER: Okay.

16                   COUNCILMAN NUTTER: Do you have a  
17          suggestion on a legislative fix that we can calm  
18          Mr. Haigler down with?

19                   MR. FEDER: On this issue, I believe I  
20          could quickly come up with an amendment which  
21          would allow L&I, but what that would mean,  
22          Councilman, would be that L&I would have to make  
23          the judgment whether there are changed  
24          circumstances. And my understanding of this bill  
25          is that it wasn't clear whether you wanted L&I

1                   12/8/99 RULES - BILL 990844  
2           making that judgment as to whether there are  
3           changed circumstance. My understanding is that  
4           you wanted that judgment only to be made by the  
5           Zoning Board.

6                   COUNCILMAN NUTTER: Well, why don't we  
7           do this. We have a little bit of time. If you  
8           could craft a proposed amendment to deal with the  
9           issue.

10                   Mr. Haigler, did Mr. Feder fairly  
11           accurately express what some of the concerns of  
12           L&I are?

13                   MR. HAIGLER: I still have certain  
14           concerns about L&I making the decision themselves  
15           related to whether or not to accept the  
16           application. I believe, though, that as a public  
17           service agency, it's our responsibility if persons  
18           decide they want to apply --

19                   COUNCILMAN NUTTER: Right.

20                   MR. HAIGLER: -- within the process,  
21           then we should allow them to at least make their  
22           application into the process. And then we should,  
23           at some point thereafter, determine whether or not  
24           they're in compliance with our codes.

25                   COUNCILMAN NUTTER: Right.

1 12/8/99 RULES - BILL 990844

2 MR. HAIGLER: And if not, then  
3 supersede with either what we normally do, which  
4 would be to give them a refusal.

5 COUNCILMAN NUTTER: Right.

6 MR. HAIGLER: And to allow them to go  
7 before the proper administrative board to make the  
8 determination of whether or not they want to grant  
9 that refusal.

10 COUNCILMAN NUTTER: I believe that  
11 people should clearly have due process, but at the  
12 same time, people should not be able to, as we  
13 say, "play the system."

14 MR. HAIGLER: Well, I understand that.  
15 And currently, under the regulations that are  
16 promulgated within the Zoning Code, the zoning  
17 regulations that are promulgated as a companion to  
18 the requirements of the Code, it addresses that  
19 issue, where if somebody were to intentionally do  
20 something that would circumvent the process, then  
21 the Board themselves would make that determination  
22 of whether or not they would want to hear their  
23 case or whether or not they will send them on  
24 their way.

25 COUNCILMAN NUTTER: I know.

1 12/8/99 RULES - BILL 990844

2 Mr. Feder, if you could work on the  
3 proposed amendments, we are going to have a little  
4 bit of time here, and I would be glad to take a  
5 look at it in the course of the hearing.

6 And, Madam Chair, with your permission,  
7 I'll come back to this particular bill. But we  
8 can certainly take all of the testimony and get  
9 that squared away, but there may be amendments  
10 later.

11 COUNCIL PRESIDENT VERNA: Thank you.

12 COUNCILMAN NUTTER: Thank you.

13 COUNCIL PRESIDENT VERNA: The Chair  
14 recognizes Councilman Cohen.

15 COUNCILMAN COHEN: This is more a  
16 question to Councilman Nutter.

17 Why do we limit it to a one-year rule?  
18 Why doesn't it say eighteen months or two years?  
19 Is there any particular reason?

20 COUNCILMAN NUTTER: Councilman, I've  
21 tried to do some research on that. Pretty much,  
22 this is basically in keeping with the current  
23 Zoning Board regulations. There is -- not in the  
24 code, but the in the regulations that govern the  
25 activities of the Zoning Board, they have what in

1 12/8/99 RULES - BILL 990844

2 essence is called "a one-year rule."

3 So I didn't necessarily want to -- I  
4 don't know where that came from, I don't know when  
5 it was instituted, could never get any  
6 documentation on it, but that's what it was. And  
7 it generally seemed to be a reasonable period of  
8 time.

9 I'm striving, Councilman, to become a  
10 more reasonable person.

11 COUNCILMAN COHEN: Yeah, well, I --  
12 we've had occasions and a few instances where year  
13 after year, they wait the year --

14 COUNCILMAN NUTTER: I understand.

15 COUNCILMAN COHEN: And the neighborhood  
16 says, My God, how often are we going to have to  
17 deal with the same situation?

18 COUNCILMAN NUTTER: Right.

19 COUNCILMAN COHEN: 'Cause it's often  
20 difficult for people in the community to get away  
21 from work and come down to the Zoning Board.

22 COUNCILMAN NUTTER: Absolutely. It is  
23 definitely a burden. I mean, that's what -- I was  
24 comporating with what currently exists.

25 COUNCILMAN COHEN: There's no other

1 12/8/99 RULES - BILL 990844

2 legal requirement on that?

3 COUNCILMAN NUTTER: No.

4 COUNCILMAN COHEN: It's a policy  
5 matter?

6 COUNCILMAN NUTTER: Yes.

7 COUNCILMAN COHEN: And in the case  
8 you're citing to Mr. Feder, if somebody does file,  
9 say, two months later, couldn't they appeal the  
10 refusal of the second application? Say, if the  
11 L&I stamps it "refused?"

12 COUNCILMAN NUTTER: Oh, yes.

13 COUNCILMAN COHEN: Under one-year rule,  
14 couldn't that particular application be appealed?  
15 And the Zoning Board look at it and decide whether  
16 or not it's substantially the same?

17 COUNCILMAN NUTTER: The bill provides  
18 that --

19 COUNCILMAN COHEN: I feel more  
20 comfortable with the Zoning Board making that  
21 decision than with the person at the desk.

22 COUNCILMAN NUTTER: Mr. Feder, I  
23 believe it's in small letter d. on Page 3.

24 MR. FEDER: Yes. Councilman Cohen is  
25 correct that, as the bill is currently drafted, a

1                   12/8/99 RULES - BILL 990844  
2           denial by L&I, on the basis of the one-year rule,  
3           can be appealed to the Zoning Board, and the  
4           Zoning Board can then determine whether there have  
5           been materially changed circumstances to provide  
6           an exception to the one-year rule.

7                   COUNCILMAN COHEN:   Yes.

8                   MR. FEDER:   But that's for the Zoning  
9           Board to determine.

10                  COUNCILMAN COHEN:   Yes.  And if we  
11           relied on that, then no amendment would be needed  
12           at the present time.

13                  COUNCILMAN NUTTER:   Well, I think,  
14           though, in the case that Mr. Haigler raises, it  
15           would force that applicant who has possibly  
16           decided rather than going to Zoning Board route  
17           that they'd just rather amend their application to  
18           be in compliance with what they could potentially  
19           get over the counter, they would never end up at  
20           the Zoning Board, and I think we don't want to  
21           take away that person's opportunity literally at  
22           the ground floor of the MSB Building to possibly  
23           change their application.  And I'm certainly fine  
24           with that.

25                  COUNCILMAN COHEN:   So you're saying

1 12/8/99 RULES - BILL 990844

2 that there's no appeal made the first time to the  
3 Zoning Board.

4 COUNCILMAN NUTTER: Generally not, yes.

5 COUNCILMAN COHEN: I think that that's  
6 right.

7 COUNCILMAN NUTTER: Thank you.

8 COUNCILMAN COHEN: But do we need an  
9 amendment for that? Or is that provided for in  
10 the bill now?

11 COUNCILMAN NUTTER: No, as I said  
12 earlier, I think a very strict reading of the bill  
13 could lead one to interpret it the way Mr. Haigler  
14 has laid out. I would like to not have that  
15 confusion because I think we're in agreement that  
16 we're not trying to stop that person from at least  
17 going back to the ground floor of L&I and amending  
18 their application.

19 COUNCILMAN COHEN: If they have not  
20 already appealed.

21 COUNCILMAN NUTTER: Exactly, right. So  
22 we'll work on that and come back to it.

23 Thank you.

24 COUNCIL PRESIDENT VERNA: Thank you.

25 Are there any other questions or

1 12/8/99 RULES - BILL 990844

2 comments from members of the committee?

3 (No questions.)

4 COUNCIL PRESIDENT VERNA: Is there  
5 anyone else to testify on this bill?

6 MR. FEDER: I believe Mr. Haigler has  
7 some additional testimony.

8 COUNCIL PRESIDENT VERNA: Oh, please  
9 proceed.

10 MR. HAIGLER: Good day, Council  
11 President Verna and members of the committee. I  
12 am Otis Haigler, Jr., Legislative and Regulatory  
13 Affairs Manager for the Department of Licenses and  
14 Inspections.

15 Today, I am here to provide testimony  
16 on Bill 990844, amending Sections 14-1703 of the  
17 Philadelphia Zoning Code to provide that the  
18 Department of Licenses and Inspections must deny  
19 certain zoning and use registration applications  
20 that are made within a certain period of time  
21 after a substantially similar applications was  
22 finally denied, and to provide for appeal of such  
23 application or such denials.

24 The Department of Licenses and  
25 Inspections has serious concerns regarding our

12/8/99 RULES - BILL 990844

1 ability to enforce the requirement of this bill.  
2  
3 As written, this bill, in a very broad sense, will  
4 require that Licenses and Inspections  
5 automatically deny applications made by any  
6 citizen because other applications have been made  
7 to the Department within the same year that may be  
8 similar in nature.

9 The phrase "substantially similar" is  
10 subjective and leaves a lot to the opinion of the  
11 employee who is making the review as to whether  
12 there are grounds to deny the person right to file  
13 to legalize a condition or obtain a permit for an  
14 activity.

15 Instances where a person who is turned  
16 down and issued a refusal for a zoning matter and  
17 then decides to amend or revise their application  
18 and resubmit it within the one-year time period  
19 would now be subject to an appeal before the  
20 Zoning Board of Adjustment because of the  
21 application process instead of the condition that  
22 precipitated their refusal.

23 If the change that was made addresses  
24 the refusal and the applicant wanted to reapply  
25 for zoning, this bill, as written, would require

12/8/99 RULES - BILL 990844

1 that we automatically deny the application since  
2 it is similar to the one that generated the  
3 refusal.  
4

5 Not only will this bill cause a problem  
6 for our Department related to interpretation and  
7 enforcement, but it also adds additional layers to  
8 our current requirements for many of the property  
9 owners and businesses that do business in the City  
10 of Philadelphia.

11 Our current policy is to research and  
12 record the three previous refusals and actions  
13 taken by the Zoning Board of Adjustment as part of  
14 any subsequent refusal pursuant to the latest  
15 application. By doing this, the Zoning Board is  
16 alerted of all previous actions related to the  
17 subject premises, including actions taken within  
18 the one-year timeframe.

19 Further, under the current regulations  
20 of the Zoning Code entitled "Decision of the  
21 Board," Section 3, No. 16, the Zoning Board of  
22 Adjustment already has the power to deny a hearing  
23 or a rehearing of a zoning case where there was a  
24 final determination by the Board or court within  
25 one year from the date of such final

12/8/99 RULES - BILL 990844

determination. The requirement to write a refusal simply based on the person making an application to obtain a permit and not the condition that is in violation of the Code adds more extent to an already-lengthy process.

In the best-case scenario, it currently takes approximately two months from the time that a refusal is issued to get a decision from the Zoning Board of Adjustment. This bill stipulates that the Board will only address an appeal of the process to apply for a permit. If the Board finds in the person's favor, it appears that they can proceed with the application process, and we, then, may find a condition of the Code which may generate another refusal, which will require the scheduling of another hearing before the Board to address the condition.

Not only is this time-consuming and confusing, but it will tie up the schedule of hearings before the Board, with appeals related to the application process instead of violations of the code.

Also, Bill 990844, under Section 14-1303, Subsection 6 and Subsection e., appears

12/8/99 RULES - BILL 990844

1 to give the general public at large the right to  
2 appeal the Department's decision to accept a  
3 person's application and issue a permit, or the  
4 applicant can now appeal to the Board if we  
5 determine that a refusal is warranted, based on a  
6 condition other than the submission of the  
7 application, subject to the one-year rule.

8  
9 Each day, our employees service the  
10 needs and concerns of our customers after they  
11 visit or telephone us. The Department of Licenses  
12 and Inspections, within the past year, has made  
13 strides to open the lines of communication with  
14 the public we serve by meeting with them and  
15 listening to them, as they assess our strength and  
16 weaknesses as a department that services their  
17 needs.

18 One of the main points that came out of  
19 the meeting we had in April with our stakeholders  
20 was that the Department could do a better job in  
21 communicating our requirements to businesses and  
22 the general public prior to either a visit from us  
23 regarding a violation or a visit from them to our  
24 facilities for the purpose of obtaining required  
25 documents to conduct businesses or perform an

1 12/8/99 RULES - BILL 990844

2 activity in the city.

3 This bill puts Licenses and Inspections  
4 in a position of doing what, in the past, we have  
5 been criticized for, and that is not being user-  
6 or business-friendly.

7 The Department of Licenses and  
8 Inspections strongly urges Council to withdraw or  
9 table this bill until such time that the bill can  
10 be fully studied to determine the impact it will  
11 have on our department and the public we serve.

12 Thank you.

13 COUNCIL PRESIDENT VERNA: Thank.

14 You any questions from members of the  
15 committee?

16 (No questions.)

17 COUNCIL PRESIDENT VERNA: Gentlemen,  
18 thank you very much.

19 Do we have anyone else to testify on  
20 this bill?

21 (No response.)

22 COUNCIL PRESIDENT VERNA: The next bill  
23 being called for consideration is Bill No. 990331.

24 THE CLERK: An ordinance approving the  
25 redevelopment proposal of the Redevelopment

12/8/99 RULES - BILL 990311

1 Authority of the City of Philadelphia for the  
2 redevelopment of a portion of the Jefferson Square  
3 Redevelopment Area, Jefferson Square Urban Renewal  
4 Area, being the area generally bounded by  
5 Washington Avenue on the south, South Fourth  
6 Street on the east, Dickinson Street on the south,  
7 and South Sixth Street on the west; approving the  
8 urban renewal plan and determining that such plan  
9 or redevelopment proposal conforms to the general  
10 locality plan and make adequate provisions for  
11 individuals, business concerns, and families who  
12 are displaced; determining the necessity for  
13 changes in and for zoning streets, alleys, public  
14 ways, street patterns, location and relocation of  
15 public utilities; determining that the urban  
16 renewal plan and redevelopment proposal prohibit  
17 discrimination because of race, color, creed, sex,  
18 sexual orientation, national origin, ancestry, or  
19 handicap; declaring that condemnation is not  
20 imminent with respect to the project, except as  
21 otherwise expressly provided for in the proposal;  
22 and declaring that the redevelopment undertakings  
23 in the project to be an important part of the  
24 City's program to remove and prevent the spread of  
25

1 12/8/99 RULES - BILL 990311

2 urban blight.

3 COUNCIL PRESIDENT VERNA: I would  
4 invite Mr. Eisenstat to come up to the witness  
5 table, please.

6 COUNCILMAN DICICCO: Madam Chair, I'd  
7 like to make a statement.

8 COUNCIL PRESIDENT VERNA: The Chair  
9 would like to recognize DiCicco.

10 COUNCILMAN DICICCO: Thank you, Madam  
11 Chair.

12 First, I want to thank all of the  
13 people who are here from the Jefferson Square  
14 community for your patience this morning. I would  
15 just like to, for the benefit of the  
16 Councilmembers that are here, just give a quick  
17 overview of the project that we will be discussing  
18 this morning.

19 As many of you may recall, back in, I  
20 believe it was, June of this year, the Rules  
21 Committee began to look at the bill in front of us  
22 today. The vision that we talked about in June  
23 was a vision that had been presented to the  
24 community back in June of 1996, where we were  
25 beginning to look at an area that has, over the

12/8/99 RULES - BILL 990311

1 years, become quite blighted, and an area where  
2 people's lives and futures were, in my opinion,  
3 basically at risk. We are looking at an area that  
4 comprises about a two- to three-square-block area,  
5 that we believe is in dire need of  
6 rehabilitation.  
7

8 There was still some concern, after  
9 about three years' worth of meetings with the  
10 community and the Redevelopment Authority, that  
11 some of the folks who live in the designated areas  
12 that we will be speaking to this morning were  
13 still not certain as to what our goal and our  
14 mission was, and there was some concern as to the  
15 issue of relocation -- not unlike the issue that  
16 was before this Council about a month or two ago  
17 in relationship to the MLK and Hawthorne vicinity.

18 At the suggestion of some of the  
19 Councilmembers, we continued that hearing till up  
20 until today. During the summer months and through  
21 the fall of this year, a series of meeting have  
22 been taking place with a group known as "the St.  
23 John's Leadership Team," that were the designated  
24 representatives for the community of the Jefferson  
25 Square Project.

1 12/8/99 RULES - BILL 990311

2 We're confident today that we have made  
3 every attempt to recognize the concerns of the  
4 community. However, I will caution everyone that  
5 I expect that there are those who are still not  
6 going to be satisfied with the decisions that have  
7 been made collectively between the Jefferson  
8 Square CDC and the St. John's Leadership Team.  
9 But, again, I believe I'm confident today in  
10 saying that we have attempted to make -- to  
11 address every issue as it relates to relocation,  
12 new housing, rehabilitation of housing, etc.

13 I want to thank everyone again for your  
14 patience, and we'll proceed with the hearing. And  
15 during the hearing, I will probably be  
16 interjecting as to the status of some of the  
17 properties in addition to the residential  
18 properties that we will be rehabilitating in this  
19 community.

20 Thank you.

21 COUNCIL PRESIDENT VERNA: Thank you.

22 Mr. Eisenstat?

23 (Noel Eisenstat comes forward.)

24 MR. EISENSTAT: Good morning.

25 COUNCIL PRESIDENT VERNA: Good morning.

1 12/8/99 RULES - BILL 990311

2 MR. EISENSTAT: Or, excuse me. Good  
3 afternoon, Council President. My name is Noel  
4 Eisenstat, and I come before you today as the  
5 Executive Director of the City's Redevelopment  
6 Authority.

7 I'm here to speak to you concerning  
8 Bill No. 990331, which has been read into the  
9 record, with a brief introduction by Councilman  
10 DiCicco. I would like to discuss a few aspects of  
11 my testimony only briefly.

12 As the Councilman indicated, this  
13 matter was before this governing body in June of  
14 this year, and at that time, a more expanded urban  
15 renewal taking was proposed. At this time, after  
16 meetings were conducted under the leadership of  
17 the District Councilperson, the Redevelopment  
18 Authority comes before you today specifically for  
19 the acquisition of only 133 properties, which  
20 includes 44 buildings and 89 lots. Twenty-one of  
21 these buildings are occupied. Based on our  
22 estimates that were conducted in the spring of  
23 this current year, 6 are estimated to be  
24 tenant-occupied units and 15 are thought to be  
25 owner-occupied.

1                   12/8/99 RULES - BILL 990311

2                   The Redevelopment Authority's  
3 relocation program will provide resources,  
4 services, and payments to occupants who might be  
5 relocated as a result of this public taking. No  
6 families or individuals will be relocated until  
7 rehousing can be accomplished, according to  
8 federal relocation guidelines.

9                   I would also note that in June of this  
10 year, the Council had also approved Bill 990255,  
11 which accompanies this bill, which concerns the  
12 acquisition of 17 adjoining properties in the  
13 Pennsport area.

14                   Let me further depart from my testimony  
15 to explain that substantively, the parking element  
16 of this bill that was here before has been  
17 excluded, and that is basically provided that  
18 residents on Lithgow and Lawrence Streets will not  
19 be affected by this bill at this time -- 1300  
20 South.

21                   Furthermore, the CDC, Jefferson Square  
22 CDC has spent considerable time working with the  
23 potential relocatees and has come to an agreement  
24 which I can verify today that it is the intention  
25 of the not-for-profit, with the Authority behind

1 12/8/99 RULES - BILL 990311

2 it, that to the extent that individuals wish not  
3 to be relocated until replacement housing has been  
4 built within the area, we believe that will be  
5 accommodated as well.

6 The CDC, which we can talk a little bit  
7 more about later this afternoon, about the mix of  
8 housing, and we can further explain what will be  
9 developed here in terms of the townhomes and the  
10 rehabilitation of units as well as the building of  
11 twin homes as well.

12 And we believe that the relocation  
13 program will be such that individuals will have an  
14 opportunity -- the rehab of certain units will be  
15 able to commence in plenty of time to provide a  
16 viable facility to allow individuals to move once  
17 if they wish to stay in the neighborhood.

18 I wanted to keep my comments short. I  
19 know that you've got some folks that -- people  
20 you'd like to speak with today. I'll be here  
21 today for a while, as you usually like me around.

22 COUNCIL PRESIDENT VERNA: Thank you.

23 Mr. Eisenstat, you said that there are  
24 133 properties? How many of them are lots?

25 MR. EISENSTAT: Eighty-nine of them are

1 12/8/99 RULES - BILL 990311

2 lots.

3 COUNCIL PRESIDENT VERNA: And did I  
4 understand you to say that 15 of the occupied  
5 properties are occupied by the owners?

6 MR. EISENSTAT: That is to our best  
7 estimates at this time, yes.

8 COUNCIL PRESIDENT VERNA: Thank you.

9 The Chair recognizes Councilman Cohen.

10 COUNCILMAN COHEN: Mr. Eisenstat, I --

11 MR. EISENSTAT: Good morning,  
12 Councilman.

13 COUNCILMAN COHEN: How are you?

14 MR. EISENSTAT: Very good.

15 COUNCILMAN COHEN: Good. I understood  
16 that you said that there was basically agreements  
17 reached on many areas between representatives of  
18 the community and the Redevelopment Authority and  
19 the CDC that's involved; is that right?

20 MR. EISENSTAT: I would say that the  
21 Authority was not directly involved in much of  
22 this; much of this was really at the direction of  
23 the Councilman and the CDC.

24 What we've come to you today is, as it  
25 relates to a urban renewal taking, it reflects

1 12/8/99 RULES - BILL 990311

2 that basic understanding, and that understanding  
3 is that relocation will be taken to a minimum,  
4 that the acquisition that was contemplated  
5 surrounding a parking lot will not occur at this  
6 time, nor will the Lithgow and Lawrence  
7 acquisitions on the South 1300 block areas occur,  
8 in part, due to certain reconfiguration, and in  
9 part also due to the fact that the properties that  
10 were a part of this bill in June that were  
11 associated with the parking lot will be deleted.

12 I will be supplying the clerk today  
13 with a revised list that I have reviewed with the  
14 Councilman, with the CDC, and with lawyers  
15 representing the community group from Legal  
16 Services.

17 COUNCILMAN COHEN: I think that's good  
18 progress. But you also stated that there were  
19 some basic agreements reached with respect to  
20 people who were going to be relocated?

21 MR. EISENSTAT: That is correct.

22 COUNCILMAN COHEN: And that certain  
23 assurances have been given to them.

24 MR. EISENSTAT: And those assurances  
25 relate to the fact that there will be some

1                   12/8/99 RULES - BILL 990311  
2           individuals who may be wishing to receive their  
3           relocation benefits and go on their own and leave  
4           the area, that there will be some individuals who  
5           will be looking to leave sooner or later, and  
6           there will be some individuals specifically who  
7           will not want to move until replacement housing  
8           within the program has not only started, but is  
9           ready for them to move into, and the CDC will  
10          schedule its construction and its development  
11          needs to accommodate those families specifically.

12                   COUNCILMAN COHEN: And will those  
13          understanding and agreements be reduced to  
14          writing? Are we going to be presented with  
15          something that reflects that?

16                   I say that because we're nearing a  
17          change of administration, which only aggravates  
18          the situation. I frequently run into --

19                   MR. EISENSTAT: It doesn't aggravate me  
20          at all right now, Councilman.

21                   (Laughter.)

22                   COUNCILMAN COHEN: No, but it  
23          aggravates the situation in that very frequently,  
24          memories begin to dim, and later on, when disputes  
25          come up, there's nothing in writing. And I'm

1 12/8/99 RULES - BILL 990311

2 hoping that whatever you say is going to be  
3 reflected and will conform.

4 MR. EISENSTAT: Let me see if I can  
5 help, and then Councilman DiCicco can correct me.  
6 And while I appreciate your understanding, there  
7 was a -- let me be exceptionally clear here.

8 There was a request by representatives  
9 of the St. John's group that the ordinance before  
10 you be amended. Technically speaking, according  
11 to urban renewal law and our general counsel at  
12 the Redevelopment Authority, the ability to amend  
13 an urban renewal bill without starting the process  
14 back at the Redevelopment Authority and the  
15 Planning Commission are such that we cannot insert  
16 that language into the bill today. To do that  
17 would require a new bill, and I don't believe, for  
18 some of the same reasons you've articulated, no  
19 one wants to do that today.

20 I'm more than happy to confirm my  
21 understandings, as it relates to this, with the  
22 St. John's group as well as the CDC and the  
23 Councilman, by having a memorandum of  
24 understanding, which I believe is probably as good  
25 as we're going to get, and I'm happy to provide

1 12/8/99 RULES - BILL 990311

2 that. The only thing, as I've indicated, that is  
3 really permissible is to insert language within  
4 the ordinance itself.

5 A document between the CDC, the  
6 Redevelopment Authority, the Councilman, and the  
7 St. John's group would be a way to address this.

8 COUNCILMAN COHEN: Would that  
9 memorandum to your understanding be arrived at  
10 prior to finally passage of this bill? Is that  
11 going to be presented to us today?

12 MR. EISENSTAT: I think with this  
13 passage of this bill, it needs to happen today and  
14 we're -- I believe, with the Councilman's  
15 leadership, this will be no problem. I don't have  
16 language today; I think that can be drafted.

17 Councilman, as you know, I've been with  
18 you for seven and a half years. And when you or  
19 your colleagues have asked for specific things  
20 like this, they've occurred and they've been  
21 implemented, and I don't think you don't have  
22 anything to worry about.

23 COUNCILMAN COHEN: Incidentally, the  
24 legal interpretation you gave is the first time in  
25 some 32 years that I've ever heard that proposed.

1 12/8/99 RULES - BILL 990311

2 The one rule we have that I know about is that we  
3 cannot amend the title of a bill. You know, that  
4 would require a new bill, but I've never heard  
5 what you said, but I assume the attorney for the  
6 Redevelopment Authority would be prepared to --

7 MR. EISENSTAT: I'd be happy to have  
8 him forward you a short note which explains the  
9 statute and the case law that we are somewhat  
10 bound by in this matter, yes.

11 COUNCILMAN COHEN: Okay, all right.  
12 Thank you.

13 Is your attorney going to be here at  
14 the hearing if that becomes a --

15 MR. EISENSTAT: Not, he's not, but I'm  
16 happy to follow this up with a letter as it  
17 relates to the modification of the bill.

18 COUNCILMAN COHEN: Yes, because I think  
19 the best thing would be if there were one single  
20 package that had everything in it because it makes  
21 it much simpler.

22 MR. EISENSTAT: I appreciate what  
23 you're suggesting. I'm very confident on this  
24 legal analysis, and it would, I believe, be -- if  
25 we had a little time, we could confer with those

1 12/8/99 RULES - BILL 990311

2 in the City Law Department.

3 And, Councilman, I can sure you a  
4 memorandum that will memorialize this  
5 understanding should be more than enough at this  
6 time.

7 COUNCILMAN COHEN: Well, I don't know  
8 where you're going to be the next four years, but  
9 nobody knows, nobody knows.

10 MR. EISENSTAT: Councilman, I --

11 COUNCILMAN COHEN: Except elected  
12 officials, we've been elected, so know we're going  
13 to be here for four years.

14 COUNCILMAN DICICCO: Councilman, I  
15 appreciate your concern and your interest in --

16 COUNCILMAN COHEN: Well, I just raise  
17 it because Mr. Eisenstat raised the issue.

18 COUNCILMAN DICICCO: I understand.

19 COUNCILMAN COHEN: I just want to make  
20 sure that --

21 COUNCILMAN DICICCO: And I appreciate  
22 your concern and interest in this.

23 Although we now understand that Noel  
24 Eisenstat will be leaving and there will be a new  
25 mayor coming, the one thing that will remain is

1                   12/8/99 RULES - BILL 990311  
2           that I've been reelected and I will be here,  
3           hopefully, for the next four years. And as a  
4           party to the negotiations from day one, I've  
5           attended all of these meetings with the community  
6           group and the St. John's Leadership Team, and I  
7           can assure you that there'll be no deviation to  
8           this.

9                   I mean, this was my project from the  
10          beginning and I'll see it through till the end.

11                  Thank you.

12                  COUNCILMAN COHEN: Good, but the legal  
13          training I have says that understandings are most  
14          successful when things are reduced to writing in a  
15          form so that there's always something there and  
16          people don't have different memories of what was  
17          agreed to. But let's see what the --

18                  COUNCILMAN DICICCO: Well, I also think  
19          that the record that we have here today will  
20          memorialize what Mr. Eisenstat has said.

21                  COUNCILMAN COHEN: Well, I was in a  
22          court hearing, Councilman DiCicco, and have to  
23          tell you, and a gentleman -- I don't mention this  
24          generally in public, but Mr. Rouse, with the  
25          Liberty Building, and there were all kind of

1                   12/8/99 RULES - BILL 990311  
2           understandings made at the hearing, and when those  
3           understandings were not carried out, the court  
4           wanted to know where it had been embodied in an  
5           agreement; the court was not ready to take  
6           testimony given at hearings as proof of the  
7           existence of the development.

8                   So that having gone through that, I'm  
9           very sensitive to the need of having something  
10          memorialized in writing. And the best thing she  
11          indicated, the court indicated at the time, would  
12          be, Well, show me in your ordinance, where did it  
13          say that? So that's the reason I'm very sensitive  
14          in this area.

15                   And in the interest of everybody, just  
16          think, in view of the all the discussions that  
17          took place, all the work you've done, Councilman  
18          DiCicco, over the years, we want to protect all of  
19          that as well as the community interests. And the  
20          best way to do it is to have it in writing.

21                   But let's go ahead and let's see how it  
22          works out.

23                   COUNCIL PRESIDENT VERNA: Thank you.

24                   Any other questions of Mr. Eisenstat?

25                   (No further questions.)

1 12/8/99 RULES - BILL 990311

2 COUNCIL PRESIDENT VERNA: Do you have  
3 any bills, Mr. Eisenstat, today?

4 MR. EISENSTAT: No, this the last one.

5 COUNCILMAN COHEN: Don't say that  
6 gleefully.

7 COUNCIL PRESIDENT VERNA: So this will  
8 be your last hearing, I guess, you'll be attending  
9 before this committee.

10 MR. EISENSTAT: That's correct, in this  
11 capacity.

12 COUNCIL PRESIDENT VERNA: And I  
13 certainly want to publicly thank you for all the  
14 cooperation that you have given us in the last  
15 several years, and I know that you were always  
16 there, ready, willing and able to assist in any  
17 way that you could, and I want you to know that  
18 we're very, very grateful for all of the service  
19 that you've given us.

20 MR. EISENSTAT: I appreciate those  
21 kind words from you and from your colleagues  
22 today.

23 COUNCILMAN COHEN: And I think we all  
24 join in that.

25 COUNCIL PRESIDENT VERNA: Do we have

1 12/8/99 RULES - BILL 990311

2 anyone else to testify on this bill? Please  
3 approach the table.

4 (Witness comes forward.)

5 MR. NEWBURG: Good afternoon.

6 COUNCIL PRESIDENT VERNA: Good  
7 afternoon. Please pull the microphone closer to  
8 you, identify yourself for the record, and proceed  
9 with your testimony.

10 MR. NEWBURG: Jeremy Newburg (ph.),  
11 with Jefferson --

12 COUNCIL PRESIDENT VERNA: Mr. Newburg,  
13 you're going to have to pull the microphone a  
14 little closer, please.

15 Thank you.

16 MR. NEWBURG: Jeremy Newburg,  
17 Jefferson Square CDC -- Community Development  
18 Corporation.

19 Good afternoon. Thank you for the time  
20 to talk. And I'd like to say good afternoon to  
21 the St. John's Leadership Team and the residents  
22 of Jefferson Square and express my appreciation  
23 for their patience this morning.

24 In June, we introduced the Jefferson  
25 Square plan to you. So for the sake of time, I'm

12/8/99 RULES - BILL 990311

1 not going to go over all of details of the plan.  
2 What you have there is Version 10, and in that  
3 version, what you see is the result of more than  
4 seven scheduled specific meetings with the St.  
5 John's Leadership Team to work through an  
6 agreement regarding the issue of parking for the  
7 Mt. Sinai Hospital regarding the issue of  
8 clarifying what type of relocation services will  
9 be provided.  
10

11 And what you have there is a plan to  
12 produce 72 new construction twin houses. The  
13 motivation for the twin houses is to introduce a  
14 lower-density design to the rowhouse neighborhood  
15 as a means to keep families in the city rather  
16 than choosing to move to the suburbs.

17 However, we seek a balanced approach on  
18 this, and it includes the construction of 20 to 30  
19 in-fill rowhouses. The 20 to 30 in-fill rowhouses  
20 will be dedicated specifically to families that  
21 are being asked to relocate. Homeowners who live  
22 in the neighborhood, who are on the condemnation  
23 list, will be given first priority for the  
24 relocation rowhouse.

25 The relocation rowhouse will have a

1                   12/8/99 RULES - BILL 990311  
2           minimum of three bedrooms and two baths. We're  
3           currently experimenting with a design format where  
4           we include a drive-in parking space, actually a  
5           drive-in garage. We think the drive-in garage  
6           actually modernizes the rowhouse and adds value.

7                   So what I'm trying to put forth is that  
8           this plan provides balance where families that can  
9           pay upward from \$85,000 for the new twins, they  
10          will benefit from a revitalized neighborhood. But  
11          more importantly, existing owners of properties  
12          who have to move will be provided a house within  
13          the neighborhood. So then rather than asking a  
14          family to move somewhere in South Philly, we're  
15          asking them to move half a block into a new house,  
16          that, in all likelihood, may be worth three times  
17          what their house is worth today.

18                   So in this plan, existing residents  
19          benefit from the reinvestment as much as the new  
20          residents.

21                   I want to make it clear that we've  
22          really had a hurdle to get over, because the Mt.  
23          Sinai Hospital closed. We need that hospital  
24          reopened. The benefit of these negotiations over  
25          the summer and fall is that we've come to common

1 12/8/99 RULES - BILL 990311

2 ground that the hospital needs to be addressed,  
3 and I think we'll work together towards that end.

4 But one thing that we've made clear in  
5 our commitments -- and I'd like to address this  
6 specifically to you, Councilman Cohen -- is that  
7 when an operator for the Mt. Sinai Hospital is  
8 identified, we will engage in a similar process of  
9 meetings with community residents, so that, number  
10 one, the hospital administrator does an exhaustive  
11 assessment of what their parking needs are and can  
12 we maximize the existing parking that is there  
13 today without expanding or taking anyone's house.

14 If the new operator determines that  
15 they need to expand the parking, it will be done  
16 so within the context of joint meetings with St.  
17 John's and Jefferson Square CDC so that it's an  
18 open process. One of the things that clouded this  
19 whole process was that we didn't actually have an  
20 operator for the hospital, okay?

21 So I want to be very clear that we've  
22 established a tone for communicating, we've  
23 produced an agreement that that plan reflects, and  
24 we will continue to use that process.

25 Now, if the new operator determines

12/8/99 RULES - BILL 990311

1 that they need expanded parking, we will not come  
2 back to this body until all of the funds for the  
3 expansion of the parking are identified and  
4 secured, and any and all families that are being  
5 impacted by relocation have had a chance to review  
6 the plan and we've met with each of them to do  
7 what we call "a personal relocation plan."

8 A personal relocation plan entails  
9 establishing the fair market value for the  
10 property, working with the RDA to calculate the  
11 relocation benefits, and then helping that family  
12 determine where they want to go, if they want one  
13 of the relocation houses, if they want to rent in  
14 the 37-unit Mt. Sinai low-income senior project,  
15 what they want to do. So it's all or nothing. We  
16 have to get everyone on board.

17 So we've put that in writing in the  
18 plan that we've submitted, and I think we're open  
19 to signing a memorandum of understanding.

20 But I can say with confidence that  
21 we've done a lot of work over the summer. We both  
22 learned about each other's needs and goals, and we  
23 both were committed to an outcome to resolve the  
24 situation.  
25

1 12/8/99 RULES - BILL 990311

2 So approval of the 133 properties in  
3 the combination list will facilitate the new  
4 housing construction, but more importantly, it  
5 facilitates the land acquisition so that we can  
6 build the relocation rowhouses.

7 So if I could present a timeline for  
8 you on where we're going with this plan. With the  
9 urban renewal plan being approved today, all the  
10 Councilmembers facilitate what's known as  
11 "equitable title" for us, which is site control.  
12 That jump-starts all our development activity in  
13 the sense that we can finish the fund-raising and  
14 move forward with personal relocation plans for  
15 each family that's being required to move, okay?

16 So immediately, we'll condemn all of  
17 the vacant lots and all of the shells, but we  
18 won't condemn the occupied houses until we've done  
19 a relocation plan with each family; and they if  
20 choose to move into the relocation rowhouse that  
21 we build, we will first build that house, and then  
22 the family will move.

23 So the first housing production that  
24 could occur is actually the relocation rowhouse.  
25 By the end of the spring, we'll have the first two

1 12/8/99 RULES - BILL 990311

2 models built.

3 So I thank you very much for your  
4 time. And if there are any questions, I'd be  
5 happy to answer them.

6 COUNCIL PRESIDENT VERNA: Thank you  
7 very much.

8 Are there any questions?

9 The Chair recognizes Councilman Cohen.

10 COUNCILMAN COHEN: This is not a  
11 question, but a comment.

12 I wanted to commend all the parties. I  
13 understand that under Councilman DiCicco's  
14 leadership, all of the parties have been very busy  
15 at work, and I'm hoping that today, we can see an  
16 end to it, with all parties fully satisfied that  
17 their rights are protected, you know, forever.

18 Thank you.

19 MR. NEWBURG: Thank you.

20 COUNCIL PRESIDENT VERNA: Thank you.

21 Thank you very much. And you did  
22 indicate that there were a number of people from  
23 St. John's Leadership Committee. Maybe they could  
24 just stand so that we could just recognize them.

25 (St. John's Leadership Team members

1 12/8/99 RULES - BILL 990311

2 stand for recognition.)

3 COUNCIL PRESIDENT VERNA: The record  
4 will indicate there are about 12 people in the  
5 audience from St. John's Leadership.

6 Who is the next person to testify on  
7 this?

8 COUNCIL PRESIDENT VERNA: If there are  
9 a number of you to testify, come up to the table  
10 so that we can save some time.

11 (Witnesses come forward.)

12 COUNCIL PRESIDENT VERNA: Good  
13 afternoon. Please identify yourself for the  
14 record and proceed with your testimony.

15 MS. BROOKENS: Good morning. My name  
16 is Peggy Brookens, and I am a co-chair for the St.  
17 John's Leadership Team.

18 As you have been informed, we were here  
19 in May and June. We were here in June under some  
20 much heated debate regarding the relocation of  
21 families that did not feel as though we should  
22 have to move, especially those people who were  
23 going to be forced out of their homes, to make  
24 provisions for a parking lot. I'd like to say now  
25 that we thank you for making it possible for us to

1                   12/8/99 RULES - BILL 990311

2           meet with the Councilman and to come up with a  
3           mutual agreement about the plan that has been  
4           presented to you.

5                   Regarding the development of our  
6           community, although we still remain opposed to  
7           people being forced out of their homes, much work  
8           has been put into this plan over the summer.  
9           Councilman DiCicco has worked with us very  
10          diligently so that we could come up with a mutual  
11          agreement regarding the process of relocation.  
12          Our initial meetings were indeed tense, but we  
13          were able to overcome the tense atmosphere so that  
14          we could begin to work with the real issues  
15          regarding this relocation process.

16                   During the summer, they produced a plan  
17          which shows a lot more concern for the community  
18          than its original draft. It has allowed us to  
19          have some input with the decision of the plan, and  
20          we are pleased to let you know that that has  
21          occurred.

22                   Thank you, Councilman DiCicco, for  
23          working with us and agreeing to allow us to be a  
24          part of your decisions regarding what happens to  
25          our community, and we look forward to working with

1 12/8/99 RULES - BILL 990311

2 you on a continued basis throughout the process of  
3 this plan.

4 As you heard before, there is a concern  
5 that the plan and the ordinance are two separate  
6 documents. Our concern is that we do want to have  
7 -- we feel we need to have some type of  
8 protection stating the promises that have been  
9 made to us in the plan. Because, you know, we're  
10 confident that, in all sincerity, the promises  
11 that have been made in the plan are those things  
12 that you and the developer intend to do. But, you  
13 know, stuff happens, and we need that assurance in  
14 writing, the promises that you have provided for  
15 us, aside from those things that are in the plan  
16 'cause, after all, this is an intense revision of  
17 this plan, and we need to have that indicated in  
18 writing, preferably in the ordinance.

19 And, you know, we feel that this type  
20 of thing should be a part of the ordinance anyway  
21 'cause we should not have to read -- we, nor  
22 anyone, in the future should have to contend with  
23 working with two documents when it pertains to  
24 their lives. You know, like the plan will say one  
25 thing, the ordinance may say something else, and a

1 12/8/99 RULES - BILL 990311

2 lawyer will further elaborate on that when he  
3 speaks.

4 But during this process of working with  
5 the plan with the redevelopment of our community,  
6 we've gone through some very tense moments, you  
7 know, for the past two years. It's been, you  
8 know, a lot of anxiety, a lot of hard work, a lot  
9 of fear that we were going to be forced out of our  
10 homes and not have any input regarding where we  
11 were going to go. We felt we were going to have  
12 to move out of the community. Now, knowing that  
13 we will be allowed to stay in the community, it  
14 has taken a load off of us, our parents, and it  
15 just makes for an entirely different situation.  
16 And we thank you for that again, you know.

17 On the other hand, working with this  
18 plan has allowed us the opportunity to gain a lot  
19 of experience in fighting for those rights that  
20 belong to us. We gained a lot of experience in  
21 doing that. We've met -- we've built new  
22 relationships, and we've also earned the respect  
23 and the awareness that we can, and we have a right  
24 to object to those things that we think are not to  
25 our benefit.

1 12/8/99 RULES - BILL 990311

2 And I'd just like to end by saying  
3 that we look forward to continue to work with you,  
4 and we're depending on you to make sure that these  
5 things are carried out so that they will benefit  
6 the community on the whole along with the  
7 residents in the community.

8 We thank you.

9 COUNCIL PRESIDENT VERNA: Thank you  
10 very much.

11 Please identify yourself for the  
12 record.

13 MS. BLACK: My name is Mary Black, and  
14 I live at 1303 South 15th Street. I'm also a  
15 member of the St. John Leadership Team.

16 First I'd like to thank God for  
17 allowing all of us to be here today. I'd like to  
18 thank City Council for allowing me to speak.

19 I just want to say briefly that we  
20 appreciate and we thank Councilman DiCicco for  
21 working with us, and we truly look forward to  
22 working with him in the future.

23 We also acknowledge the fact that  
24 there's been several changes in the plan, but we  
25 also would like for City Council to consider the

1                   12/8/99 RULES - BILL 990311  
2 fact that we don't believe that this is a good  
3 policy to have anyone removed from their homes for  
4 parking-- not just in our community but anywhere  
5 in the city, anywhere.

6                   Thank you.

7                   MR. ACKELSBURG: Madam Chair, members  
8 of the Rules Committee, my name is Irv Ackelsberg,  
9 and I'm with Community Legal Services, and for the  
10 past several months. I've had the great privilege  
11 and honor of representing the St. John's  
12 Leadership Team in this struggle.

13                   I would like to first just reiterate  
14 the thanks and recognition extended to Councilman  
15 DiCicco. When this process began, there was a  
16 tremendous amount of distrust on both sides. And  
17 I think largely due to the graciousness of  
18 Councilman DiCicco in hosting the talks and in his  
19 real determination, I think, to make something  
20 happen out of the talks, I think that distrust  
21 very clearly, as you can see here today, gave way  
22 to a spirit of cooperation that I'm convinced will  
23 have a lasting positive effect in this corner of  
24 South Philadelphia.

25                   I do, however, just want to briefly

1                   12/8/99 RULES - BILL 990311  
2           address the issue that Councilman Cohen raised. I  
3           think it's very important -- it's very important  
4           not just for this particular redevelopment bill,  
5           but really for how Council does redevelopment  
6           bills in the future.

7                   I heard what Mr. Eisenstat said in  
8           terms of his lawyers being of the opinion that  
9           redevelopment bills can't be amended. I think  
10          that what that means is that -- I mean, I  
11          certainly would agree that this body does not have  
12          the power to change the boundaries, to add  
13          properties to the list. Those matters have to go  
14          before the Planning Commission; we all know that.

15                   However, the law specifically says --  
16          and I'm actually reading from the State law that  
17          we're operating under. The governing body,  
18          meaning the City Council of Philadelphia in this  
19          context, shall not approve a redevelopment  
20          proposal unless it is satisfied that adequate  
21          provisions will be made to rehouse displaced  
22          families, if any, without undue hardship.

23                   Now, in the bill that you have before  
24          you, there is a finding in Section 4 of the bill  
25          that Council finds and declares that the

1                   12/8/99 RULES - BILL 990311  
2           relocation is adequate. Now, I suspect that this  
3           is boilerplate language that is used in virtually  
4           any redevelopment bill that comes before Council.  
5           There is nothing in State law that prevents  
6           Council from being specific about what, in fact,  
7           those relocation provisions are.

8                   If you read section 1 of the bill  
9           before you, which is really the only section that  
10          is authorizing anything in particular to happen,  
11          it refers to the redevelopment proposal, including  
12          maps, the plan, the maps, and all other documents,  
13          etc., which form a part of the proposal, without  
14          really specifying what documents we're referring  
15          to.

16                   Now, the agreement that has been  
17          described at length here this morning is contained  
18          in a document entitled, "The Jefferson Square  
19          Revitalization Plan." It's Chapter 8 of this  
20          document and it has a date of November 1999.

21                   It is our position that there is  
22          nothing whatsoever in State law which prevents  
23          this body from amending the ordinance just to make  
24          it clear that those documents contain this  
25          particular -- the documents alluded to contain

1                   12/8/99 RULES - BILL 990311  
2           this document, and that the relocation provision  
3           is the relocation provision that is agreed to in  
4           this document.

5                   I have taken the liberty of drafting a  
6           proposed amendment to the bill, which does nothing  
7           more than make clear what I have just said and  
8           make clear the understandings that have been  
9           alluded to here and described at great length.  
10          But, again, the redevelopment lawyers have taken  
11          the position that, for some reason or another, you  
12          know, this can't be in the bill.

13                   I would respectfully dissent from that  
14          opinion. And maybe if it can't happen today in  
15          this bill, that this body should ask the Law  
16          Department for its opinion. And I would be more  
17          than happy to work with Council on that. But I  
18          would ask that Council the amendments that I've  
19          proposed, and if I could approach and give the  
20          Chair. . .

21                   (Copy of Mr. Ackelsberg's proposed  
22          amendments not provided to stenographer.)

23                   COUNCILMAN DICICCO: Mr. Ackelsberg,  
24          not being an attorney, I've been hearing arguments  
25          on both sides as to whether this is a legal way of

1                   12/8/99 RULES - BILL 990311  
2           proceeding with the amendment and can it be  
3           interjected into the bill.

4                   For the record, I would read it into  
5           the record this morning. Councilman Cohen, I'll  
6           probably yield to you being the attorney that's  
7           sitting here with Council this morning. I don't  
8           know if that makes a difference or not.

9                   And I understand the question of trust,  
10          which goes even beyond this document, and I'll  
11          just speak to that very briefly, that I want to  
12          thank all of you and all of the members of the St.  
13          John's Leadership Team for allowing me the  
14          opportunity to present this plan and this vision  
15          over the last several months, and for your  
16          open-mindedness in allowing me to be able to  
17          present that.

18                  And I do agree that at the initial  
19          stages, even back as far as 1996, there was a lot  
20          of suspicion out there. And it was a learning  
21          process for me also. Having been a first-time  
22          elected Councilperson, I had a vision for a  
23          community close that is very close to where I  
24          lived and wanted to change some things for the  
25          better.

1 12/8/99 RULES - BILL 990311

2 Maybe I was a little bit slow or  
3 derelict in my presentation to the community, so I  
4 apologize for that never. It was my intention to  
5 just uproot people and change the entire  
6 community, but I was looking to make some minor  
7 changes, or maybe some significant changes, that  
8 would make for a better product all the way  
9 around.

10 As to the issue of the parking lot, we  
11 discussed this for the last couple of years and  
12 more recently during the summer months, during our  
13 negotiations, that we all do agree that something  
14 needs to be done with the hospital facility. And  
15 I think at the meeting before the last -- or two  
16 meetings before the last, before we even began to  
17 discuss the plan, I had mentioned to all of you  
18 that I had found out that there was no deal to  
19 reopen the hospital. So that the issue that we  
20 had been negotiating, as it relates to a parking  
21 lot facility and how that would impact on the  
22 number of families and homes that may have to be  
23 taken, was not an issue at that time.

24 So I think I was very honest with you.  
25 I could have probably just passed by that and no

1 12/8/99 RULES - BILL 990311

2 one would have known. But I was just doing that  
3 as an effort to express to you that there was no  
4 secret agenda here, and that there was openness on  
5 my part.

6 We will at some time, as I think Jeremy  
7 Newburg pointed out in his testimony, need to  
8 revisit the issue of a parking lot in order to get  
9 tenants into that building to provide jobs for the  
10 community and to occupy a building that is almost  
11 one city square block that is now vacant.

12 There are negotiations, as we speak,  
13 going on with Methodist Hospital and others, who  
14 are looking at the hospital facility and occupying  
15 a couple of those floors.

16 So it's very fluid and you'll always be  
17 a part of that process. Whether this document is  
18 in there or not, I can assure you of that. I have  
19 no reason to want to change the way I've been  
20 doing business with your community or any other  
21 community over the last four years.

22 And, again, I do want to take this  
23 opportunity one more time to thank all of you for  
24 allowing me into your life basically to present  
25 this plan and vision. And I think in the end,

1 12/8/99 RULES - BILL 990311

2 over the next couple of years, we're going to have  
3 something that we can all be proud of.

4 Thank you again.

5 COUNCIL PRESIDENT VERNA: Thank you.

6 MR. ACKELSBERG: Madam Chair, if I  
7 could just conclude.

8 Again, it is our wish that the  
9 agreement be referred to in the bill. If that  
10 cannot happen, you know, the memorandum of  
11 understanding that was referred to before that --  
12 and as I take it, the idea is that this memorandum  
13 of understanding would be signed and made a part  
14 of the record, and I would say it could be  
15 included within the other documents that are  
16 referred to in Section 1 of the bill. If we could  
17 do that, I think that it would be extremely  
18 important, and it would be the bear minimum, I  
19 think, of what needs to be done here.

20 But, again, I would strongly urge  
21 Council to consider this whole question of why it  
22 is that agreements like this could not really be a  
23 part of the regular business of this body, because  
24 after all, under State law this, it's body, not  
25 the Redevelopment Authority, which has the legal

1                   12/8/99 RULES - BILL 990311  
2           obligation to make sure that adequate provisions  
3           have been made for relocation of current  
4           residents.

5                   Thank you.

6                   COUNCIL PRESIDENT VERNA: Thank you  
7           very much.

8                   COUNCILMAN COHEN: Madam Chair?

9                   COUNCIL PRESIDENT VERNA: Mr. Cohen?

10                  COUNCILMAN COHEN: A question to Mr.  
11           Ackelsberg. Where precisely in the bill would the  
12           amendment go?

13                  MR. ACKELSBERG: Councilman Cohen, it's  
14           really just two things that I would suggest  
15           adding. One is just simply a new whereas clause.  
16           That's the first paragraph in the sheet that I've  
17           given you.

18                  COUNCILMAN COHEN: Yes.

19                  MR. ACKELSBERG: And that whereas  
20           clause would read as follows: "Whereas, the  
21           Redevelopment Authority, through the Jefferson  
22           Square Community Development Corporation, has  
23           engaged in discussions with existing residents of  
24           the redevelopment area, and as a result of such  
25           discussions, has developed a document, entitled

1                   12/8/99 RULES - BILL 990311  
2           "Jefferson Square Revitalization Plan," dated  
3           November 1999, which document contains, among  
4           others things, a relocation plan for existing  
5           residents."

6                   So it would be a new whereas clause,  
7           and then the key amendments, Councilman Cohen,  
8           would be in Section 1.

9                   (Unintelligible, parties talking over  
10          each other.)

11                   MR. ACKELSBERG: I'm making two  
12          suggestions. One is an additional whereas clause,  
13          and that's the first paragraph on the sheet that  
14          I've handed out.

15                   COUNCILMAN COHEN: Right.

16                   MR. ACKELSBERG: The second suggestion  
17          is in the actual enabling text of the statute,  
18          that Section 1, that we insert the shaded language  
19          that I've included. And hopefully on the copy,  
20          Councilman Cohen, you can see that, and perhaps I  
21          should --

22                   COUNCILMAN COHEN: I see that.

23                   MR. ACKELSBERG: Okay. In other words,  
24          I would insert in Section 1, after the reference  
25          to the various documents that make up this

1                   12/8/99 RULES - BILL 990311  
2           proposal, the following language: "And including  
3           the Jefferson Square Revitalization Plan, dated  
4           November '99, which plan contains the relocation  
5           provisions applicable to current residents."

6                   And then I would ask add a phrase at  
7           the end of the second sentence which gives the  
8           redevelopment the authority to take such action as  
9           is necessary to carry out this, and that we add,  
10          "Except that involuntary relocation of current  
11          residents of the redevelopment area is conditioned  
12          on compliance with the commitments contained in  
13          the Jefferson Square Revitalization Plan, dated  
14          November '99, and will occur only if sufficient  
15          funding exists to comply with such commitments."

16                  And that, finally, in the subsequent  
17          sentence, "which gives the redevelopment the  
18          authority to proceed with minor changes that are  
19          in substantial conformity to the plan as passed by  
20          Council." And that we add the phrase, "and as  
21          long as such changes are in conformity with the  
22          relocation commitments contained in the Jefferson  
23          Square Revitalization Plan dated November '99."

24                  COUNCIL PRESIDENT VERNA: Mr.  
25          Eisenstat, do you mind approaching the table.

1 12/8/99 RULES - BILL 990311

2 (Mr. Eisenstat comes forward.)

3 MR. EISENSTAT: Good afternoon again.

4 COUNCILWOMAN VERNA: Good afternoon.

5 Now, I would ask you to reiterate what  
6 you said earlier.

7 MR. EISENSTAT: I'd be happy to, but  
8 now that I understand where Mr. Ackelsberg's  
9 coming from and he's explained what he would like  
10 to do, it creates a series of other issues which  
11 he had not discussed with me, and I would further  
12 like to explain that I believe the authority  
13 before this body can commit to what's been said.

14 But as Mr. Ackelsberg has gone on and  
15 on and on, he has outlined more issues that become  
16 more problematic as it relates to the specifics of  
17 which he's attempting to speak here today.

18 Specifically the problem that I see  
19 he's -- leaving aside the issue I spoke with you  
20 earlier about, the legality of amending  
21 redevelopment plans at the time of final adoption,  
22 the problem here is, he's attempting to reference  
23 a document dated November 6th that was prepared by  
24 the Jefferson Square CDC and by incorporating that  
25 document, the concern is that's a document that

1 12/8/99 RULES - BILL 990311

2 was never presented for approval or consideration  
3 by the Planning Commission or by the Redevelopment  
4 Authority.

5 Furthermore, you, was the governing  
6 body of Philadelphia, approve the developers and  
7 then subsequently approve redevelopers. And part  
8 of that process is the acquisition of land and  
9 then the selection of redeveloper.

10 And what Mr. Ackelsberg has proposed is  
11 effectively binding City Council to make the  
12 Jefferson Square CDC the redeveloper, without  
13 following State statute as it relates to  
14 redeveloper's agreement, redevelopment plan and  
15 adoption by the Redevelopment Authority and the  
16 Planning Commission before coming to you by  
17 resolution. And I think that by beginning this  
18 process, it would just be unnecessary.

19 As I've expressed to you earlier,  
20 Council President, the Authority is willing and  
21 able to, by a letter, bind itself in a way that  
22 memorializes the understanding. We believe  
23 substantively that, as first explained to me  
24 yesterday and the day before, which was the first  
25 time I saw Mr. Ackelsberg's language, although

1                   12/8/99 RULES - BILL 990311  
2           hard to read on the fax, I would have had further  
3           discussions with him earlier or later if I thought  
4           that this would have persisted. This can be  
5           accomplished in other ways, and we would believe  
6           it most appropriately to do so.

7                   MR. ACKELSBERG: Madam Chair, the  
8           intent of this idea was certainly not to create  
9           additional problems, and I appreciate what Mr.  
10          Eisenstat has said. And, really, I think the way  
11          to address that is where the language here speaks  
12          of the Jefferson Square Revitalization Plan dated  
13          November '99, we can simply say the memorandum of  
14          understanding, dated whatever that date is.

15                   In other words, we can -- my point was  
16          not to do all of the various things that, you  
17          know, to endorse a particular developer. My point  
18          is that the agreements, as they exist as of now,  
19          are in Chapter 8 of this document. They don't  
20          exist in writing anywhere else.

21                   And the point is -- and I think is  
22          obvious and I think it's articulated most clearly  
23          by Councilman Cohen that whatever happens, there's  
24          a lot of understanding, it needs to be  
25          memorialized in some fashion. And I think the

1                   12/8/99 RULES - BILL 990311  
2           easiest way to do that is to allude to the  
3           document that contains it, whether it's this plan,  
4           whether it's a separate document called a  
5           memorandum of understanding, it needs to be  
6           specified. That's all.

7                   MR. EISENSTAT: And I agree that we  
8           should be able to have a memorandum of  
9           understanding, and I believe that you will  
10          actually not be able to take final passage till a  
11          week from Thursday, not tomorrow. So I don't see  
12          any reason why we don't attempt to have an  
13          independent agreement that is now memorialized in  
14          the document rather than amending the ordinance  
15          today.

16                   COUNCIL PRESIDENT VERNA: Fine.

17                   MR. ACKELSBURG: And just for purposes  
18          of some history here, if you can indulge me. I  
19          just want to make clear, though, that that then  
20          will be -- that memorandum of understanding will  
21          then be one of those documents that accompany the  
22          plan and that are referenced in Section 1 of the  
23          ordinance.

24                   MR. EISENSTAT: If you're asking me to  
25          respond to that, I'm not. I'm not here, again, to

1                   12/8/99 RULES - BILL 990311

2           amend a bill; I am here today to suggest that if

3           you wish to enter into -- you're asking me.

4                   MR. ACKELSBURG: You misunderstanding

5           my request.

6                   MR. EISENSTAT: Let me finish

7                   COUNCIL PRESIDENT VERNA: If we're

8           going to go through this debate, I think we better

9           do it -- the two of you can go into the back of

10          the room because we have six other bills and we

11          have a Finance Committee hearing that has been

12          waiting in the wings for another hearing, and then

13          we have Public Property that's also listed today.

14                   So maybe you could go to the back of

15          the room and have this discussion among

16          yourselves, but to have this open debate on the

17          record, I'm afraid the hour is much too late

18          people and we have other people that have been

19          waiting here since 9 o'clock to testify.

20                   MR. ACKELSBURG: Thank you very much.

21                   COUNCIL PRESIDENT VERNA: Is there

22          anyone else to testify on this bill?

23                   Please approach the witness table.

24                   (Witness comes forward.)

25                   MR. PRICE: My name is Kevin Price.

1 12/8/99 RULES - BILL 990311

2 I'm a Democratic Committee person, and I'm also a  
3 member of the Jefferson Square Community  
4 Development. I'm also a neighbor of the people of  
5 Jefferson Square -- I mean, the St. John's  
6 community group and I'm a parent of the  
7 neighborhood.

8 I strongly come forward to support the  
9 bill, over the last five months, meeting with  
10 Councilman DiCicco, the St. John's group and other  
11 members of the neighborhood that are not  
12 represented here today. The only concern of the  
13 members was the relocation of residents being  
14 moved out of their homes, and I think that we've  
15 come up with an agreement that's a win-win  
16 situation for everyone involved.

17 That's all I have to say.

18 COUNCILWOMAN VERNA: Fine, thank you,  
19 and thank you for your patience.

20 Do we have anyone else to testify on  
21 this bill?

22 (No response.)

23 COUNCIL PRESIDENT VERNA: Okay. Seeing  
24 no one else to testify on the bill, I would ask  
25 the clerk to please read Bill No. 990673.

1 12/8/99 RULES - BILL 990673

2 THE CLERK: An ordinance authorizing  
3 the Health Commissioner, on behalf of the City of  
4 Philadelphia, to enter into a contract with the  
5 Health Care Advocate to represent the City's  
6 health consumers in various matters relating to  
7 the provision and access to health care; and  
8 amending Chapter 17-100 of the Philadelphia Code,  
9 entitled "Procurement Contracts," by requiring  
10 that a City contract with a hospital health  
11 management organization or other health-care  
12 provider shall include the provision requiring  
13 such health-care provider to make available to a  
14 City-contracted Health Care Advocate information  
15 relating to the provision of health care to City  
16 residents, all under certain terms and conditions.

17 COUNCIL PRESIDENT VERNA: I'm so sorry  
18 you've been kept waiting all this time, but it's  
19 one of those days.

20 MR. DOMZALSKI: President Verna and  
21 members of the Rules Committee, good afternoon.  
22 I'm John Domzalski, Executive Deputy and Chief of  
23 Staff for the Philadelphia Department of Health,  
24 and I'm pleased to represent Commissioner Richman  
25 in presenting testimony concerning Bill No. --

1 12/8/99 RULES - BILL 990673

2 COUNCIL PRESIDENT VERNA: Excuse me,  
3 excuse me, excuse me, Commissioner.

4 Sorry but the noise level is much too  
5 high. We must be able to hear the witness  
6 testifying, please.

7 Thank you very much.

8 Please proceed.

9 MR. DOMZALSKI: Thank you.

10 The concept of a health care advocate  
11 for the citizens of Philadelphia is a very  
12 attractive one to the Philadelphia Department of  
13 Public Health. This bill incorporates two very  
14 distinct functions. One is to act as an ombudsman  
15 to give consumers of health-care services a voice  
16 with health-care providers that would also provide  
17 a place where consumers can turn to resolve  
18 individual problems.

19 The second function involves working  
20 with providers around charitable care policies and  
21 practices, which is an increasingly important  
22 issue as the number of the uninsured in  
23 Philadelphia continues to grow.

24 The Department is increasing aligning  
25 itself with other major stakeholders in the City's

1                   12/8/99 RULES - BILL 990673  
2           Health Care Agreement to development regional  
3           responses to health-care quality and access, and  
4           the provisions of this bill greatly expand that  
5           role.

6                   In the last year, the Department has  
7           broadened its outlook on the uninsured to move  
8           beyond the impact on our health-care centers.  
9           Along with other major providers, the Department  
10          has begun looking at citywide numbers and trends  
11          toward development of regional responses, but  
12          these efforts are in their infancy and are being  
13          done at this time with support from staff on a  
14          collaborative basis. This bill would support and  
15          enhance these efforts.

16                   One function of this bill is to act as  
17          an advocate with health-care providers to resolve  
18          individual consumer problems. In fact, the bill  
19          states that the health care advocate must provide  
20          an annual report on the number of cases handled  
21          and results obtained. Clearly, these problems  
22          have the potential to range from very small  
23          specific problems to larger systemic ones. While  
24          attempting to solve problems and perhaps assisting  
25          in an ombudsman role, the advocate will need to

1                   12/8/99 RULES - BILL 990673

2           have real authority to accomplish this.

3                   The second function includes data-  
4           gathering and analysis and projection, and there  
5           are very different skills needed for this, and it  
6           clearly means that the Department will need to  
7           access staff with sufficient expertise to produce  
8           meaningful information. Again, this effort will  
9           need a great deal of cooperation from health-care  
10          providers, as they are under no present obligation  
11          to provide the information stated in the bill.

12                   The ability to gather data on the  
13          uninsured is vital. The number of uninsured is a  
14          critical issue for city government and for all  
15          health-care providers. A healthy population is a  
16          long held value in the City of Philadelphia. Key  
17          to this is access to health care and the  
18          corresponding access to health insurance.

19                   Philadelphia has an adult population of  
20          approximately 860,000. And survey data from 1998  
21          shows that 10 percent, or an astounding 86,000 of  
22          these adults, are without insurance at the time of  
23          the survey. And that 20 percent, or double that  
24          number, 173,000, are without insurance at some  
25          point during the year preceding survey. In

12/8/99 RULES - BILL 990673

1 addition, 19 percent reported having no  
2 prescription drug coverage, and 24 percent  
3 reported being without dental coverage. Vital to  
4 any initiative addressing the growing fiscal and  
5 social burden of providing care to those without  
6 insurance are data.  
7

8 While the current system of safety-net  
9 providers, including the City's hospital systems,  
10 has continued to provide services. We are  
11 critically aware that broad system changes are  
12 necessary for the viability and continued quality  
13 of care for Philadelphians without insurance.  
14 Accurate data would show not only the number and  
15 demographics of the uninsured population, but also  
16 the utilization of existing resources to determine  
17 which members of this population are not accessing  
18 available services and what services are most  
19 needed.

20 Recognizing the lack of a current  
21 obligation on the part of health-care providers to  
22 provide the type of information to the City, the  
23 provisions of this bill would provide a means of  
24 obtaining data necessary for citywide policy  
25 development around health care for the uninsured.

1 12/8/99 RULES - BILL 990673

2 And, Madam President, we thank you for  
3 the opportunity to present testimony on this bill  
4 today.

5 COUNCIL PRESIDENT VERNA: Thank you.

6 I hear most of your testimony, but I  
7 note that this bill creates a position for a  
8 health care advocate and confers certain powers to  
9 that individual. Describe, if you will, the  
10 position of the particular advocate and what that  
11 person's responsibilities would be.

12 MR. DOMZALSKI: As we understand it  
13 from the bill, Madam President, it would be  
14 responsible for collecting the data that is  
15 essential to understanding the dynamics and the  
16 demographics with regard to the extent of the  
17 uninsured in Philadelphia, and it would also -- it  
18 would also report the --

19 COUNCIL PRESIDENT VERNA: You mean  
20 that's not being done presently?

21 MR. DOMZALSKI: No.

22 COUNCIL PRESIDENT VERNA: There's no  
23 agency that does that?

24 MR. DOMZALSKI: Not overall. There are  
25 bits and pieces. Each health care system has its

1                   12/8/99 RULES - BILL 990673  
2           own bits and pieces of those aspects that are  
3           clearly important to it. I'm sure the Delaware  
4           Valley Hospital Council has some information,  
5           probably a lot, that would be very valuable. And  
6           we --

7                   COUNCIL PRESIDENT VERNA: So they would  
8           provide the Health Department with all of the  
9           necessary data?

10                   MR. DOMZALSKI: Well, the idea is that  
11           the provider, the hospital systems, the  
12           health-care providers, the insurers would -- who  
13           are under no present obligation to do this, would,  
14           under this bill, do it.

15                   COUNCIL PRESIDENT VERNA: And how do  
16           you feel that this bill will improve the delivery  
17           of health care to the citizens of Philadelphia?

18                   MR. DOMZALSKI: I think that if we get  
19           it to a point where it can be implemented, it  
20           would be a bill that would create the important  
21           body of information that tells us who are not  
22           getting services, who are -- what are the complete  
23           demographics of the uninsured population, who is  
24           accessing care, and who is falling between the  
25           cracks.

1 12/8/99 RULES - BILL 990673

2 You know, we grapple with this issue on  
3 a daily basis on a one case by one case basis in  
4 the Department now, and we don't have an overall  
5 body of information to help us plan effectively.

6 COUNCIL PRESIDENT VERNA: Thank you.

7 Are there any questions from members of  
8 the Committee?

9 COUNCILMAN NUTTER: Madam President,  
10 let me just --

11 COUNCIL PRESIDENT VERNA: The Chair  
12 recognizes Councilman Nutter.

13 COUNCILMAN NUTTER: Thank you, Madam  
14 Chair.

15 I know that there will be testimony  
16 from representatives of the health-care community  
17 as well as advocates in the same community. A  
18 number of concerns have been raised, which I am,  
19 Madam Chair, more than prepared, I think, to try  
20 to respond to, both in a general fashion, as well  
21 as in a substantive fashion, about some of the  
22 scope of the activities of this person.

23 I think it should at least should be  
24 stated for the record that the passage of the bill  
25 does not create a health care advocate for

1                   12/8/99 RULES - BILL 990673  
2 Philadelphia. It enables the City administration  
3 to create such an advocate by contract.

4                   And there are amendments that I have to  
5 put forward to make sure that both the  
6 administration is clear and the Council is clear  
7 on what the ultimate and detailed responsibilities  
8 are for this person, as well as allow us some time  
9 for all of us to continue to meet and discuss  
10 these issues, not necessarily under the  
11 high-pressure environment that we may find  
12 ourselves in today, but to grant some time to  
13 allow for other potential amendments going  
14 forward.

15                   So I wanted to at least put that on the  
16 record, and I'll discuss shortly what those  
17 amendments are, but I appreciate your testimony  
18 and your views, Mr. Domzalski.

19                   MR. DOMZALSKI: You're welcome,  
20 Council.

21                   COUNCILMAN NUTTER: Thank you.

22                   COUNCIL PRESIDENT VERNA: And if you  
23 don't mind waiting until the conclusion of this  
24 hearing, there may be other questions that we have  
25 to ask you. Thank you.

1 12/8/99 RULES - BILL 990673

2 MR. DOMZALSKI: I'll be glad to.

3 COUNCIL PRESIDENT VERNA: Thank you.

4 Do we have anyone else to testify on  
5 this bill? Please approach the witness table.

6 (Witnesses come forward.)

7 COUNCIL PRESIDENT VERNA: Is there  
8 anybody else that's testifying on this bill? Why  
9 don't you approach the witness table so that we  
10 can save time.

11 Ladies first.

12 Good afternoon. Please identify  
13 yourself for the record and proceed with your  
14 testimony.

15 MS. TISDALE: My name is Yvonne Tisdale  
16 (ph.), and I'm the Assistant Director of the  
17 Philadelphia Unemployment Project.

18 Part of my job is to run a health  
19 rights hotline, in which I attempt to gain access  
20 to health care and advocate on behalf of health  
21 care for the citizens of Philadelphia.

22 Accessing health care for the uninsured  
23 has become increasingly difficult. The amount of  
24 available resources is shrinking and the number of  
25 uninsured in Philadelphia is increasing at an

1 12/8/99 RULES - BILL 990673

2 alarming rate.

3 We are in a health care crisis in  
4 Philadelphia. Over 20 percent of the adult  
5 population between the ages of 18 and 64 are  
6 uninsured. Seventy percent of them are working  
7 adults and another 30 percent are unemployed. On  
8 top of that, an additional 21,000 families have  
9 lost their medical assistance in the last year due  
10 to welfare reform. These numbers represent over a  
11 100,000 people in the Philadelphia area who have  
12 no health coverage at all.

13 People are being turned away from  
14 hospitals and clinics simply because they cannot  
15 afford to pay for care. They are cancer patients  
16 who are being refused chemotherapy treatments,  
17 patients in need of liver biopsies who are being  
18 denied surgeries. We have head-trauma patients  
19 who can't get MRIs just simply because they can't  
20 afford to pay for care.

21 Most of our hospitals are nonprofit  
22 institutions, which are bound by a charitable  
23 mission upon which they were established. This  
24 mission dictates that they provide care for poor  
25 and uninsured citizens in the community. It is

1 12/8/99 RULES - BILL 990673

2 sad to say that some of these hospitals are  
3 reneging on their obligations. This is  
4 unacceptable, especially when these institutions  
5 have not only a charitable but also a legal  
6 obligation to do so.

7 Within the last year, we saw the  
8 emergence of the first for-profit health-care  
9 system in our area. They had no charitable or  
10 legal obligation to care for our poor and  
11 uninsured. Historically, for-profit health-care  
12 systems have a tendency to cut services to  
13 increase profits. It was only through the demand  
14 and pressure from health care advocates and the  
15 community that a commitment was made by this  
16 for-profit hospital to implement a charity care  
17 policy. This is the first formal written charity  
18 care policy in the city, and it is a commitment  
19 that needs to be made by the rest of our hospitals  
20 to ensure that the health needs of our citizens  
21 will be met by all health-care institutions.

22 As competition in the health-care  
23 industry intensifies and the government subsidies  
24 to hospitals decline, this results in an increase  
25 in the uncompensated care for hospitals. It is

1                   12/8/99 RULES - BILL 990673  
2           probably safe to say that we will see more  
3           for-profit institutions emerge in our area and a  
4           decline in the services to the poor.

5                   Presently, there is no City agency or  
6           agent monitoring or enforcing any regulations or  
7           commitments by health-care agencies and  
8           institutions to make sure our citizens get the  
9           necessary care they need. These institutions are  
10          left to monitor and enforce policies at their  
11          will, and sometimes at the detriment of the poor  
12          and uninsured.

13                   Our city health centers remain the only  
14          means for which the uninsured get care without  
15          being turned away, but these centers are being  
16          burdened with the overwhelming number of uninsured  
17          who walk through their doors. People are waiting  
18          for up to four to six weeks before they can get  
19          appointments.

20                   As the number of uninsured increases,  
21          this will create a significant need for additional  
22          funding for our health centers. This could  
23          severely impact the financial stability of our  
24          city. Presently, there is no one monitoring the  
25          impact of this crisis, which could create a

1 12/8/99 RULES - BILL 990673

2 financial hardship for us.

3 All of this could be the role of the  
4 public health advocate. The advocate would be a  
5 significant resource and consumer protection agent  
6 for the city and its citizens. We must ensure  
7 that the health care needs and demands of our city  
8 and their citizens are met.

9 I would also ask that this position is  
10 contracted to a nonprofit agency who will not in  
11 any way jeopardize the credibility, integrity, or  
12 commitment or effectiveness of the job that needs  
13 to be done. I hope you understand and do see the  
14 need for an important position like this to be  
15 developed.

16 Thank you.

17 COUNCIL PRESIDENT VERNA: Thank you.

18 HEALTH CARE ADVOCATE WITNESS: Good  
19 afternoon. My name is Stephanie (unintelligible),  
20 and I'm reading this on behalf of Alison Stein,  
21 who is a public health professional and the  
22 director of the health care organization for  
23 Citizens for Consumer Justice.

24 I would first like to thank Councilman  
25 Nutter and the Rules Committee for allowing me to

12/8/99 RULES - BILL 990673

1 speak today concerning the importance of amending  
2 Chapter 17-100 of the Philadelphia Code, thereby  
3 allowing the City to hire a health care advocate  
4 to represent consumers and that there is a  
5 willingness on the part of the committee to listen  
6 to us on the consumer perspective of why it is  
7 important to have a health care advocate.  
8

9 Let me say that what has been apparent  
10 in the organization of the CCJ existent is the  
11 growing disillusion and the powerlessness that  
12 consumers feel in relationship to health systems.  
13 CCJ has identified many health issues of growing  
14 concern to consumers. Among these issues are the  
15 growing number of uninsured in Pennsylvania, the  
16 difficulty in obtaining charitable care from  
17 hospitals and other health-care providers, and the  
18 need for the advocate to act as an ombudsman to  
19 assist consumers with their health-related  
20 problems. Only these matters would be addressed  
21 by hiring a health care advocate for Philadelphia.

22 The proposed legislation would  
23 strengthen the individual participation in the  
24 health-care systems in many ways. The health care  
25 advocate would be in a position to serve as an

12/8/99 RULES - BILL 990673

information clearinghouse while monitoring and examining current health-related policies and recommending direction for a change and action.

He or she will be able to mobilize individuals and organizations around issues that affect the health of Philadelphia residents and communities and provide the technical information to help people become advocates for their own community health.

In addition, the health care advocate would be able to educate people about available health-care services and their rights and relationship to these services, provide referrals to health-care providers, advocate for consumers, and analyze important policies which affect people throughout the City.

Finally, a health care advocate would help the City of Philadelphia determine what best to focus our limited energy and resources. As an example, there has been little research on managed care impacting a minority population and to work on what delivery systems feature can best insure access and quality care for the underserved population. Providing a health care advocate for Philadelphia would be an opportunity to fill some

1                   12/8/99 RULES - BILL 990673  
2           of the important knowledge gaps by providing the  
3           City with a person whose job is to access the  
4           health and well-being of the consumer.

5                   One of the Citizens for Consumers  
6           Justice's primary goal is that a health-care  
7           system should respond to the needs of the local  
8           communities. We welcome any organization or  
9           individual who will play a role in the public  
10          education and policy to improve the health  
11          system.

12                   We want to the public to know more  
13          about the community health. We want accessible,  
14          reliable information concerning health care  
15          available to all consumers in Philadelphia. We  
16          want to promote a dialogue between health  
17          professionals and laypeople. We want to give the  
18          public a voice in the health and well-being of  
19          their community. And finally, and most  
20          importantly, we want to improve the health of  
21          people in Philadelphia.

22                   For all of these reasons, we ask that  
23          you amend Chapter 17-100 of the Philadelphia Code  
24          and allow the City to provide a health care  
25          advocate to represent the City consumers.

1 12/8/99 RULES - BILL 990673

2 COUNCIL PRESIDENT VERNA: Thank you  
3 very much.

4 Yes?

5 MR. STEIN: Thank you, Madam President.  
6 I'm Jonathon Stein, and I'm general counsel at  
7 Community Legal Services here in the City, and we  
8 have been representing the interests of uninsured  
9 and those low-income people who have been facing  
10 barriers to access to health care.

11 I think this is an historic moment for  
12 City Council because this is an extraordinary  
13 moment of giving a voice to health consumers and  
14 to the uninsured, which they never had in the city  
15 before. And we applaud Councilman Nutter's  
16 initiative and your interest as Councilpeople here  
17 this afternoon in this bill.

18 The bill continues to support our  
19 district health centers which are really the care of  
20 last resort for the uninsured. And the City is to  
21 applauded and Council is to be applauded in terms of  
22 that continuing support. But we can't rely on  
23 health centers to fill this enormous gap, and I  
24 think there is a role for a public health advocate  
25 to assist people in getting through the systems

12/8/99 RULES - BILL 990673

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1  
2 that exist to access benefits. There are thousands  
3 of people in the City who have a right to health  
4 under existing programs but are not getting due to  
5 various problems in state government and state  
6 welfare programs. And I think this public advocate  
7 can play an important role in doing that.

8           You will hear, as I imagine you'll be  
9 hearing, some concerns by some others to be speaking  
10 in a moment or two about this advocate, but I can  
11 only recall that 10 years ago when the public gas  
12 advocate was established and how PGW wasn't  
13 particularly happy with that. We'd had a very  
14 successful decade of work with gas public advocate.  
15 It saved ratepayers millions of dollars. It's  
16 helped resolve lots of problems. It hasn't solved  
17 the problems of PGW or gas service, but it's made, I  
18 think, an important public service contribute.

19           This advocate does need some flexibility  
20 and breadth. And I know there are some concerns  
21 that are being expressed that their responsibilities  
22 need to be more specifically defined. Some people  
23 have specific agendas for the advocate like medical  
24 assistance enrollment. But I think the important  
25 not to tie the hands of this advocate since the

12/8/99 RULES - BILL 990673

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health system is changing so much and issues really will be altered really continually into the future.

So in conclusion, I think this is really an extraordinary initiative the City is taking, an important one that gives consumers a voice. And let me just say that the Philadelphia Citizens for Children and youth couldn't wait to this moment to give their testimony wanting me to pass on their written testimony to you and have it entered into the record. Their a group that has been advocating for children and families for many years and they see, too, that this health care advocate is crucial to help those families assist and access health care and look to broader solutions and recommendations that I think are needed in this entire area. I'd like to offer this piece of testimony as well.

(Testimony attached to transcript.)

COUNCILMAN KENNEY: Thank you very much. The Stenographer will take and add it for the record.

Are there any questions for these witnesses?

Councilman Nutter?

COUNCILMAN NUTTER: No questions. I

12/8/99 RULES - BILL 990673

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1  
2 just want, again, thank you for your testimony and  
3 your advocacy in the health care community and  
4 really appreciate you coming out this afternoon.

5 COUNCILMAN KENNEY: Thank you very much.

6 COUNCILMAN NUTTER: Mr. Chairman, before  
7 the next group comes to testify, we received  
8 testimony. A person indicated that they wanted to  
9 be here to testify, but they may have had to leave.  
10 Alisa Simon, Director of Health Care Organizing  
11 Citizens for Consumer Justice. With the Chair's  
12 approval, I'd like to offer this testimony as if  
13 it's been read into the record.

14 (Copy of testimony attached.)

15 COUNCILMAN KENNEY: Please identify for  
16 the record.

17 MR. WIGGLESWORTH: Good afternoon. My  
18 name Andrew Wigglesworth, I'm president of the  
19 Delaware Valley Health Care Council. Kevin Hannifan  
20 who is president CEO of Methodist Hospital had hoped  
21 to be here to present his views. Unfortunately, he  
22 was called away to actually a health care issue.  
23 His son has injured his arm and he had to go be  
24 with his family. So he apologizes for not being  
25 able to wait.

12/8/99 RULES - BILL 990673

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2 DVHC, and perhaps you can give our  
3 testimony up. DVHC represents and advocates for  
4 more than 150 hospitals and health care systems and  
5 health related organizations across southeastern  
6 Pennsylvania, including all hospitals in the City of  
7 Philadelphia. I will summarize my written  
8 statement, which is being handed out in the interest  
9 of time, but I want to say at the outset that we  
10 obviously appreciate the opportunity to present our  
11 views relative to this ordinance which would create  
12 a health care advocate.

13 In concept, as we've done in discussions  
14 with Councilman Nutter, the sponsor of the  
15 legislation as well as with others, we're very  
16 supportive of the concept. Some of the issues that  
17 the previous witnesses raised about the growth of  
18 the uninsured, the growth of uncompensated care, the  
19 lack of a national solution to the problem of the  
20 growing numbers of uninsured are some think we are  
21 absolutely as concerned if not more so than previous  
22 witnesses. But I think that the complex nature of  
23 this legislation, some of the -- basically the way  
24 that it is currently drafted it is so broad as it is  
25 difficult to determine precisely what the role of

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1  
2 the health care advocate would be and how the health  
3 care advocate would fit into in the context of the  
4 existing advocacy programs. For example, under the  
5 Older Americans Act and Philadelphia Corporation for  
6 Aging currently has a ombudsman program for senior  
7 citizens that advocates on behalf of senior  
8 citizens. If Kevin Hannifan had been able to stay,  
9 he would have told you about the advocates for the  
10 Asian community with respect to Methodist Hospital  
11 and in terms of the long-term care ombudsman, as  
12 well as the governmental agencies, for example, the  
13 Health Care Financing Administration with respect to  
14 Medicare patients has very explicit responsibilities  
15 as it relates to advocating for patients. All  
16 hospitals have patient advocates as well as social  
17 work departments that attempt to assist the  
18 uninsured and as well as other patients deal with  
19 the health care deliver system, which as we all  
20 know, has become increasingly complex and difficult.

21 So there are a whole series of different  
22 agencies. There's a lot of talk in terms of the  
23 representative of the City Health Department as it  
24 relates to data and data collection. Well, there's  
25 a state agency called the Health Care Cost

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1  
2 Containment of Council, which annually produces  
3 reports on uncompensated care delivered in this City  
4 as well as across the Commonwealth of Pennsylvania.  
5 As you know, again, DPW has responsibility with  
6 respect to medical assistance recipients. This  
7 isn't to say that a properly crafted ombudsman or  
8 health care advocate role in the City couldn't be an  
9 enormous help. But the way the legislation has been  
10 introduced and we think that basically there needs  
11 -- we would respectfully request that the Committee  
12 defer action on this. Let's sit down and basically  
13 craft the legislation in a way that we can all  
14 support it.

15 I think in terms of the delivery, and  
16 there were some comments by previous witnesses about  
17 the delivery of services to the uninsured. I think  
18 all the members of this Committee know that the  
19 hospitals in Philadelphia are committed to providing  
20 access to quality care for all of our citizens.  
21 It's a principle that they live by today.  
22 Philadelphia actually is the largest city in the  
23 country without a public hospital. The services are  
24 provided by private hospitals. Philadelphia has the  
25 highest percentage of uninsured residents of any

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1  
2 county across the state. And again, according to  
3 the Health Care Cost Containment Council, last year  
4 hospitals provided over \$235 million worth of  
5 uncompensated care. That number is under stated in  
6 that it -- that's only in-patient services, it  
7 doesn't include clinic services, it doesn't include  
8 services of physicians to others, it's just  
9 inpatient hospital services. So hospitals are  
10 providing an enormous amount of uncompensated care  
11 today, and quite frankly we agree with the witnesses  
12 previously that we all need to work together to try  
13 to provide answers or solutions to the growing  
14 numbers of uninsured.

15 We think one thing that we hope that  
16 this Council as well as and all the advocates that  
17 are here today can work together with us on is in  
18 terms of trying to attain tobacco settlement funds  
19 in terms of providing coverage for the uninsured,  
20 which would be a meaningful step in terms of trying  
21 to provide access to all our citizens to health  
22 insurance coverage.

23 I think two final points before I just  
24 touch on a couple things. One is also to put this  
25 whole environment into the context. As you know,

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2 hospitals and actually on a previous bill there's  
3 discussion about the closure of Mount Sinai  
4 Hospital. Three-quarters of the hospitals in this  
5 region lost money on operations last year. The  
6 federal government is reducing payments under  
7 Medicare by 1.5 billion.

8           A previous witness represented or  
9 discussed the reductions in medical assistance under  
10 act 35. That increased hospital uncompensated care  
11 across the region by more than 150 million. There  
12 are enormous issues with respect to health care,  
13 enormous issues that we think we all need to work  
14 together on. And to the extent that a health care  
15 advocate could help enroll people in insurance in  
16 the children's health insurance program or MA, that  
17 would be appropriate role. The bill, as drafted,  
18 doesn't even provide that role which is, as we see,  
19 a significant problem.

20           Additionally, we think the health care  
21 advocate should advocate on behalf of consumers and  
22 providers with insurers and managed care  
23 organizations. There are enormous problems with  
24 people being denied coverage by their managed care  
25 organization. And we think the ombudsman or the

12/8/99 RULES - BILL 990673

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1 health care advocate could play a role in that. The  
2 legislation, as drafted, doesn't cover those  
3 situations.  
4

5 Moreover, as I indicated before, as  
6 drafted, the bill basically duplicates many of the  
7 existing duties of state and federal agencies.  
8 Given the limitation on resources, we think it  
9 should be focussed in those areas where it doesn't  
10 duplicate the existing governmental activities and  
11 would note that the way the bill is drafted now,  
12 it's not only the uninsured, but every person that's  
13 covered under Medicare, Medicaid, city employees,  
14 federal, state employees, or military dependents,  
15 all, the way this bill is drafted as those are  
16 government-sponsored programs, would all be in  
17 effect eligible for the advocate services under this  
18 legislation. That's an enormous responsibility,  
19 enormous resources that we think, again, we need to  
20 more narrowly focus this bill or target this bill on  
21 the specific problems, not focus away from problems  
22 but basically make sure that we utilize the  
23 resources of this city and the most effective way.

24 Those, I think, are the comments that I  
25 wanted to share with you. Again, my written

12/8/99 RULES - BILL 990673

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2 testimony goes into the specifics of the bill in  
3 greater detail. We also provided a report that is a  
4 compilation of information about uncompensated care  
5 across the Commonwealth as well in the City of  
6 Philadelphia. I'll be happy to answer any question  
7 or go through each one of the issues with respect to  
8 this bill as it's drafted and talk to you about what  
9 the potential complications or implications are.  
10 Thank you for the opportunity to testify.

11 COUNCIL PRESIDENT VERNA: Are there any  
12 questions of this witness?

13 Thank you very much.

14 I believe your next to testify. You're  
15 not testifying?

16 MR. WIGGLESWORTH: Rose Wenshal (ph)  
17 works for the Delaware Valley Health Care Council.  
18 I apologize. I should have introduced her to begin  
19 with.

20 COUNCIL PRESIDENT VERNA: The Chair  
21 recognizes Councilman Nutter.

22 COUNCILMAN NUTTER: Thank you, Madam  
23 Chair. Let me say to both Mr. Wigglesworth and Ms.  
24 to Ms. Wenshal, I appreciate your testimony, your  
25 views. I think as you have articulated, we have had

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1  
2 an opportunity to talk about this on a number of  
3 occasions. As I mentioned earlier, I do plan to  
4 propose some amendments which I think directly will  
5 respond to a couple of the issues that you raised.  
6 I understand from your perspective the timing issue.  
7 I will try to address that. It may not completely  
8 to your satisfaction, but I will at least say here  
9 on the record and in public that I am sure that  
10 there will be other issues that need to be addressed  
11 as relates to the creation of health a care  
12 advocate. And as we continue our discussions, I  
13 will continue to work with you and talk with you and  
14 other groups and organizations. And during that  
15 time period, I would come back with any needed  
16 amendments to clarify even further the role of the  
17 advocate. I don't think anyone envisions that the  
18 mere creation of the advocate, one, will solve all  
19 the health care problems in Philadelphia; two, that  
20 this individual, either by themselves or if someone  
21 were suggesting that they, for instance, would need  
22 an army of people to work with them, one, we don't  
23 have an army of people to throw at this particular  
24 operation. But I do think this Council and the City  
25 Administration and all our citizens would benefit

12/8/99 RULES - BILL 990673

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2 from someone having somewhat like a laser beam  
3 focussed on this particular issue. And let me also  
4 state for the record that while the title would be  
5 something along the lines of health care advocate,  
6 that does not mean that they are exclusively only  
7 for consumers. There are issues that Delaware  
8 Valley Health Care Council has that both the Council  
9 and the City Administration need to know about, and  
10 there is certainly nothing, I would think, prevent  
11 the health care advocate figuring out some of those  
12 issues from advocating on your behalf as it relates  
13 to negative policies that may come down to us, as  
14 they often role up the highway from Washington or  
15 roll down the highway from Harrisburg. That effect,  
16 hospitals and other providers in their ability to  
17 provide services to our citizens. So I don't look  
18 at it as necessarily a one-way street. There may be  
19 issues that both consumers and providers agree on  
20 and that you need someone else to make that advocacy  
21 and be in the ear of the Mayor and ear of the  
22 Council as we try to work together in a cooperative  
23 fashion to get to the point where we all want to be.

24 MR. WIGGLESWORTH: Councilman Nutter, I  
25 appreciate your comments and we, obviously, would

12/8/99 RULES - BILL 990673

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1  
2 like to work with you. But again, in terms of  
3 passage of a bill at this point that basically  
4 authorizes we're-not-sure-what to a one in context  
5 of the transition of a new administration. We're  
6 not certain who would be the city health  
7 commissioner to basically authorize the creation of  
8 it and entering into a contract for a whole range of  
9 services that we don't know, one, what it is, and  
10 the things you just said in terms of providers and  
11 consumers having very similar concerns, absolutely.  
12 But the bill as drafted doesn't do that. So we,  
13 again, would respectfully suggest that you sit down  
14 between now and the start of the new session of the  
15 Council. Obviously, you all will be back here again  
16 shortly after the first of the year, and we'd love  
17 to work with you to develop a bill that is focussed  
18 like a laser beam on the issues in a way that is  
19 meaningful, because as it is now, it is so broad as  
20 to be somewhat incomprehensible, with all due  
21 respect.

22 COUNCILMAN NUTTER: Absolutely.

23 COUNCIL PRESIDENT VERNA: Thank you.

24 The Chair recognizes Councilman Cohen.

25 COUNCILMAN COHEN: Mr. Wigglesworth, I

12/8/99 RULES - BILL 990673

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2 read the bill before I attached my name to it, and  
3 then as I heard your testimony I was wondering  
4 whether I was on the right bill or not and I kept  
5 trying to hear a specific complaint. Seems to me  
6 this bill is just exactly what an advocate's bill  
7 ought to be. The problems in the health field are  
8 too great that it seems to be any advocate has to  
9 have a very broad range of powers and it seems to me  
10 that Councilman Nutter's explanation made that very  
11 clear, and you've indicated yourself from time to  
12 time that you agree that these problems have to be  
13 dealt with. So let me ask you a specific question.  
14 Is it that your concerns are really not about the  
15 advocacy part but about the provision that relates  
16 to contracts with health care providers which  
17 authorizes the advocate to obtain information from  
18 hospitals?

19                   And I did not hear anything from you  
20 with respect to that, and yet your strong feeling  
21 against doing anything on the bill and not giving us  
22 any specific problems dealing with led me to believe  
23 as a lawyer that maybe the real problem was that  
24 this bill would arm the advocate with the right to  
25 get information which perhaps hospitals did not want

12/8/99 RULES - BILL 990673

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to give. Am I wrong as to that?

MR. WIGGLESWORTH: Well, put it this way. To the extent that I didn't, I should state absolutely for record, and I'm glad that you reminded me, as a matter of record, we, one, don't appreciate the mechanism that's used in the bill in terms of conditioning contracts on the delivery of information. It's not that the information can't be necessarily be available but, again, the way the bill is structured, it says obtaining necessary information from hospitals. We don't -- what does necessary information mean? Related to various matters; what do various matters mean in terms of obtaining as it relates to -- deal with issues and problems for Medicaid, Medicare, city employees, state employees, federal employees, Campis recipients, those are hundreds of thousands of people. Concern about the information pieces that as notwithstanding some of the language in the bill which suggest at least makes a passing reference to it. Information that we have is confidential. There are federal laws as it relates to the release of substance abuse and mental health records. There are state laws as it relates to release of patient

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2 identifying information. With respect to  
3 information on uncompensated care and the delivery  
4 of services, as I've indicated before, we report  
5 that to the state government today and have been for  
6 years. Pennsylvania has one of the most  
7 comprehensive data reporting requirements for  
8 hospitals in the country. So it's not that we're  
9 afraid to have data out there or whatever. But,  
10 again, the way the bill is structured, this would  
11 say that the health care advocate could say, "We  
12 want to see every single patient record for all  
13 admissions to the hospital." And this law  
14 theoretically would enable that. That would be  
15 overly burdensome and we would suggest  
16 inappropriate. What we think needs to be done is to  
17 focus this legislation on those areas -- if it's  
18 complaints, for senior citizens they can complain to  
19 HIFFA. As you know, under federal law we must  
20 provide services to all persons who present at the  
21 emergency room. They must be screened and  
22 evaluated, and to the extent they have an emergency  
23 condition, must be treated under federal law. If  
24 there's a complaint about that, the federal  
25 government can come in and basically lift Medicare

12/8/99 RULES - BILL 990673

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2 certification, there's various substantial  
3 enforcement mechanisms as it relates to that. And  
4 I'm not afraid and I think having an advocate  
5 involved in that would be okay. Let's focus the  
6 scope of this onto the problems. And, again, the  
7 way the bill is drafted right now, it's wide open  
8 for whatever and conditions it. And some hospitals,  
9 quite frankly, may not want to enter into city  
10 contracts if this is wide open. And I'm not sure  
11 who losses the most under that, whether the City  
12 losses the most or the hospitals lose the most. But  
13 certainly, people do; people lose the most. And I  
14 don't think it needs to have that kind of dynamic  
15 because this is an area that we all agree that we  
16 need to do more to provide coverage for the  
17 uninsured. We need to provide access to consumers.  
18 Hospitals need help in terms of financing  
19 uncompensated care. It's a huge problem.

20 COUNCILMAN NUTTER: Councilman Cohen, if  
21 I can quickly respond to that. Councilman, the bill  
22 could not be more clear. In Section 17-108, Item 1,  
23 which is in this area of the contract issue, that  
24 section reads, "Such provisions shall not require  
25 any health care provider to provide any information

12/8/99 RULES - BILL 990673

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2 which the health care provider by law may not  
3 provide to the health care advocate."

4 From my perspective, at least, the  
5 hospital or other providers not allowed by law to  
6 release the information, they don't have to give it  
7 to health care advocate.

8 COUNCILMAN COHEN: That would be my  
9 understanding.

10 COUNCIL PRESIDENT VERNA: I think the  
11 gentleman would like to respond.

12 MR. WIGGLESWORTH: Again, that raises  
13 the spectra of, okay, the advocate wants information  
14 about a complaint and it would be against state law  
15 to release patient identifying information; so  
16 therefore, we go to the health care advocate and say  
17 "There's a complaint." This is an extreme example,  
18 but under this bill, basically there's a complaint.  
19 There's a city of 1.6 million people, go out and  
20 find what the complaint because we can't identify  
21 the patient under state law. We think that we need  
22 to work through these kinds of issues. There would  
23 be a requirement if the patient consented to having  
24 records, then that could be done. But again, what  
25 you're talking about is volumes of patients. And

12/8/99 RULES - BILL 990673

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2 again, it is not that we're opposed to the concept  
3 per se, but we think the legislation needs to be  
4 crafted more carefully and targeted more carefully.  
5 And that's, I guess, where we have the disagreement.

6 COUNCILMAN NUTTER: Madam Chair and  
7 Councilman Cohen, again, I would suggest that  
8 through amendment there some opportunity to lessen  
9 at least for the moment some of the concern as  
10 expressed. I think all of these concerns are very  
11 legitimate. I do believe that with time and added  
12 review by the Council of scope of services what the  
13 terms and conditions of this contract are, if,  
14 again, the new administration decides to enter into  
15 a contract, Councilman, you may have been out of the  
16 room a little while ago, I suggested that I have  
17 some amendments that have been circulated across the  
18 table that may address some of those issues and give  
19 us additional time and opportunity as well as a  
20 direct involvement in review of all these  
21 activities.

22 COUNCILMAN COHEN: Is your intention to  
23 have the Council act on a bill before the end of our  
24 session?

25 COUNCILMAN NUTTER: Yes.

12/8/99 RULES - BILL 990673

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COUNCILMAN COHEN: Okay.

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COUNCILMAN NUTTER: Thanks.

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COUNCILMAN COHEN: Very good.

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MR. WIGGLESWORTH: One additional

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suggestion for you. One final point. From a

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technical standpoint, the bill reference to health

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management organizations, which I think it's

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supposed to refer to health maintenance

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organizations which are HMOs, but in that context it

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would leave out basically all the other major

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insurers. So that either a whole series, for

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example, Blue Cross is a hospital plan corporation.

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Children Health Insurance Program. Variety of

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others. So that, again, the scope of the bill is

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not what those that are supporting passage of this

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particular legislation would suggest and it needs to

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be cleaned up as far as that goes as well.

19

COUNCILMAN NUTTER: Mr. Wigglesworth,

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I'm sorry, I missed part of what you just said. I

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hospital plan corporation.

22

MR. WIGGLESWORTH: You would have

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insurers, you'd have under state law, the way that

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this is drafted, the HMOs would say this bill

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doesn't apply to them. Managed care plans would say

12/8/99 RULES - BILL 990673

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2 that the bill doesn't apply to them. Blue Cross  
3 would say that it wouldn't apply to them. In other  
4 words, there needs to be specific amendments to  
5 basically cover, and I assume the intent would be  
6 to say that non-profit plans like Blue Cross to the  
7 extent that they have a contract, which they have a  
8 very substantial contract with the City, should  
9 provide information to the health care advocate as  
10 it relates to them denying services. I would assume  
11 that you would also want to include community health  
12 care physicians, long-term care, nursing homes, all  
13 of these other facilities where there are issues in  
14 terms of -- those are the kinds of things that in  
15 terms of trying to address this between now and the  
16 16th, which I understand is where the problem is.

17 COUNCILMAN NUTTER: I understand. Let  
18 me just ask you one very specific question. You  
19 made a statement earlier. You said hospital plan  
20 corporation and then something you said something  
21 after that. That was the thing I didn't hear.

22 MR. WIGGLESWORTH: It should be  
23 basically HMOs, PPOs. It should also, for example,  
24 Children's Health Insurance Program, if you wanted  
25 to cover that, the two major vendors for that are

12/8/99 RULES - BILL 990673

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2 AETNA US Health Care, but then it's also the  
3 Independence Blue Cross Caring Foundation which  
4 technically is not an insurer and, therefore, would  
5 have to be crafted in a different way. I'm not sure  
6 how to do that.

7 COUNCILMAN NUTTER: Are they health care  
8 providers?

9 MR. WIGGLESWORTH: No, they're a  
10 foundation.

11 COUNCILMAN NUTTER: I understand. Thank  
12 you.

13 COUNCIL PRESIDENT VERNA: Thank you.  
14 Any other questions or comments from Members of the  
15 Committee?

16 Thank you very much.

17 MR. WIGGLESWORTH: Thank you.

18 COUNCIL PRESIDENT VERNA: Mr. Johnson.

19 MR. JOHNSON: My name Bernard Johnson.  
20 I'm the executive director of Heathy Family Health  
21 Life, Inc., and I'm the Chairperson of the  
22 Philadelphia Health Consortium which has a focus on  
23 infant mortality. I'd just like to say that that's  
24 an area that the health department has talked to our  
25 committee about, the area of infant deaths where the

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2 City cannot always get a record from all the city  
3 hospitals. So some hospitals in the City, as it  
4 relates to my understanding, may not issue a death  
5 certificate for a child who was born premature and  
6 dies. That has caused a problem for the Office of  
7 Maternal and Child Health and for Healthy Start  
8 Consortium in our partnership to design education  
9 programs for families who have suffered the death of  
10 a child. So we have been, through MCH and through  
11 the Pennsylvania Citizen Association, been trying to  
12 negotiate with the hospitals for them to produce the  
13 dealt records for every child who is born and dies.  
14 So I think that's an area, Councilman Nutter, that  
15 is a clear area for us where documentation is not  
16 easily obtained from the hospitals. But I would  
17 like to say that the reason I came to the table was  
18 to support the broadest clearest definition of a  
19 health advocate. And that we may want to make sure  
20 that this advocate has all the tools that are  
21 necessary in terms of staff. Not an army of people,  
22 certainly, but a staff that certainly could assist  
23 the advocate in carrying out the everyday duties  
24 that are outlined there because that's a real task  
25 there.

12/8/99 RULES - BILL 990673

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2 I'd like to just give some areas where  
3 we're concerned that we think an advocate would be  
4 helpful. Around drug and alcohol centers, programs,  
5 that provide quality care as it relates to drug and  
6 alcohol but may not have the tool that allows it to  
7 provide mental health services to those folks. We  
8 think that those, especially men who are in those  
9 types of environments need to be advocated for so  
10 that they in fact can get, if needed, get the  
11 behavior health services that are necessary.  
12 Another area is around boarding homes. And I've  
13 tried to establish a conversation with Councilman  
14 Kenney around the quality of boarding homes and the  
15 type of care that people who are living in boarding  
16 homes should be entitled to but in many cases are  
17 not receiving. We believe that an advocate there  
18 would be a very useful kind of person.

19 I'd like to talk about the areas where  
20 behavior health services are provided. We don't  
21 believe that in Southwest Philadelphia and in parts  
22 of South Philadelphia that there are adequate  
23 behavior health services. And what we've found is  
24 that people get referred to a behavioral health  
25 provider based on their address. So you have

12/8/99 RULES - BILL 990673

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2 neighborhoods where people are getting services, but  
3 we believe they're not quality services. As an  
4 example, about six months ago we took a client of  
5 the Kingsessing Network Behavioral Health, we took  
6 their client and met with the Health Commissioner  
7 and dumped on the Health Commissioner's desk about  
8 two years' worth of prescription drugs that had been  
9 given to a patient and with no follow-up, the dosage  
10 just continued to be increased by saying, "Do you  
11 want more? Is the dosage strong enough?" And the  
12 person nodded her head and said, "Yes, I'll take  
13 more," because that person actually thought that  
14 they had to accept the medication in order to keep  
15 their public benefits. So that is the type of  
16 concerns that we're having.

17 We also think it would be a good  
18 opportunity for an advocate to bring all of the  
19 advocacy groups and organizations and individuals  
20 that they could identify in the City together along  
21 with people like the folks that were sitting here  
22 from the Hospital Council so that we can begin plan  
23 and develop programs and services that are going to  
24 meet the needs of folks who are in the most critical  
25 parts of their life when they're I will. So, again,

12/8/99 RULES - BILL 990673

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2 I just wanted to -- and I tell you another thing.  
3 This is my next point. What people believe is the  
4 dual system of care at like hospitals like the  
5 University of Pennsylvania where they strongly  
6 believe that if you're insured through a commercial  
7 company, you get one type of service; if you are  
8 insured through a managed care company that services  
9 people on public assistance that you get another  
10 type of service; and if you're uninsured, then it's  
11 real questionable as it relates to the quality and  
12 care you receive. So I'm here on behalf of my  
13 organization Healthy Family and on behalf of the  
14 Philadelphia Healthy Start consortium encouraging  
15 the Council to move forward and adapt the bill that  
16 will allow the Commissioner to appoint an effective  
17 health care advocate and team. Thank you.

18 COUNCIL PRESIDENT VERNA: Thank you. Do  
19 we have anyone else to testify on this bill? Seeing  
20 none, I would ask the clerk please read the title?

21 COUNCILMAN NUTTER: Madam Chair.

22 COUNCIL PRESIDENT VERNA: At this time  
23 the Chair recognizes Councilman Nutter.

24 COUNCILMAN NUTTER: Thank you, Madam  
25 Chair. Madam Chair with your permission I'd like to

12/8/99 RULES - BILL 990673

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2 read into the record proposed amendments to Bill  
3 990673 which could then could be taken up in the  
4 public meeting portion of today's proceedings. The  
5 first amendment would amend Section 1 of the bill  
6 starting on the fifth line, the sentence currently  
7 reads "health management organizations." The word  
8 "management" should be stricken; the word  
9 "maintenance" should be inserted. After the word  
10 "organizations" and comma, insert the words  
11 "third-party payers, managed care plans, health plan  
12 corporations, children's insurance programs for  
13 other insurers." The sentence would continue, "and  
14 other health care providers," insert "or  
15 foundations." That's in small 1.

16 In 2, the sentence presently reads,  
17 "Resolving problems and issues relating to the  
18 access of city residents to health care services."  
19 The amendment would add in the phrase or wording  
20 "and assisting children and other eligible persons  
21 to enroll in plans for which they qualify."

22 In 5, the end of the sentence, last line  
23 of that sentence presently reads, "And any  
24 discernible trends in the provision of health care  
25 to city residents." Additional language, "including

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2 detailed information and reports regarding the  
3 policies and practices of the city, state or federal  
4 government that may negatively impact the ability of  
5 hospitals, health maintenance organizations,  
6 third-party payers, managed care plans, hospital  
7 plan corporations, children's insurance programs, or  
8 other insurers and other health care providers or  
9 foundations to provide these services to city  
10 residents."

11 Amend Section 2 of the bill, add a new  
12 sentence to the end of that paragraph to read, "The  
13 contract shall not be executed until the contract,  
14 including it's terms, conditions and scope of  
15 services, has been approved by resolution of  
16 Council.

17 Amend Section 17-108(1), at the top  
18 presently reads "health management." Strike the  
19 word "management"; insert the word "maintenance."  
20 Continuing on in that sentence, after the word  
21 "organizations" a new come and add third party  
22 payers, managed care plans, hospital plan  
23 corporations, children's insurance programs, and  
24 other insurers." The sentence continues, "and other  
25 health care providers" insert "or foundation."

12/8/99 RULES - BILL 990673

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2 Lastly, add a new Section 4, Section 4  
3 to read, "This ordinance shall take effect July 1,  
4 2000."

5 Those are the proposed amendment, Madam  
6 Chair. What that effectively does is starting with  
7 the last one, the bill would not then be effective  
8 until July 1, 2000. Secondly, should the health  
9 care advocate be appointed and a contract drawn up,  
10 that contract would be subject of approval by  
11 resolution of City Council. I believe, Madam Chair,  
12 at least those two mechanisms the City Council  
13 clearly in the process for what the final activity  
14 would be for the health care advocate with full  
15 discussion of those matters. It also allows us time  
16 to have those discussions among, I believe, all the  
17 parties stated at the table today they were more  
18 willing to have continued discussions about this.  
19 Thank you, Madam Chair.

20 COUNCIL PRESIDENT VERNA: Thank you. At  
21 this time I would ask the clerk to please read the  
22 title of Bill No. 990812.

23 (Pause.)

24 Mr. Ackelsberg. We're just going back  
25 to the bill regarding 990331. You did have a

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BILL NO. 990812

12/8/99 RULES - BILL 990673

2 meeting?

3 MR. ACKELSBURG: Yes, we did, Madam  
4 Chair, and we have agreed that between now and the  
5 session where the bill would be put up to vote,  
6 there will be a memorandum of understanding.  
7 Joining in that agreement will be the CDC,  
8 Councilman DiCicco's office, the St. John's  
9 Leadership Team, and Redevelopment Authority, and at  
10 the time the bill is presented for a vote, it will  
11 be made clear in the record that it is understood by  
12 Council in passing the legislation that the  
13 memorandum of understanding is a part of what is  
14 happening.

15 COUNCIL PRESIDENT VERNA: Thank you.

16 The clerk will please read the title of  
17 Bill No. 990812.

18 THE CLERK: An ordinance amending  
19 Section 19-1303(4) of the Philadelphia Code  
20 entitled, authorization to offer exemption from real  
21 estate taxes on new construction of residential  
22 properties by changing the definition of eligible  
23 dwelling unit under certain terms and conditions.

24 COUNCIL PRESIDENT VERNA: Who's  
25 testifying on this bill?

1 BILL NO. 990812

2 Good afternoon.

3 MR. NADOL: Good afternoon, President  
4 Verna, and Members of the Committee. I'm Michael  
5 Nadol, N-A-D-O-L, Director of Finance for the City.  
6 I hope that you've all received our written  
7 testimony, the Administration's written testimony  
8 regarding this bill. I'll be happy to briefly  
9 summarize it if that's the Committee's pleasure.  
10 Also with me is Mimi Pulasky from the City Law  
11 Department, and we may be joined shortly by several  
12 other administration officials who had stepped out  
13 momentarily to help answer questions.

14 This is actually our second round of  
15 testimony in recent weeks regarding tax abatement  
16 proposals. We did testify at some length about the  
17 Administration's general approach to such abatement  
18 initiatives so long as we don't lose our focus on  
19 reducing the overall tax burden for all  
20 Philadelphians, we do believe that some target  
21 incentives can be a tremendous boon to the City by  
22 stimulating residential and commercial development  
23 that might not have happened without such  
24 incentives. Certainly, the recent conversion  
25 abatement program to convert vacant and unused

BILL NO. 990812

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2 office and commercial space into residential  
3 apartment dwellings has been a tremendous success  
4 and we hope that some of the ordinances recently  
5 enacted after our previous testimony and previous  
6 hearings on this matters will have similar  
7 beneficial stimulus affects.

8           One of those bills that was recently  
9 considered was a proposed expansion to the existing  
10 City abatement program for real state taxes on new  
11 residential construction. Currently, there's a  
12 three-year full abatement for new residential  
13 construction and under a recently passed ordinance  
14 that is slated to be change to a 10-year phased out  
15 abatement program creating a somewhat greater  
16 incentives to try to spur new investment in  
17 residential housing. That bill and this amendment  
18 that we're considering today or rather the bill that  
19 we're consider today which would also amend the same  
20 provisions of the City Code, it should be noted  
21 would require change in the state enabling  
22 legislation to take effect. Currently, again, that  
23 expansion of this program that was recently approved  
24 and the one that's being considered today could not  
25 take effect. What this proposed bill would do is to

## BILL NO. 990812

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2 further expand the new construction abatement  
3 program to include apartment, commercial, rental  
4 housing, apartment dwellings. Currently and for  
5 many years, this particular tax abatement program  
6 has been limited to owner-occupied dwelling units.

7 We have, with the help of the Budget  
8 Office -- I have been joined now by Rob Dubow, the  
9 City's budget director. We have under taken our  
10 best efforts to analyze the potential cost impacts  
11 of this bill. Of course, as with any abatement  
12 program, the stimulus impact is hard to project, but  
13 what we have looked at is the recent usage of  
14 similar current a basement programs that taxpayers  
15 would be eligible for if they're undertaking  
16 commercial apartment rental housing construction.  
17 We've looked at the level of usage throughout the  
18 City and we've looked at what financial impact would  
19 be in terms of foregone revenues if the bill that's  
20 under consideration today were fully in effect. And  
21 over the course of a 10-year period, the aggregate  
22 cost of that bill would be approximately 6- to  
23 \$700,000 with that impact, of course, borne both by  
24 the City and the School District. The initial years  
25 of the program would actually not have an adverse

BILL NO. 990812

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2 impact on the City's budget. That's because new  
3 commercial construction, including that for  
4 apartment buildings, rental housing, is already  
5 eligible for a three-year or abatement of real  
6 estate taxes under the commercial improvement tax  
7 abatement program that the City currently offers.  
8 By switching to a 10-year phase program, in the  
9 first few years there might actually be a net  
10 savings to the City because we would be phasing out  
11 the benefit of the abatement, but over the course of  
12 time as the full program kicks into place over the  
13 decades ahead, we would be looking at, again,  
14 assuming current levels of construction activity,  
15 about \$150,000 a year aggregate impact between both  
16 the City and the School District.

17 While this financial impact is  
18 relatively modest, and we certainly share the goals  
19 that we believe are embodied in this proposal of  
20 stimulating new apartment and residential  
21 construction and investment in the City, the  
22 Administration does have some concerns regarding a  
23 potential impact of this expansion of our abatement  
24 programs on the success of some of the programs  
25 already in place. Specifically, we have concerns by

## BILL NO. 990812

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2 tilting the playing field a little bit further by  
3 new construction of apartment buildings we would be  
4 tilting the playing field away from our existing  
5 successful abatement program at a time when there  
6 are many active conversions still in the pipeline  
7 and at a time when there are still, according to  
8 preliminary analysis by the Board of Division of  
9 taxes we're now at a point in time where there are  
10 still scores of potential candidates for future  
11 conversion to residential apartment buildings. And  
12 we would not want to see that program, as successful  
13 as it has been and as we hope it will continue to be  
14 in the near term, we would not want to see that  
15 program undermined by the creation of a new  
16 incentive that might serve to undermine it.

17           So taking that concern and to some  
18 degree the cost considerations into account, the  
19 Administration at this time does not recommend  
20 support for Bill No. 990812. We do, again, share  
21 many of the goals reflected in it. We welcome this  
22 opportunity to talk about the creative ideas such as  
23 this, and we would be happy to answer any questions  
24 that you may have at this time.

25           I also want to note that I've also been

BILL NO. 990812

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joined at the table by David Glancy, Chairman of the Board of Revision of Taxes. Thank you.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman DiCicco.

COUNCILMAN DI CICCO: Thank you, Madam Chair. Thank you, Mike. Just lay out a scenario. Let's just assume for the moment that there were no potential conversion candidate buildings available in Center City. Would the position of the Administration be somewhat different than it is presenting today? And that's a hypothetical. And where I'm going with this, I will have someone who is a developer who is here today to testify as to whether or not he believes that the all of a sudden because there is a bill that may be passed today or voted out of the Committee today that is favorable to new construction that for some reason developers are going to abandon the notion or the conversion of vacant buildings. I think the testimony will be presented today by developer and there may actually be another developer who does conversions that that is not necessarily what will occur. The irony of this whole thing is when we introduced the original conversion bill, there was concern for the negative

BILL NO. 990812

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2 impact to the City finances, and now their worrying  
3 about all of sudden we may not have a conversion  
4 thing happening. So even to my surprise, it's much  
5 more -- there's more conversion going on than I ever  
6 anticipated in my wildest dreams. And I mean with  
7 the demand, at least as it relates to Center City  
8 which is the only neighborhood we have seen an  
9 increase in population. The demand for more units,  
10 I think that this bill is necessary at this time in  
11 order to give developers a little bit more of an  
12 edge to encourage them to begin developing units  
13 that will accommodate for the demand. And Mr.  
14 Dranoff, Carl Dranoff, I'm hoping shows up before  
15 these hearings end, has indicated yesterday that  
16 there are not that many buildings left that are good  
17 candidates for conversion and there's a whole set of  
18 reasons for that. Some of them have to do with the  
19 start up of tax credits, some of them may have to do  
20 with the integrity of the building. And as someone  
21 who has done several and is anticipating a few more  
22 conversions, he will simultaneously be conversions  
23 and new if the opportunity presence itself. And it  
24 also has to do with location, location, location in  
25 real estate that not all abandoned office buildings

BILL NO. 990812

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2 or industrial buildings are going to be candidates  
3 for conversion merely because people may not want to  
4 move into those neighborhoods. So I think this is  
5 an opportunity for us to give more incentives, to  
6 encourage more development of either new and/or  
7 existing buildings, and I think the conversion bill  
8 has proved that if you give developers a reason to  
9 do it, they will come and they will do it.

10 Again, I understand your position and I  
11 understand it's not a hostile -- you're not adverse  
12 to this bill because you think it's going to  
13 negatively impact the budget all that much. But I  
14 certainly, again, based on my conversation with  
15 builders, don't think that they're going to abandon  
16 that conversion. But Mr. Kline who is here, Steve  
17 Kline is here is a developer; he's going to testify  
18 also. Thank you, Madam Chair.

19 MR. GLANCY: Good afternoon, Councilman  
20 DiCicco and Madam President. My name is David  
21 Glancy and I'm the Chairman of the Board of Revision  
22 of Taxes. I know Mr. Nadol gave the testimony of  
23 the Administration. What I might say may coincide  
24 with the Administration; it may not. But I will try  
25 to make obvious to you as I say it. I guess I'd

BILL NO. 990812

1  
2 like to give you some real facts. There are 38  
3 applications, some are still pending, but  
4 nonetheless 38 applications for the 10-year  
5 conversion bill. And I agree with you, this has  
6 gone beyond our wildest expectations, so I suppose  
7 the fear of those of us in the Administration have  
8 is will this put a stop to that particular success  
9 story. I did a very quick first pass on properties  
10 in what I call Center City corridor which really  
11 goes down from Washington Avenue, river to river,  
12 and maybe up to Spring Garden Street. And using the  
13 criteria in the ordinance about age and about  
14 vacancy, I came up with about 70 buildings. Again,  
15 these were not inspected nor was there an economic  
16 analysis done, obviously. I came up with about 70  
17 buildings that just on that first pass would meet  
18 those qualifications. As I was sitting here this  
19 morning, I went through that list of 70 buildings to  
20 see in my own mind if I knew where they were, what  
21 they looked at. And again, physical location. And  
22 of that 70, about 44 looked like they would pass at  
23 least physical location muster. Now, none of that  
24 goes to the economic viability. And again, every  
25 building would have to be inspected all by itself.

BILL NO. 990812

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2 Each one is a suey-generous type of property, where  
3 you would just simply have to say on an ad hoc basis  
4 whether this makes sense or not. But I do believe  
5 that the pool does exist. We were here last; there  
6 was some testimony that everything that can be  
7 converted has been or most of them have. I'm not so  
8 sure that's the case, again, just based on the quick  
9 kind of first pass analysis that I did with the  
10 information that we have. And I'm not here to tell  
11 you that all 44 of those buildings could possibly  
12 pass the economic test, the muster for that.

13           One of the things that has made this  
14 conversion bill so successful, I believe, is that it  
15 is not just that it is a 10-year abatement when you  
16 do this conversion; it's been coupled with some  
17 other things, i.e., historic tax credits. Not so  
18 sure, in fact, we know that new buildings will not  
19 be able to make that kind of kind of coupling. So  
20 the one final thing I would like to add is that --  
21 and maybe this is more of an aesthetic argument, in  
22 that some of these buildings are historic. And it's  
23 my experience that it is a lot cheaper to build new  
24 than it is to convert. If you have buildings that  
25 might still retain historic nature of the City and

BILL NO. 990812

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2 if I'm developer -- and again, the developers can  
3 testify about this better than I. But if I'm a  
4 developer, I might say, "Well, yeah, it would nice  
5 to have that building, but that lot is really what  
6 I'm interested in. I can knock that building down,  
7 build cheaper new." And the question is, is that  
8 what we want to do as a matter of policy? Are we  
9 concerned about maybe savings som of that? But  
10 again, that's not my decision to make. I just raise  
11 that for your consideration.

12 COUNCILMAN DI CICCO: I understand that  
13 and I appreciate it, but if it's a building that has  
14 historical significance, they're just not going to  
15 be able to knock it down that easily either.

16 MR. GLANCY: It may not be historically  
17 certified by the Historical Association, but it may  
18 have historical significance and you can make those  
19 kinds of moves.

20 COUNCILMAN DI CICCO: And I guess the  
21 other thought that I've had is in the area you just  
22 described, there isn't really that much land where  
23 new construction could begin to take place, I don't  
24 think.

25 MR. GLANCY: Well, again, as I said --

BILL NO. 990812

1  
2 well, there's probably some on the riverfront if we  
3 go north and south of Penn's Landing.

4 COUNCILMAN DI CICCIO: And that's going  
5 to occur anyway. We're negotiating now with  
6 community groups along Delaware avenue to do some  
7 multi-level high-rise apartment buildings on the  
8 river, whether there's a tax abatement or not. But  
9 again, I think the developer Mr. Kline is in the  
10 room today can testify better than I can.

11 MR. GLANCY: I agree with you, but as I  
12 indicated, you can find land if you knock something  
13 down, and that's really a concern.

14 COUNCILMAN DI CICCIO: If you do and you  
15 take it and you knock something down, historical  
16 significance aside, we've accomplished something.  
17 We're taking a vacant building, putting up a new  
18 structure, and providing an opportunity for people  
19 to move into the City. I mean, that's what this is  
20 about. It's about reinventing and recreating  
21 neighborhoods and giving people an opportunity to  
22 want to move in. So if it's an old building, we  
23 take it down and they build new and they take  
24 advantage of this bill, I think we've accomplished  
25 what we've set out to do, repopulate the City and

BILL NO. 990812

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we're going to start from Center City and continue to go from there out.

MR. GLANCY: I don't disagree with you, Councilman.

MR. NADOL: One of the other concerns that we would have, as you noted there are proposals for additional apartment construction that would happen -- would very likely happen with or without this abatement. And to the extent that that were to occur, the cost impact could become significantly greater than what we've seen. We based our financial analysis on just the last several years worth of activity where new apartment construction has happened to have been relatively modest in scale and almost exclusively within the low income housing market. If we do see -- and there are a number, as you've indicated, a number of major projects in the pipeline. If we do see those come to fruition soon, we might be foregoing more revenues that we would have received even without this abatement, and that is just something to take into consideration.

COUNCILMAN DI CICCO: Let me rephrase that and then we can go on with the other witnesses. There are two project that I'm aware of in my

BILL NO. 990812

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2 district. One has already been tiffed. That's the  
3 multi-level high-rise apartment at Seventh and  
4 Walnut. So that wouldn't even come under this;  
5 they've already gotten tiffed. The other is the  
6 proposal by DePaul for a high-rise development on  
7 the river. So really it's only one that is even  
8 being proposed and would be affected by this. My  
9 hope is that what we get out of this is the same  
10 benefits that we got out of the conversion bill that  
11 will stimulate simultaneously conversions and new.  
12 Thank you. Thank you, Madam Chair.

13 COUNCIL PRESIDENT VERNA: Thank you. Do  
14 we have anyone else to testify on this bill?  
15 Please approach the witness table, sir.

16 COUNCILMAN COHEN: I have a question.

17 COUNCIL PRESIDENT VERNA: I'm sorry.  
18 Councilman Cohen.

19 COUNCILMAN COHEN: First of Councilman  
20 DiCicco. We're on 812?

21 COUNCILMAN DI CICCO: Yes.

22 COUNCILMAN COHEN: I was trying to  
23 relate -- unfortunately, I wasn't here at the very  
24 beginning of the discussion. I was trying to relate  
25 the discussion that you and Chairman Glancy of the

BILL NO. 990812

1  
2 Board of Revision of Taxes was having to this bill.  
3 Could you help me with that?

4 COUNCILMAN DI CICCO: I think what the  
5 chairman was suggesting that in an area which we  
6 refer to the Center City from Washington Avenue to  
7 Spring Garden, river to river, there were about 77  
8 buildings that, in his opinion, may qualify for  
9 conversion.

10 COUNCILMAN COHEN: What do you mean by  
11 conversion?

12 COUNCILMAN DI CICCO: Converting vacant  
13 office buildings or industrial buildings to  
14 residential rental units which was a bill that this  
15 Council passed a couple of years ago. And beyond  
16 even all of our expectations there are a significant  
17 number of buildings that have already been converted  
18 or are in the process of being converted. Mr.  
19 Glancy suggests that possibly 40, 44 of those 77  
20 buildings would qualify or pass muster just on the  
21 integrity of the building, not looking at the  
22 economics of the building for conversion. Should  
23 this bill pass, people may abandon the notion of  
24 doing the conversions and opt for new construction.

25 What I say is even if they take that

BILL NO. 990812

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2 building which would qualify for conversion but  
3 decided it's cheaper to do new and they tear it  
4 down, so what? We have a new building, we're  
5 providing for people to come into the City because  
6 there's a demand for people to want to move into the  
7 City and move into these rental units. Whether it's  
8 converted or new, I think we've accomplished our  
9 mission by repopulating these neighborhoods.

10 COUNCILMAN COHEN: But the basic purpose  
11 of this bill is to remove the limitation that may be  
12 abatement applicable only to a home --

13 COUNCILMAN DI CICCO: To owner-occupied  
14 unit.

15 COUNCILMAN COHEN: So the purpose of  
16 this bill is to eliminate that exemption.

17 COUNCILMAN DI CICCO: Right.

18 COUNCILMAN COHEN: And why that?  
19 Because I understood because I think I remember the  
20 original discussion, the main point was this is to  
21 benefit owner-occupied people.

22 COUNCILMAN DI CICCO: Because  
23 originally, and correct me if I'm wrong, Mike, the  
24 bill I think said up to three or four unit  
25 dwellings, and we actually amended that to include

BILL NO. 990812

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2 multi-level high-rise apartment buildings. And if  
3 you had a developer and he or she is required to  
4 live in a unit, how many units could they possible  
5 live in? It's really taking that out of there  
6 saying, you no longer have to be an owner-occupied  
7 unit to qualify.

8 MR. NADOL: If I may try to clarify very  
9 briefly. Under the current abatement programs of  
10 the City, apartment housing, newly constructed  
11 apartment housing, newly constructed rental housing  
12 is eligible for a three-year full abatement. This  
13 bill will shift that category of property into a new  
14 category and along with other recent amendments  
15 approved by Council within recent months would have  
16 the effect of having apartment dwellings receive  
17 eligible for a 10-year phased out abatement for  
18 newly constructed apartment buildings.

19 COUNCILMAN COHEN: Only for newly  
20 constructed.

21 MR. NADOL: Newly constructed apartment  
22 buildings under this ordinance would go from  
23 eligible for a three-year full abatement to become  
24 eligible instead for a 10-year phased out abatement.  
25 Phasing out, you know, a hundred percent in the

BILL NO. 990812

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first year, 90 percent in the second year, 80 percent and so on over 10 years.

MR. GLANCY: If I can just add, all new residential construction would fit into that category, all new residential construction. So homeowners are part of that.

MR. NADOL: Homeowners are now already part of that or will be pursuant to a very recently passed ordinance. This would also extend that change to apartment dwellings.

COUNCILMAN COHEN: And what was the concern you raised that you thought we ought to be thinking about?

MR. GLANCY: The concern I raised, and just for consideration, was that the 10-year conversion abatement that is currently in effect is so successful that would this ordinance, which would encourage new construction as opposed to conversion of older buildings to residential dwelling units, would that impede the success of our currently very successful ordinance. And I raise that for Council's consideration.

COUNCILMAN COHEN: And I gather Councilman DiCicco's response was sort of, so what,

1 BILL NO. 990812

2 it would be beneficial if it did.

3 COUNCILMAN DI CICCO: Absolutely.

4 COUNCILMAN COHEN: At least I understand  
5 the issue now. I'm sorry to make everybody go over  
6 it.

7 COUNCIL PRESIDENT VERNA: The Chair  
8 recognizes Councilman O'Neill.

9 COUNCILMAN O'NEILL: Yes, Madam Chair.  
10 I just want to let the Committee know, and I  
11 mentioned it to the sponsor, I will have an  
12 amendment to exclude my district from this. I'd  
13 like to explain why.

14 This bill, I believe, is a good bill for  
15 many areas in the City. I do not need or have to be  
16 responsible for having encouraged the development  
17 of one more apartment building in my district. To  
18 the extent that different parts of the City have  
19 different needs, I would like that to be recognized.  
20 This little different from what I was earlier today.  
21 I have no problem with the concept of it or what  
22 Councilman is encouraging in certain areas of the  
23 City that could really use it. But, again, if there  
24 was a bill here that was going to figure out -- that  
25 was going to encourage apartments being torn down in

BILL NO. 990812

1  
2 turned into single family houses, that's what people  
3 in my district would be looking for, not encouraging  
4 more apartments. That would be the purpose behind  
5 my amendment.

6 COUNCIL PRESIDENT VERNA: Any other  
7 comments or questions from Members of the Committee?

8 I believe we have a gentleman that had  
9 wanted to be recognized. Mr. Kline.

10 MR. KLINE: Afternoon. Thank you for  
11 giving me the opportunity to participate. Thank you  
12 for giving me the opportunity to participate. My  
13 name is Steven Kline, and I'm the president of the  
14 Kline Company, and we specialize in developing  
15 apartments in the Suburban Philadelphia market,  
16 Bucks, Chester, Montgomery County, and down in  
17 Orlando.

18 COUNCILMAN DI CICCO: Excuse me, Mr.  
19 Kline, can you identify where you live?

20 MR. KLINE: I live on 217 Delancy  
21 Street. I'm a Philadelphia resident, love living  
22 downtown, a long time suburbanite, wouldn't go back,  
23 it's the best, selling all my friends.

24 Anyway, we've owned at site at 18th and  
25 Vine for 17 years. It's the large parking lot

BILL NO. 990812

1  
2 right in front of Logan East. We've been trying to  
3 build a residential apartment community there for  
4 several years. Unfortunately, the economics don't  
5 allow us to do so. Let me explain a little bit to  
6 you why that's so. In the suburbs it costs us about  
7 \$45 a foot to build an apartment complex. In the  
8 City, it's over \$100 a foot because of the high-rise  
9 construction costs that you incur. The rents in the  
10 suburbs are about \$1 to \$1.10. The rents in the  
11 City, probably \$1.60 to \$1.70. So you can see the  
12 economics really are very difficult, almost  
13 impossible to complete. In addition, the real  
14 estate taxes in the City as they exist today after  
15 the short three-year tax abatement are double what  
16 they are in the suburbs. So what's happening is  
17 that you see no new apartment construction. There  
18 hasn't been an apartment construction of a new  
19 building for the past 10 years. What has been very  
20 successful is the bill where you have allowed the  
21 tax abatement for conversions of office buildings  
22 and industrial buildings to residential. So you  
23 have now approximately 8--, 900 units that have been  
24 completed and there are others in the pipeline. And  
25 to confirm what I'm saying, it's very easy. Just

BILL NO. 990812

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2 look around the City. There are no new apartment  
3 buildings and we are seeing new conversions of older  
4 buildings to apartments. The marketplace speaks for  
5 itself. It confirms what I'm here to tell you.  
6 Without the tax abatement, there will not be any new  
7 residential apartments unless there is help from  
8 some part of the City, and the tax abatement program  
9 provides such a program.

10 I've heard some comment here today as I  
11 listened to the testimony and I'd like to respond to  
12 that as well. It was said today that the City would  
13 lose certain revenues through the tax abatement  
14 program. And there is a study by Erston Young that  
15 points out that the City would gain revenues  
16 although the City would lose money from the tax  
17 abatement by populating the City with wage earners,  
18 obviously the wage tax and other incidental taxes  
19 are available. The other thing that happens as  
20 well, the Erston Young study says that about 75  
21 percent of the money earned by people living in the  
22 City would be spent in the City. So there is a net  
23 gain in City populating the City providing housing  
24 of all types. What this bill is intend to do is  
25 really level the playing field so we have new

BILL NO. 990812

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2 apartment buildings as well as converted apartment  
3 buildings. And I think and I can testify for my  
4 fellow developers that you will see both type of  
5 activities occurring because the conversion has a  
6 certain charm, a certain elegance that exist with an  
7 older building. A newer building is more  
8 contemporary, it's sleeker. It's like having two  
9 flavors of ice cream; some like chocolate, some like  
10 vanilla; some black clothes, some like blue clothes.  
11 And that's what you're really providing here, a  
12 chance to level the playing field to allow the City  
13 offer all different types of residential housing for  
14 people who want to come downtown. And in fact,  
15 there is a demand for people who want to come  
16 downtown. So it's my suggestion here that by  
17 passing this bill you would level the playing field  
18 and you would see in this City new development such  
19 as you're seeing of the conversion and you would  
20 have both types of building here and you'd have  
21 choices for people and make it further enticing to  
22 come and live in the City.

23 COUNCIL PRESIDENT VERNA: Thank you, Mr.  
24 Kline. The Chair recognizes Councilman DiCicco.

25 COUNCILMAN DI CICCO: Thank you, Madam

BILL NO. 990812

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Chair. Mr. Kline, the property that you mentioned that you own and operate as a parking lot, you're paying a certain dollar amount in taxes, real estate taxes today.

MR. KLINE: Right.

COUNCILMAN DI CICCO: You would propose to build at some point a luxury high-rise apartment facility. Could you tell me what the taxes are today and what the taxes at the year of the tax abatement on the real estate of the improvements would be approximately?

MR. KLINE: Today I believe our taxes are about \$50,000, give or take, and in 10 years from now I would think it would probably be somewhere from 600--- and 750,000 a year.

COUNCILMAN DI CICCO: Not counting what the economic impact to the City is by bringing more people in and the spending, as was reported by Erston Young.

MR. KLINE: Basically, put 300 people in an apartment building and minimum salary would have to be \$50,000. You're talking about 15 to \$20 million OF earning power per year. Take the wage tax on that, it certainly makes up for the real

BILL NO. 990812

1  
2 estate taxes and then all the money that's being  
3 spent.

4 COUNCILMAN DI CICCO: Thank you. Thank  
5 you, Madam Chair.

6 COUNCIL PRESIDENT VERNA: Thank you.  
7 Any other questions? The Chair recognizes  
8 Councilman Cohen.

9 COUNCILMAN COHEN: Could you explain why  
10 a conversion doesn't run into the same market  
11 problems that new construction does currently? You  
12 gave us the illustration of how much more expensive  
13 it is in Philadelphia for new construction and how  
14 you can't compete with the suburbs. Why can the  
15 City compete under conversion? What changes?

16 MR. KLINE: The bill that you passed  
17 several three years ago, the tax abatement has  
18 allowed the conversion of the older buildings to the  
19 residential apartments. That difference of not  
20 paying the taxes for 10 years has made the  
21 difference where something is not economically  
22 viable to where a project is economically viable,  
23 and that's made the difference. The first buildings  
24 that you see converted also have had other tax  
25 advantages, sometimes facade easements, historic

BILL NO. 990812

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2 credits. So when it's all said and done, you've got  
3 to say that the initial round of conversions from  
4 office to residential has had some form of subsidy  
5 in one form or another, but primarily the tax  
6 abatement bill has been the major driving force and  
7 all we're saying here today is level the playing  
8 field, let new construction and the tax abatement  
9 for conversion exist side by side. And it's my  
10 opinion that you will see both converted residential  
11 buildings and new apartment buildings.

12 COUNCILMAN COHEN: Well, the question I  
13 have is, their real movement of foot to keep  
14 knocking down the wage tax to the point, not only to  
15 go into 4 percent, but far below it if possible  
16 because most people for many years have said that's  
17 the real impediment to people coming into the City  
18 much more other conditions. Yet you kind of base  
19 your argument on the fact that more money will come  
20 in on the wage increase and the wage tax. And it  
21 just seems to me it continues to put the City in a  
22 very difficult bind. On the one hand we're trying  
23 to reduce reliance on it; on the other hand we're  
24 increasing the City's reliance on it.

25 MR. KLINE: Well, I think, sir -- I'm

BILL NO. 990812

1  
2 not an expert, but I've just read some of these  
3 reports, and basically you put so much purchasing  
4 power in a 200 or 300 unit apartment complex that  
5 the amount of taxes that would be generated to the  
6 City through even a lower wage tax and amount of  
7 money that is spent by these residents who are  
8 coming down to the City will far exceed the amount  
9 of revenue that is not being paid because of the tax  
10 abatement. In effect, you can see that the new  
11 residents are paying more taxes than the building  
12 would have paid with real estate taxes.

13 COUNCIL PRESIDENT VERNA: Thank you.

14 Any other questions from Members of the Committee?

15 COUNCILMAN DI CICCO: Thank you for your  
16 time.

17 COUNCIL PRESIDENT VERNA: Thank you Mr.  
18 Kline.

19 Do we have anyone else testify on this  
20 bill?

21 MR. EDISON: My name is Ben Edison. I'm  
22 a developer from Manayunk. I was actually here on  
23 another issue, but I think it's important because I  
24 personally have taken advantage of this bill, the  
25 10-year conversion bill. I converted a property

BILL NO. 990812

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2 that was sitting vacant for eight years; it's now  
3 full. I took a survey of over 200 people who live  
4 there. The 200 people who live there represent  
5 \$57,000 a year in income. That \$57,000 a year  
6 income, as Steve said, can be translated into \$12  
7 million. Those people are paying City wage tax.  
8 Surprisingly, because I am in Manayunk, 70 percent  
9 of those people who are living in my apartments work  
10 outside the city, but yet they have chosen to come  
11 here and pay the City wage tax. Another interesting  
12 statistic is 70 percent of those people who live in  
13 my buildings previously lived outside the City. So  
14 I was able attract people who were suburbanites,  
15 they came into the City, and they're paying the City  
16 wage tax. The other incredible thing about my own  
17 survey is that very surprisingly none of these  
18 people have children. So they're paying City wage  
19 tax, they're helping our school system in effect by  
20 subsidizing our school system by paying our taxes  
21 and certainly they spend a lot of their disposable  
22 income in Manayunk.

23 I heard that there's all these available  
24 buildings that can be converted, however, they're  
25 not in Manayunk. There are no buildings that I know

BILL NO. 990812

1  
2 of, and I've been in Manayunk for 12 years. I've  
3 taken advantage, like I said, of the older buildings  
4 and gone and converted them. There are no new  
5 buildings. Maybe Dave Glancy knows of one or two; I  
6 don't. I've been there a long time. So I think  
7 what's the difference? If it's new construction or  
8 old construction, the City is losing people all the  
9 time.

10 The only other thing I'd like to add is  
11 I took a survey of my people again -- actually, City  
12 Planning did also. 46 percent of my tenants would  
13 consider buying a house in Philadelphia if they were  
14 available. So I mean, it's a home run for everyone  
15 here because one of the biggest problems is that  
16 we're losing all these people all the time.

17 COUNCIL PRESIDENT VERNA: Thank you.  
18 Thank you very much.

19 Any questions from members of the  
20 Committee?

21 Thank you, sir.

22 Do we have anyone else to testify on  
23 this bill?

24 Seeing none, I would ask the clerk to  
25 please read Bill Nos. 990760 and 990761.

1 BILL NOS. 990760, 990761

2 I'm sorry, at this point the Chair would  
3 like to recognize Councilman DiCicco.

4 COUNCILMAN DI CICCO: Thank you, Madam  
5 Chair. I have an amendment to offer to Bill No.  
6 990812. In the interest of time I will supply the  
7 stenographer with a of the copy of the amendment and  
8 also make a copy available to all members of the  
9 Rules Committee.

10 COUNCIL PRESIDENT VERNA: Mr. Lombardo,  
11 please identify yourself for the record and proceed  
12 with your testimony.

13 MR. LOMBARDO: Good afternoon, Madam  
14 Chair, Members of the Committee. Richard Lombardo  
15 from the City Planning Commission here today to  
16 speak on behalf of Bills 990760 and 990761.

17 COUNCIL PRESIDENT VERNA: Mr. Lombardo,  
18 I'm sorry. The Clerk did not read the titles of the  
19 bills. I think we're all kind of anxious at this  
20 point.

21 MR. LOMBARDO: I may have read off the  
22 wrong numbers.

23 THE CLERK: Bill No. 990760, an  
24 ordinance amending title 14 of the Philadelphia Code  
25 entitled "Zoning and Planning" by amending Chapter

1 BILL NOS. 990760, 990761  
2 14-1600 entitled Miscellaneous by amending Section  
3 14-1615 entitled Main Street/Manayunk Special  
4 District Controls, by establishing use and zoning  
5 controls for Venice Island under certain terms and  
6 conditions.

7 Bill No. 990761, an ordinance amending  
8 Title 14 of the Philadelphia Code entitled "Zoning  
9 and Planning," by amending chapter 14-200 entitled  
10 Residential Districts by repealing 140221 entitled  
11 "RC-1" Residential District, and adopting a new  
12 section 14-221 entitled "RC-1" Residential District,  
13 under certain terms and conditions.

14 MR. LOMBARDO: Once again, Madam Chair,  
15 Members of the Committee, my name is Richard  
16 Lombardo here to speak on both of these bills.  
17 Actually, of these two bills, the most substantive  
18 bill and the bill, I think, is generated most  
19 interest is 960 which establishes or rather expands  
20 the zoning overlay, special zoning controls for  
21 Manayunk to include approximately half of Venice  
22 Island. Before I get into the exact testimony, I  
23 want put a couple thing very quickly on the record.  
24 First of all, neither of these bills have anything  
25 to do with changing, amending, recreating, undoing

BILL NOS. 990760, 990761

1 the floodplain controls of the Schuylkill River.  
2  
3 There will probably be lots of testimony today about  
4 building in the floodplain and floodway of the  
5 river. These bills are two bills that deal with  
6 changing the land use controls on Venice Island from  
7 what we believe is an obsolete zoning classification  
8 G-2 General Industrial to a zoning classification  
9 which will allow for both conversion and new  
10 construction of residential units. This Council for  
11 a number of years has been endorsing various pieces  
12 of legislation on both the Schuylkill and Delaware  
13 waterfronts to convert from industrial zoning to  
14 various zoning classifications that would allow  
15 mixed use development to take place. And a lot of  
16 mixed use development has taken place, Piers 3 and  
17 5, the bills that were before counsel earlier this  
18 morning for the Old Tavis Dinner Theater to allow  
19 mixed use development of that, rezoing of the south  
20 waterfront south of Penns Landing to C-3 Commercial  
21 to allow, again, for multi-family and mixed use  
22 development, the approval of the hotel at Penns  
23 Landing, all within the floodplain of the Delaware  
24 River. I just want to make a point that this is not  
25 a new idea of taking obsolete industrial zoning and

BILL NOS. 990760, 990761

1 rezoning the waterfronts to allow for residential  
2 development.

3  
4 The second point I wanted to make is  
5 this process that we've been going through in the  
6 last couple years is part of over a 25-year process  
7 that the Planning Commission has been involved in  
8 making plans, amending plans, redoing plans,  
9 changing plans, and putting forth new plans for  
10 Manayunk. Most of what's happened in Manayunk over  
11 the years is the results of various planning efforts  
12 done in conjunction with the present District  
13 Councilperson, present residents, their  
14 predecessors. This plan is a result of a request  
15 made to us to look at the issue of what is the  
16 future of Venice Island given the fact that today  
17 you have on the island one operating industry,  
18 Smurfet Stone, the rest of the Island is either  
19 vacant land or vacant industrial properties. It's  
20 part of a larger question of the future of this type  
21 of industrial in this whole area of northwest  
22 Philadelphia. If you're familiar with driving a car  
23 up a Umbria Street above Manayunk, you will see the  
24 industrial areas generally characterized by  
25 non-industrial uses, autobody shops, junk yards,

1 BILL NOS. 990760, 990761

2 self storage, medical office buildings, diners. But  
3 in fact, what's sort of been happening is industrial  
4 areas in the district also understand this that  
5 industry is either leaving the city or going to the  
6 newer industrial parks or Keystone opportunity zones  
7 or places where the City is able to attract business  
8 by offering tax incentives and other things.

9 We were asked to look at the issue of  
10 what is the future of Venice Island. Against the  
11 background of years of articles and testimony  
12 dealing with traffic conjunction --

13 COUNCIL PRESIDENT VERNA: Councilman  
14 Cohen and I are at a loss. We just don't know where  
15 Venice Island is located.

16 MR. LOMBARDO: I'm going to get there.  
17 I was just trying to give you the context in which  
18 we did this. I'm sorry, I apologize, and I'll zero  
19 it in. We're asked to come into Manayunk to look at  
20 this whole issue against the background of traffic  
21 and parking congestion. Venice Island is the area  
22 of Manayunk which is bounded by the Schuylkill River  
23 and the Manayunk Canal. It extends basically from  
24 Lock Street which is just a little bit above Shores  
25 Lane and it extends up to the Flat Rock Dam which

1 BILL NOS. 990760, 990761

2 is, again, a little bit below Shawmont Avenue. The  
3 island is depicted on that map there.

4 COUNCIL PRESIDENT VERNA: Is that the  
5 area red?

6 MR. LOMBARDO: Well, the area in red is  
7 the area we're proposing in the controls. The  
8 island is much longer. As I said, we're only  
9 proposing controls for about half of the island.  
10 The reason for that is the northern end of the  
11 island Mr. Chapman has pointed to is currently today  
12 occupied by Smurfet Stone which is an industrial  
13 paper box, paper product manufacturer and we wanted  
14 it clear that nothing we're doing is at all intended  
15 to jeopardize or discourage or affect the  
16 continuation of that business. So we're not putting  
17 changing zoning in that business, we're not putting  
18 any overlay or any impediment in the continuation of  
19 that operation. We're only talking about the area  
20 south of that, which again as I characterized, is  
21 basically vacant industrial land, vacant industrial  
22 buildings. There is, I believe, a restaurant and an  
23 auto detailing shop. The whole island, including  
24 the lower end as well as Smurfet Stone is zoned  
25 industrial today with the exception of recreational

1 BILL NOS. 990760, 990761

2 land owned by the City of Philadelphia, Venice  
3 Island playground and area south of that which was  
4 acquired in more recent areas for river front access  
5 and river front recreation.

6 This plan was developed against the  
7 background of numerous articles, community meetings  
8 dealing with issue of traffic congestion and  
9 parking. The City commission a study by Bold Smyth  
10 of traffic in Manayunk. Layered on top of that,  
11 Planning Commission conducted its own traffic study,  
12 traffic survey. We also had a citizen survey  
13 questionnaire that was mailed out to residents to  
14 add certain their living patterns and how many cars  
15 they own, where they park, how many people in their  
16 family had cars to sort of deal with the issue of  
17 what's the truth, what is the real factual situation  
18 in terms of traffic and parking in Manayunk. No  
19 surprise, there is conjunction there is traffic  
20 construction, there is a shortage of on-street  
21 parking. That itself has led us in the community to  
22 adopt certain policies in dealing with conversions.  
23 For example, our policy has been for a number of  
24 years of a conversion of a building to apartment  
25 that they provide more than one space per dwelling

BILL NOS. 990760, 990761

1  
2 unit, one off-street parking space for dwelling  
3 units. We look for one off-street parking space per  
4 bedroom rather than per dwelling unit.

5           The point I'm making about parking is we  
6 looked at this as sort of the motivating driving  
7 force. However we change land use on Venice Island  
8 future, we have to do it being cognizant of the  
9 traffic impact of the change abuse. What would be  
10 the impact of any new development on the island  
11 against the existing background traffic in the  
12 surrounding community. And that is because you are  
13 dealing with a series of streets that end at the  
14 river. There is no -- there is very limited access  
15 once across the river. You have a Green Lane  
16 Bridge. Next place to cross the river south of here  
17 is down at City Avenue Bridge, north of here you  
18 have go up to Conshohoken to cross the river. So  
19 you have already a funneling effect of traffic. So  
20 we had to look at what the impact of future  
21 development would be on that background traffic. We  
22 used as our point of reference, not to see new  
23 construction that would require infrastructure  
24 improvements to accommodate its traffic. In other  
25 words, we are looking at a level of development

1 BILL NOS. 990760, 990761

2 would go up to the point that you would not need to  
3 rebuild bridges, widen streets, try to build new  
4 roadways. Basically, the development live within  
5 the available capacity of the surrounding streets in  
6 the area.

7 That being said, we analyzed what the  
8 traffic impact would be of various types of  
9 development. And I don't think --

10 COUNCILMAN COHEN: May I interrupt you  
11 for a moment? Is it really an island?

12 MR. LOMBARDO: It is really into the  
13 island.

14 COUNCILMAN COHEN: Where to you access  
15 into the island?

16 MR. LOMBARDO: There are three points of  
17 access into the island today -- actually four points  
18 of access, Lock Street at lower end, Cotton Street  
19 about a third of the way up, there's a bridge that  
20 is not a street that goes over to a parking lot  
21 which is operated by the Manayunk Development  
22 Corporation for Shoppers parking that occurs just  
23 below the Green Lane Bridge and north of that there  
24 is a City street, Levering Street which becomes Flat  
25 Rock Road that comes down from Henry avenue and goes

1 BILL NOS. 990760, 990761

2 on to the island and then ultimately culminates in a  
3 cul-de-sac up at Smurfet stone. So there are four  
4 points of access to the island today.

5 Now to get back to what I was saying.  
6 We started to analyze the impact of the potential  
7 land uses, notwithstanding our believe, which I  
8 began by saying industrial is no longer in the  
9 future. When analyzed the impact of light  
10 industrial, heavy industrial, retail commercial,  
11 office commercial, and residential. In no surprise  
12 the lowest impact of traffic is that of residential.  
13 The spectrum runs -- and usual residential is the  
14 basis, the lowest, on weekday traffic retail would  
15 produce 15 percent from a square per square foot  
16 basis, 15 times more traffic than an equal square  
17 foot of residential. Heavy industrial would produce  
18 12 times the amount of traffic of an equal square  
19 foot of residential development. Light industrial  
20 approximately would be 7 times as much traffic. And  
21 office commercial approximately 4 times as much  
22 traffic.

23 COUNCILMAN NUTTER: I'm sorry to  
24 interrupt you. Where did those figures or that  
25 analyst, where does that come from?

1 BILL NOS. 990760, 990761

2 MR. LOMBARDO: That comes from our  
3 traffic people basically used standard planning --  
4 planning standards that are put forth by  
5 organizations like the American Planning  
6 Association, Trip Generation Annual Traffic  
7 Engineers.

8 COUNCILMAN NUTTER: Somewhere in that  
9 book or document there's a formula that lays out  
10 what the anticipated number of trips based on the  
11 type of use, is that what you're saying?

12 MR. LOMBARDO: Right.

13 COUNCILMAN NUTTER: We're taking us  
14 through an analysis of certain types and where  
15 residential was as compared to industrial or  
16 commercial or other uses?

17 MR. LOMBARDO: I was trying to be brief  
18 because most of it, if you look at the studies, even  
19 the studies that were done at Manayunk, the points  
20 of congestion are a.m. rush hour, a.m. peak. So we  
21 looked at the impact of traffic at those points,  
22 a.m. peak. I'm sure you're familiar because you  
23 probably get complaints about it all the time.  
24 Traffic backs up on the Green Lane Bridge up Main  
25 Street. We look at the impact of traffic at those

1 BILL NOS. 990760, 990761

2 particular times of day, a.m. and p.m. peak.

3 COUNCILMAN NUTTER: Okay.

4 MR. LOMBARDO: So that being said, so we  
5 come to the conclusion that residential will have  
6 the least impact.

7 The next thing we did was we then looked  
8 at the amount of development that could potentially  
9 take place on the island, and we sponsored a suret  
10 of potential land use. We invited architectural  
11 planners to come in and participate in an all-day  
12 examination and putting forth the proposals for the  
13 potential development of Venice Island. And what  
14 they all came up with using the underlying zoning  
15 G-2, which is a very high density district, it's a 5  
16 FAR district, very intense development, it's very  
17 intense mixed-use developments of retail and an  
18 apartments and even a supermarket. But various  
19 levels of entertainment, residential, and retail.  
20 That was presented to the community. Community  
21 comments were taken. Not to abbreviate that, but  
22 the point I wanted to get to is that we took it back  
23 to our own office and we began to analyze it. All  
24 we found real quickly is that approaching anywhere  
25 near those levels of development that came out in

BILL NOS. 990760, 990761

1  
2 the suret would just grid lock Manayunk. You just  
3 couldn't do enough infrastructure of prudence to  
4 deal with the traffic. You could replace the Green  
5 Lane Bridge. I mean, you'd be talking about  
6 infrastructure improvements like rebuilding the  
7 Schuylkill Expressway from Manayunk to Center City.  
8 I'm somewhat exaggerating. You'd be talking about  
9 major infrastructure improvements to accommodate the  
10 amount of traffic that would result from the levels  
11 of development that development teams put forth in  
12 the suret.

13 So we went back to our point of  
14 departure became at point that any development would  
15 be limited to development that could exist within  
16 the background traffic conditions in Manayunk, and  
17 we came up with a number of scenarios that looked at  
18 a residential and limited commercial reuse for the  
19 island. FAR ratios running from 1.0 to about, I  
20 think, up to the 5.0 of the underlying G-2  
21 industrial zoning. We, after analyzing the traffic  
22 impact against our benchmark, we came to the  
23 conclusion that 1 FAR with limited retail commercial  
24 was the desirable level of development that we  
25 thought that Venice Island could accommodate. We

BILL NOS. 990760, 990761

1  
2 had a meeting that Councilman Nutter participated  
3 in, actually arranged to participate in with the  
4 residential communities to discuss our  
5 recommendations of the plan. There are other  
6 recommendations, but I want to talk about these  
7 bills and not the other recommendations. And we  
8 then had a subsequent meeting with the Manayunk  
9 Development Corporation, which more represents the  
10 shopkeepers and other business interests down on  
11 Main Street. We found out two things. It wasn't an  
12 awful lot of interest in retail commercial on the  
13 Island. Matter of fact, the Manayunk Development  
14 corporation, they are here and can speak for  
15 ourselves, I think were concerned about if you put  
16 retail on the island you would create levels of  
17 congestion activity would only detract from the  
18 commercial Main Street. So the MDC's point of view  
19 was they would rather see residential and hotel but  
20 no commercial.

21 We went back and analyzed that and said,  
22 "Well, if we went all residential, we can up the FAR  
23 from the 1.0 to a 1.35 because we eliminate the  
24 heavier traffic from the retail. But if we added  
25 back in hotels, in fact hotels would generate

BILL NOS. 990760, 990761

1  
2 probably a little bit more traffic than the retail  
3 would, so we'd have to lower the FAR to below to  
4 1.0. At that point in time, the business community  
5 backed off the interest in hotels and said they'd  
6 rather go to an all residential scenario at which  
7 point we prepared another draft of the plan with the  
8 intention of -- and resubmitted that back out for  
9 discussion. We got comments from the MDC and we got  
10 comments about 10 days ago or 2 weeks ago from the  
11 community on that plan. Subsequently, this past  
12 Monday we've had meeting at the Planning Commission  
13 Office with both groups representatives from MDC as  
14 well as representatives from the residential  
15 community. And I think the Councilman somewhere  
16 later in the testimony can characterize what the  
17 results of that meeting were. Basically, some folks  
18 still opposed the plan, some folks have gone over  
19 from being opposed to it to supporting the plan, and  
20 some people who came into the room supporting the  
21 plan left the room still supporting the plan.

22 The plan I'm talking about is a plan  
23 that basically calls for about a third of the island  
24 to be recreational, about a third of the island  
25 residential, and about a third of the island to

BILL NOS. 990760, 990761

1  
2 remain industrial. The area that would be  
3 residential would be limited to just residential and  
4 it would be further limited by requirements that  
5 buildings provide setbacks from both the river front  
6 and the canal to allow for public access to both the  
7 river front and the canal. It would also encourage  
8 cultural and recreational use on the recreationally  
9 zoned portions of the island, the publically  
10 controlled, and not disallow cultural and  
11 recreational uses on the residential parcels as long  
12 as they're within the normal residential  
13 restrictions, like you can't have an amusement park  
14 in the residential district.

15 With me today, I should take the time to  
16 introduce, I have sitting with me today to my right  
17 Elmer Boles who is an engineer and whose firm has  
18 done engineering for development elsewhere, both  
19 inside and outside the City along the Schuylkill  
20 River if the issue comes about developing on an  
21 island, developing the in the floodplain.

22 I also have Charlotte Gaston from the  
23 Law Department and Patrick O'Neil from the Law  
24 Department, and Marty Soffer who is the head of the  
25 Planning Commission's environmental unit.

1 BILL NOS. 990760, 990761

2 COUNCILMAN KENNEY: The Chair  
3 recognizes Councilmember Nutter.

4 COUNCILMAN NUTTER: Thank you, Mr.  
5 Chairman. Mr. Lombardo, why don't we get to what I  
6 think are the most controversial aspects of most of  
7 this discussion which would revolve around, I'm  
8 quite certain, issues related to the ability or  
9 inability, the legality or illegality, compliance  
10 with the Philadelphia Code or non-compliance with  
11 the Philadelphia Code, on the issue of whether or  
12 not development can take place in a floodway or  
13 floodplain in accordance with the appropriate  
14 provisions of the Philadelphia Code. What I would  
15 like you to do is to talk about those provisions,  
16 what is allowed, what is not allowed. I'd also like  
17 to hear from the Law Department on those particular  
18 issues as well in terms of how the Code is not only  
19 interpreted, but how it's implemented and what the  
20 facts are related to those particular issues.

21 MR. LOMBARDO: I'd be glad to do that.  
22 One thing I wanted to tell you is we did prepare an  
23 outline of the floodplain regulations in the  
24 Philadelphia Code as they are --

25 COUNCILMAN NUTTER: The appropriate

1 BILL NOS. 990760, 990761  
2 section from the Philadelphia Code that governs  
3 this?

4 MR. LOMBARDO: The appropriate section  
5 of the Philadelphia Code.

6 COUNCILMAN NUTTER: Thank you.

7 MR. LOMBARDO: Secondly, and I know I  
8 said this at the beginning of my testimony. I'll  
9 just very quickly refer to it again. Nothing in  
10 either one of these two bills is going to change or  
11 propose to change one iota any of these existing  
12 control that exist in the Code today. What I have  
13 given you beginning with the top of the page is  
14 Section 14-1606 entitled floodplain controls for all  
15 bodies of water, the Schuylkill, the Delaware River,  
16 and various creeks, the Wissahickon Creek,  
17 Poquessing Creek, the Pennypack Creek, Cobbs Creek,  
18 in the City of Philadelphia.

19 Cutting to Paragraph 5, it says the  
20 following special controls are imposed to regulate  
21 setbacks in the floodplain, construction and earth  
22 moving activity along water course subject to  
23 flooding. These controls are in addition to the  
24 requirements that the Pennsylvania Department of  
25 Environmental Resources. Note, A, within a

BILL NOS. 990760, 990761

1  
2 floodway. And this is here because the entire  
3 Venice Island is within the floodway of the  
4 Schuylkill River. The Code says, within the  
5 floodway, no encroachment (including fill, new  
6 construction or any development) is permitted except  
7 that public utilities are permitted as long as they  
8 cause no increase in the 100 flood year level.

9 Point 2, public utilities shall be  
10 prohibited from placing mobile homes and/or offices  
11 within the floodway.

12 Point 3, construction or substantial  
13 improvement of any structure used for the production  
14 of storage of any of the following listed materials  
15 or used for any activity required, the maintenance  
16 or supply in excess of 550 gallons or other  
17 comparable volume or used for any purposes involving  
18 the production storage or use of any amount of  
19 radioactive substance shall be prohibited and no  
20 variance granted.

21 This section deals with sensibly not  
22 putting hazardous materials where they can get  
23 pulled into waterers of the water. Now, that's the  
24 sole requirements of what can you cannot do in the  
25 floodway.

1 BILL NOS. 990760, 990761

2 The next paragraph I've included,  
3 Chapter 1800, powers of the Zoning Board.  
4 Jurisdiction and power. Point 1, the Zoning Board  
5 may after public notice and public hearing, A, hear  
6 and decide items -- I don't have to read all that,  
7 but it's, hear and decide appeals on zoning matters  
8 when error is alleged in order to require decision  
9 of termination made by the department of this title  
10 herein decide special exceptions to the provisions  
11 this title and authorize, and this is the important  
12 part, authorize upon appeal in specific cases such  
13 variance in the terms of this title that will not be  
14 contrary to the public interest where owing to  
15 special conditions a literal enforcement of the  
16 provisions of the title will result in unnecessary  
17 hardship so that the spirit of this title shall be  
18 observed substantial justice done subject to such  
19 terms and conditions that the board may decide.  
20 Some of that we go down to -- this is the important  
21 thing. Where the property in question is situated  
22 in areas subject to flooding as provided 14-1606,  
23 that's the floodplain controls, related to flood  
24 plain controls, the Zoning Board of Adjustments  
25 shall consider the following criteria in granting a

BILL NOS. 990760, 990761

1  
2 variance under 14-1801c, which I just read above.  
3 One item the board has too consider, no variance may  
4 be issued that will result in any increase in flood  
5 levels during a regulatory flood. That basically  
6 means, you can still build as long as what you build  
7 after engineering studies is documented that it will  
8 not increase the flooding in the river. This does  
9 not mean that you can't build, it means that you can  
10 only build so long as what you build does not  
11 increase flooding. That is determined by  
12 engineering studies. I don't want to beat a dead  
13 horse. We drafted this legislation, it's been  
14 imposed by the Federal Emergency Management people,  
15 FEMA, imposed on the City. So that people living  
16 and building in the city would be eligible to flood  
17 insurance. If we didn't adopt these regulations --  
18 so this is an insurance issue. If we didn't adopt  
19 these regulations, the City and its residents would  
20 not have been eligible for flood insurance.

21 COUNCILMAN NUTTER: Mr. Lombardo, let me  
22 ask you a question. In 14-1606(5)a.1 --

23 THE WITNESS: Right.

24 COUNCILMAN NUTTER: It reads, no  
25 encroachment; including fill, new construction, or

1 BILL NOS. 990760, 990761

2 any development is permitted except that public  
3 utilities are permitted as long as they cause no  
4 increase in 100-year flood level.

5 MR. LOMBARDO: Right.

6 COUNCILMAN NUTTER: If a person were to  
7 read that and that section only of the Code, would a  
8 reasonable person be left to think that you cannot  
9 build anything in a floodplain or a flood say.

10 MR. LOMBARDO: Absolutely, they would be  
11 lead to believe that.

12 COUNCILMAN NUTTER: If a person read  
13 that section and the rest of the applicable sections  
14 of the Philadelphia Code, would that change your  
15 perspective on what the entire meaning is of whether  
16 or not you can build or not build in a floodway or  
17 flood pain.

18 MR. LOMBARDO: Yes, it was.

19 COUNCILMAN NUTTER: Why?

20 MR. LOMBARDO: Because when you look at  
21 what the board has to consider -- for me it's  
22 different because I was involved in drafting this so  
23 I know what was intended. But if you read the sole  
24 condition that Zoning Board is to consider when  
25 granting a variance in this section of the Code, the

BILL NOS. 990760, 990761

1  
2 condition is not a condition necessarily of whether  
3 it's appropriate development or whether it has  
4 enough parking. It's one issue. The issue to  
5 consider is whether or not the development is going  
6 to increase potential of flooding within the  
7 floodway.

8 COUNCILMAN NUTTER: What is the  
9 connection between 14-1606(5)a.1 and the rest of the  
10 Code? Do they operate separately from each other,  
11 do they operate in conjunction with other?

12 MR. LOMBARDO: They operate in  
13 conjunction with each other. Basically, when you  
14 would get a reference to the Zoning Board, the  
15 Zoning Board would reference 5, they would like that  
16 quote in there. When the Zoning Board got the item  
17 before, they -- and I'm sure anybody who's doing  
18 this would have an attorney who would make a  
19 presentation that would explain that the one  
20 condition the board considering, and the board would  
21 know this themselves, is under Sub A under Paragraph  
22 3, areas within a floodway. That was the only  
23 refusal they would get. They would get a refusal  
24 for being within the floodway.

25 COUNCILMAN NUTTER: So your testimony is

1 BILL NOS. 990760, 990761

2 that you can build in a floodway or in a floodplain  
3 and that if you end up at the Zoning Board of the  
4 Adjustment, the board's role and their criteria is  
5 to take in consideration whether or not the  
6 applicant is able to prove or not prove that this  
7 proposed development will or will not increase the  
8 100-year flood level; is that your testimony?

9 MR. LOMBARDO: That's my testimony.

10 COUNCILMAN NUTTER: Can we hear from the  
11 Law Department on this issue, please?

12 COUNCIL PRESIDENT VERNA: I would just  
13 like to make an announcement that the Finance  
14 Committee public hearing will be held immediately  
15 after this hearing. Thank you.

16 COUNCILMAN COHEN: Councilman Nutter,  
17 could you explain what the issue is immediately that  
18 the Law Department is going to talk about?

19 COUNCILMAN NUTTER: The Law Department  
20 is going primarily talk, Councilman, about the same  
21 issue that Mr. Lombardo talked, but from the Law  
22 Department perspective on the issue of whether or  
23 not you can build in a floodway or a floodplain and  
24 under what circumstances and conditions you can or  
25 cannot do that.

1 BILL NOS. 990760, 990761

2 COUNCILMAN COHEN: What is the issue?

3 Apparently there is a disagreement apparently on  
4 some interpretation of something. What is that?

5 COUNCILMAN NUTTER: The disagreement  
6 quite directly, Councilman, is that if a person were  
7 to read 14-1606(5)a.1 and only read that section,  
8 that person might be led to believe that you  
9 absolutely under no circumstance can build anything  
10 in a floodway or in a floodplain.

11 COUNCILMAN COHEN: That you could not  
12 build.

13 COUNCILMAN NUTTER: That you could not.  
14 The reason I asked Mr. Lombardo, and I'm going to  
15 ask the Law Department the same question, is, again,  
16 whether or not that particular provision solely  
17 operates exclusive of every other provision of the  
18 zoning code or if it is a part of the larger  
19 consideration of the zoning code and when you get  
20 down to 14-1801 3A. So if a person believes that  
21 you cannot absolutely build in a floodway or a flood  
22 plane because they've only read the one section,  
23 therein lies a dispute on the fundamental issue of  
24 whether or not you can build in a floodway or a  
25 floodplain, as explained by Mr. Lombardo. And I

BILL NOS. 990760, 990761

1  
2 don't know what the Law Department is going to say.  
3 The testimony is you can as long as whatever it is  
4 you build doesn't increase the 100-year flood level.  
5 And therein lies some sense of dispute or difference  
6 of opinion by some people in the community. We need  
7 to clear up that fundamental issue because you can't  
8 make any kind of progress.

9 COUNCILMAN COHEN: Are there any  
10 standards anywhere to guide the board in reaching a  
11 conclusion as to whether or not whatever is proposed  
12 is going to increase the likelihood of a flood, or  
13 does the board decide that on its own?

14 COUNCILMAN NUTTER: I believe it's base  
15 odd various studies, but Mr. Lombardo might want to  
16 respond to that and I think the Law Department does  
17 as well.

18 COUNCILMAN COHEN: Very good. Thanks,  
19 Councilman.

20 COUNCIL PRESIDENT VERNA: Does the  
21 gentleman from the Law Department have a copy of  
22 what Mr. Lombardo just read?

23 MR. LOMBARDO: The answer to Councilman  
24 Cohen's question, we are operating in an arena where  
25 you also have the State Department of Environmental

BILL NOS. 990760, 990761

1  
2 Resources as well as FEMA, Federal Emergency  
3 Management people also operate in that arena. There  
4 are standards of the type of engineering studies  
5 that they would require a developer to do. The  
6 reason for the public hearing of the zoning variance  
7 was to do it in a public way, not to just have an  
8 engineer submit a study to a L & I examiner but  
9 rather to have a public forum so that if there was  
10 disagreement, your engineer, if you disagreed, can  
11 argue with their engineer about whether or not their  
12 study is correct or not. The way it works in  
13 Philadelphia with the Zoning Board and Marty Soffer  
14 heads our environmental unit is here, they do the  
15 reviewing of the engineer study for the City and  
16 then would in writing notify the Zoning Board that  
17 that the study does bear out what the engineers are  
18 intending that it wouldn't increase hundred year  
19 flood. That's the way it work. And there are  
20 certain standards there are only certain types of  
21 studies that FEMA and the State and the City would  
22 accept as -- we wouldn't just accept a letter from  
23 an engineer saying it's not going to increase. As a  
24 matter fact, I have Mr. Boles here who has done  
25 these types of studies within the Schuylkill

1 BILL NOS. 990760, 990761  
2 watershed who could testify as to what the standard  
3 are of these studies.

4 COUNCIL PRESIDENT VERNA: Can we hear  
5 from the Law Department, please.

6 MR. O'NEIL: My name is Patrick O'Neil,  
7 and I'm, generally speaking, the City's  
8 environmental counsel. Sitting next to me --

9 MS. GASTON: I'm Cheryl Gaston Deputy  
10 City Solicitor. I am counsel to the Zoning Board of  
11 Adjustment.

12 MR. O'NEIL: Councilman, I suppose if  
13 given that we've heard the conversation to this  
14 point, and both Cheryl and I can probably address  
15 this issue to some extent. The simple answer to  
16 your question, I think, the question being is it in  
17 fact legal to build something in the so-called  
18 floodplain. The answer is yes, it is legal to do  
19 so. And yes, you do read the entire set of  
20 regulations that are provided under Section 14, when  
21 you read them together there is a specific provision  
22 for variances to move forward. I think as a  
23 practical matter, it is probably worth noting that  
24 throughout Philadelphia, I believe Mr. Lombardo  
25 point this out, there's been plenty of building and

1 BILL NOS. 990760, 990761  
2 development in the, quote/unquote, so-called  
3 floodplain, whether it's along the Delaware and  
4 Delaware avenue specifically, whether it's Home  
5 Depot or whether it's redevelopment one of the peer  
6 projects all along and including the Schuylkill.

7 COUNCILMAN NUTTER: Mr. O'Neil, I hate  
8 to interrupt you. Have those developments taken  
9 place since this particular provision was added to  
10 the Philadelphia Code and are any of them  
11 residential in nature?

12 MR. O'NEIL: The answer to that is yes.

13 COUNCILMAN NUTTER: Can you give us a  
14 couple examples?

15 MR. O'NEIL: It's my understanding that  
16 the peer developments took place since that I time.  
17 I think Rich would have to address the other  
18 projects.

19 MR. LOMBARDO: I'm not going to be all  
20 inclusive, but there is South Center City in  
21 Councilwoman Verna's district there's new townhouses  
22 that have been built near Schuylkill River Park and  
23 near the playground within the floodplain of the  
24 Schuylkill River, Locust Point, the converse of the  
25 Curtis Publishing Building, the residential within

BILL NOS. 990760, 990761

1  
2 the flood plain of the Schuylkill River. Further up  
3 near Vine Street, River's edge Condominium. There's  
4 also the presbyterian church did a senior citizens  
5 housing, again both built within the floodplain of  
6 the Schuylkill River.

7 COUNCILMAN NUTTER: Can you tell us in  
8 15 words or less the difference between a floodway  
9 and a floodplain?

10 MR. LOMBARDO: Yeah. In 15 words --  
11 Marty's going to kill me trying to do this in 15  
12 words. A floodway is, as has been described to me,  
13 as a engineering construct that says, first of all,  
14 only in bodies of water that are non-tidal. If  
15 you're dealing with tidal water, you don't have  
16 floodways, and that's because level of the water is  
17 affected by the tides of the ocean so there's not a  
18 constant there. Where there is the constant, what  
19 the core of engineers did is they went out and they  
20 analyzed obstructions within the area where the  
21 water flows and identified obstructions or areas  
22 where you don't want to have further obstruction.  
23 That became the floodway. And a lot of instances,  
24 the floodway winds up -- on the other side of the  
25 river from Philadelphia, the floodway is the bank of

BILL NOS. 990760, 990761

1  
2 the river going up to the Schuylkill Expressway,  
3 that's the floodway. You don't want to fill in  
4 further, put more dirt that would down increase,  
5 that would narrow that area, constrict the flow of  
6 water is what we're talking about.

7 COUNCILMAN NUTTER: What is the  
8 technical difference if you can explain it, because  
9 I'd like to move on from this, between a floodway  
10 and a floodplain.

11 MR. LOMBARDO: Floodway is an area  
12 within a floodplain where federal regulations do not  
13 allow further constriction of the flow of water.

14 COUNCILMAN NUTTER: So floodway is  
15 within a floodplain.

16 MR. LOMBARDO: Within a floodplain. And  
17 it has nothing to do the height of the water or the  
18 speed of the water. There could more water outside  
19 the floodway than inside the floodway. It can be  
20 deeper. For example, the water gets deeper as you  
21 get down towards -- I mean deeper in terms of the  
22 level of the hundred year flood. It gets higher as  
23 you go down towards Center City than it is at the  
24 north when you're getting up towards of the city  
25 boundary with Montgomery County.

1 BILL NOS. 990760, 990761

2 COUNCILMAN NUTTER: Okay. Why don't we  
3 have the Law Department finish up and then we've got  
4 a very sizable list of people who wish to testify.

5 MS. GASTON: In terms reading the zoning  
6 code and how it has to be read, what you'll have is  
7 in one section it may you can do thus and so or you  
8 can't do thus and so; and then in another section it  
9 will talk about what kind of variance requirements  
10 there may be so that you can do those things even  
11 though the Code may say in some other section that  
12 those things are prohibited.

13 I think in terms of reading these  
14 regulations, there are a few things that are  
15 important to note. First, where it talks about the  
16 special controls, it says they are imposed to  
17 regulate and not to prohibit setbacks in the  
18 floodplain. So if there was an intention to  
19 actually prohibit any kind construction within the  
20 setbacks in the floodplain, then I think that the  
21 language of the Code would be different and would  
22 actually say that we're going to prohibit as  
23 proposed to regulate the different kinds of  
24 construction or earth moving activity that would go  
25 on in these water courses that are subject to

BILL NOS. 990760, 990761

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flooding.

Second, in terms of where it talks about Subsection A.1, some of this language is a little bit different -- not the language, but the punctuation is different. The semicolons behind "encroachment" and behind "fill" are not in the latest version of the code, and I think that's because I don't think that this was meant to read quite this way. But I think that that section was really intended when it was drafted to say that there's no encroachment that causes an increase in this 100-year flood level. And that is consistent with what it says in section 14-1802, Subsection 3, Subsection A, which is further down on the sheet that you were given by the Planning Commission where it says no variances may be issue which would result any increase in flood levels during the regulatory flood. The interpretation of that would be that there is no development allowed which will cause an increase in the hundred year flood levels. And then part two of that would be if it's allowed, then you have to elevate the flood proof structures to or above whatever that regulatory flood elevation would be. So there's a two-part kind of consideration at

BILL NOS. 990760, 990761

1  
2 least for the Zoning Board. Do you allow  
3 development? They can allow this development as  
4 long it doesn't cause an increase in these hundred  
5 year flood levels. Again, if they're going to allow  
6 it, they generally require that there been some  
7 elevation, again, to prevent the structures from  
8 being subject to flooding. And that's in keeping  
9 with the FEMA regulations. The FEMA regulations  
10 talk about the fact that these regulations are  
11 really intended to reduce future flood damage by  
12 requiring the local regulation of new development in  
13 flood prone areas. So it's not to prevent  
14 development; it is to make sure that if there is any  
15 new development in these flood prone areas that  
16 there's local regulation and that the concerns about  
17 what happens in the floodplain are taken into  
18 account and they are compensated for in terms of any  
19 construction.

20 COUNCIL PRESIDENT VERNA: I think  
21 Councilman Rizzo has a question. Do you want me to  
22 ask the question?

23 COUNCILMAN RIZZO: Yes.

24 COUNCIL PRESIDENT VERNA: Councilman  
25 Rizzo was rather concerned if in fact there is

1 BILL NOS. 990760, 990761

2 construction would the people be able to get flood  
3 insurance?

4 MS. GASTON: That's why these  
5 regulations are in place, yes. There's parts in  
6 terms of why these regulations were adopted many  
7 years ago. It's to provide the general public the  
8 opportunity to obtain insurance coverage to cover  
9 flood damages to buildings and their contents. So  
10 by making sure that any new construction is in  
11 keeping with these regulations, then we have the  
12 ability to have our citizenry get flood insurance.  
13 So part of what the Planning Commission is charged  
14 with doing is making sure that these floodplain  
15 controls are complied with. And then the Zoning  
16 Board would do the same thing for the same reasons.

17 COUNCIL PRESIDENT VERNA: In the  
18 Eastwick area where they've had the flooding a  
19 couple months ago. Were they in the floodplain?

20 MR. LOMBARDO: My understanding is, I  
21 wouldn't want to give you a definitive answer, the  
22 worst of the flooding was not in the floodplain of  
23 the Schuylkill or Delaware River. It was actually  
24 caused by the lack of similar controls that we have  
25 in the City within the watershed of the Cobbs and

BILL NOS. 990760, 990761

1  
2 the Darby Creeks which are out in the counties. As  
3 a matter of fact, since that has happened, the City  
4 has been working with the Delaware County regional  
5 Planning Commission and the local municipalities to  
6 try to get them to adopt. It's very difficult. In  
7 the counties you're dealing with a lot of little  
8 municipalities that may or may not choose to do it.

9 COUNCIL PRESIDENT VERNA: Not to get off  
10 this subject, but I thought that there was a new law  
11 out that if you lived in an area such as Eastwick  
12 and there was a possibility of you're being near a  
13 floodplain that if you actually got a mortgage, if  
14 you bought a home, got a mortgage, you were  
15 compelled to get flood insurance. Is that so? Is  
16 that a new law?

17 MR. LOMBARDO: This is all part of the  
18 eligible you're talking about. What you are  
19 required to do is either get flood insurance or get  
20 certification from an agency, delegating agency who  
21 happens to be Planning Commission is one of them,  
22 that you do not need to get flood insurance. That  
23 is determined simply -- not simply, but it's  
24 determined by elevation on federal flood insurance  
25 maps. If you're below the hundred year flood

BILL NOS. 990760, 990761

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2 elevation, you were a flood-prone area and,  
3 therefore, you would be required to get flood  
4 insurance. If you're not below that elevation, you  
5 may still get it; it's good advise to get flood  
6 insurance, but you're not required to get it.  
7 Unfortunately what happened in Eastwick, and I think  
8 people misunderstood, in hearing they weren't  
9 required to get it, they said, "Fine. Thanks a  
10 lot." Rather than asking someone or thinking  
11 themselves is it a good idea pay the extra money to  
12 have flood insurance as well. It's not a guarantee  
13 that just because you're not in a federally  
14 designated flood prone area that at some  
15 catastrophic conditions you may have flooding. I  
16 think if anything was learned from that, not just by  
17 the people in Eastwick, but people throughout the  
18 region, that it's probably a good idea if you're  
19 anywhere near a creek or stream, at lease explore  
20 the possibility of getting flood insurance.

21 COUNCILMAN KENNEY: Any other questions  
22 for these witnesses?

23 Anyone else to testify at the table?

24 MR. LOMBARDO: I have one other thing.  
25 As I mentioned earlier -- I'm sorry to do this. I

1 BILL NOS. 990760, 990761

2 know it's late and you people are tired. We had a  
3 meeting Monday that Councilman Nutter arranged for.  
4 Out of that meeting came an agreement to submit some  
5 amendments to these bills today. The amendments  
6 deal with --

7 COUNCILMAN KENNEY: Excuse me. The  
8 Chair recognizes Councilman Nutter.

9 COUNCILMAN NUTTER: Mr. Lombardo, I  
10 always want to make sure the record is absolutely  
11 clear. I don't want you to overstate what came out  
12 of the meeting on Monday in terms of any agreement  
13 about anything. There was discussion about some  
14 wording clarifications that needed to be made in a  
15 couple sections. There were some suggestions about  
16 a couple other items that might get adjustment. The  
17 one think you didn't -- I'll just state for the  
18 record from earlier. The Planning Commission did  
19 react to, I believe, a document dated December 17,  
20 1999, from some members of the community who reacted  
21 to the Planning Commission's original plan and  
22 subsequent amendments to that plan based on the  
23 Planning Commission's discussions with various  
24 parties, including business people. Monday's  
25 meeting was somewhat of a point by point looking at

BILL NOS. 990760, 990761

1  
2 the community's concerns and then the Planning  
3 Commission's response to those concerns. I think  
4 out of that came at least some better understanding,  
5 if you will, of what the Planning Commission did,  
6 although in many instances complete disagreement  
7 with the Planning Commission's plan. There were a  
8 couple of areas where some understanding was reached  
9 or agreement was reached on some proposed  
10 amendments, but I don't want to leave the impression  
11 on the record that you are putting forward  
12 amendments that have been either completely agreed  
13 to by all parties involved in this or that this is a  
14 comprehensive list of any proposed amendments or  
15 ideas that other people may have, because I'm sure  
16 that your list is not going to be comprehensive in  
17 nature.

18 MR. LOMBARDO: I am sure it is not.  
19 What I meant by saying "agreed," it was agreed to by  
20 us, the Planning Commission, to sponsor these  
21 particular amendments based on comments made by  
22 various people at that meeting. And again,  
23 Councilman is right, they were not unanimously  
24 adopted by everyone, but from our note-taking and  
25 recollection these were the ones that we thought

1 BILL NOS. 990760, 990761

2 that most people had no problems with.

3 COUNCILMAN KENNEY: If I may, I want to  
4 ask Councilmember Nutter if he thinks it's  
5 appropriate now to read into and discuss the  
6 amendments or would you like to wait until the  
7 meeting stage?

8 COUNCILMAN NUTTER: Probably some later  
9 stage possibly in the public hearing. We do have a  
10 number of people who wish to testify. But I do want  
11 to get in a time when everyone here so people know  
12 what they are. I do want to ask Mr. Lombardo one  
13 question.

14 MR. LOMBARDO: I wasn't intending to  
15 read them in, I was just going to characterize them.

16 COUNCILMAN NUTTER: I understand. There  
17 was, Mr. Lombardo, from my notes, one item that was  
18 not resolved of a number of items that weren't  
19 resolved, but one that was in active discussion was  
20 about the walkway or the pathway on the river side  
21 between the buildings and the river. This was a  
22 4-foot versus 6-foot discussion. Did you address  
23 that?

24 MR. LOMBARDO: We did not. Since that  
25 was unresolved, we left that unresolved. We did not

BILL NOS. 990760, 990761

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address that.

Basically, we addressed the issue of to make sure the people knew that cultural recreation use was going to be encouraged and permitted. We put in -- it was concern about facade review and what the buildings would look like. We put in the same requirement for the Island that we have for Lower Main Street requirement of facade review. We made it clear that no building should be closed within 25 feet from the Manayunk Canal, no future building within 10 feet from the Conrail right-of-way which we are proposing to be a walkway in the future. And we made a last requirement that plant material used for screening be materials that are indigenous to the river bank or the island rather than just put the wrong type of vegetation in developments. They were points that we had in our notes as the points that were raised at the meeting that seemed to be somewhat agreement on.

COUNCILMAN NUTTER: Can you point to me, though, for the documents that you handed out, where is the 4-foot versus 6-foot issue, which section of the bill would that be addressing?

MR. LOMBARDO: It would be on Page 5.2,

1 BILL NOS. 990760, 990761

2 setback from the Schuylkill River.

3 COUNCILMAN NUTTER: Are you in 761 or  
4 760.

5 MR. LOMBARDO: Oh, I'm sorry, 760, Page  
6 5, point 2 at the top of the page. That's the  
7 language, and we have thus far are not proposing any  
8 change to that language.

9 COUNCILMAN NUTTER: All right, thank  
10 you.

11 COUNCILMAN KENNEY: Any further  
12 questions for this panel?

13 Thank you very much.

14 The Chair now recognizes in groups of  
15 four I guess would be the easiest way to do it.

16 COUNCILMAN NUTTER: Mr. Chairman, two  
17 housekeeping items. If we can ask the city agency  
18 folks to stay around for awhile, there may be issues  
19 that come up in the course of the testimony that may  
20 need further clarification.

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

23 MR. MC ALANE: My name is Robert McAlane  
24 (ph). I'm the primary owner of the property that is  
25 designated there as Namico which is former soap

BILL NOS. 990760, 990761

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2 plant and my statement will be very brief. We also  
3 have plants in Ohio and California. We sold the  
4 business in mid year 1998. The plant has been  
5 closed. There are no people in the building. It's  
6 about 135,000 square feet. We had one of the larger  
7 real estate companies representing us when we were  
8 trying to market the property. And I can just tell  
9 you because we've been given some very helpful  
10 suggestions from some of the neighborhood groups  
11 that this be converted into a number of different  
12 uses. I can tell you from my experience that we had  
13 zero interest in this property for manufacturing.  
14 We had zero interest in this property for an office  
15 building. The only interest we had was as a  
16 residential conversion. It's also in a historic  
17 district. Two of the buildings have been designated  
18 by the authorities in Harrisburg as being  
19 appropriate for historic conversion. Carl Grantoff  
20 who is the foremost converter developer of historic  
21 buildings has the property under contract.

22 I'm sure it's no surprise to any of you  
23 that there is no interest in this property for  
24 industrial because there are virtually no industrial  
25 companies left in Philadelphia. They've moved out

1 BILL NOS. 990760, 990761

2 for reasons that we're all well aware of. There are  
3 only two outcomes that I can see: One is that this  
4 property will remain vacant and deteriorate and it's  
5 not a real pretty building, or secondly it can be  
6 developed into a residential property with 160  
7 luxury apartments, citizens who will shop in  
8 Manayunk, worship Manayunk, go to the bakery, the  
9 cleaners and contribute to the community center and  
10 all the other activities that people do in a  
11 community or it can sit there and become a  
12 deteriorating eyesore.

13 COUNCILMAN KENNEY: Thank you. Ms.  
14 Smith.

15 MS. SMITH: I am Kay Smith I'm executive  
16 director of the Manayunk Development Corporation.  
17 Manayunk Development Corporation is a non-profit  
18 community department engaged in planning economic  
19 development for the Manayunk Commercial District.  
20 Included in our projects are also a number of  
21 community projects which include the canal and the  
22 waterfront area.

23 I want to lead off by saying that the  
24 Manayunk Development Corporation fully supports the  
25 proposed Venice Island overlay. This zoning gives

BILL NOS. 990760, 990761

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2 tremendous opportunity for the expansion and  
3 development of public amenities such as recreation  
4 environmental green space as well as cultural  
5 facilities for the entire community. Never in the  
6 history of Manayunk has this community had legal  
7 public access to the river front area in Manayunk.  
8 The entire waterfront area has been in private land  
9 ownership, and this actually gives us an opportunity  
10 to get that kind of access.

11 Conditions of this zoning overlay wil  
12 negotiate public access to the waterfront area and  
13 setbacks from the railroad for future  
14 pedestrian/bike-way. Ground at either end of Venice  
15 Island which will include the Locks that existed for  
16 Schuylkill Navigation System -- and I will say that  
17 this section of canal is the only total complete  
18 section of canal on the Schuylkill system that's  
19 been left intact from end to end -- will ultimately  
20 be planned for park space. A reasonable residential  
21 presence will create eyes and ears that protect  
22 those recreational green space areas.

23 Manayunk Development Corporation over  
24 the years has initiated, responded, and worked to  
25 plan on behalf of the Manayunk community

BILL NOS. 990760, 990761

particularly in the area of economic development.

In Manayunk, economic development and quality of life issues go hand in hand. Below are projects initiated and developed by MDC in partnership with the city of Philadelphia to plan, develop, and expand Manayunk's Manayunk public recreational green space.

'95, Capital Project Masterplan for the Manayunk Canal.

'96, the Lock Street Bridge.

'97, the Cotton Street Bridge.

'97-'98, a Recreational Masterplan which takes a look at the entire island and was incorporated into a lot of the efforts that Planning Commission has put forth funded by MDC and involved the total community.

'98-'99, and actually in the next year, we have funded in partnership with William Penn a person who just is dedicated to the green space park space projects that are along the water front area.

Right now as we speak, the bank stabilization is underway along the canal and looking forward through a lot of the efforts that everyone has put forth, funding is now in place for

1 BILL NOS. 990760, 990761

2 the Manayunk Canal of \$4 million. There's another  
3 \$1.2 million for the bike-way, the completion of  
4 some of the ends.

5 As a result of the hard work of many,  
6 many people representing many different aspects of  
7 the Manayunk community, Manayunk is in a unique and  
8 very special position. Manayunk has a market driven  
9 economy, bringing tax base to the City and Manayunk  
10 has the opportunity with the funding is in place to  
11 invest significant capital dollars and the  
12 recreational as green space quality of life projects  
13 of the residential community has requested for so  
14 long.

15 COUNCILMAN KENNEY: Thank you for  
16 testimony. Please identify yourself for the record.

17 MR. NETISON: My name is Dan Netison  
18 (ph). I'm a developer basically concentrating in  
19 Manayunk. Some of the things I've done, I've  
20 developed 50 retail properties. I own and operate  
21 five restaurants in Manayunk; as I stated prior, 200  
22 apartments. That construction and development has  
23 really accounted for 600 new jobs along Main Street  
24 and I think was the catalyst for future development  
25 that involved into 3,000 new jobs along Main Street.

BILL NOS. 990760, 990761

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2 I currently own a piece of ground on the map with my  
3 partner, as ex-Mayor Bill Greene called Venice  
4 Island partners. The property currently is zoned  
5 actually for office space. We could build a  
6 20-story high office building there. Unfortunately,  
7 there is no demand for office space, being so close  
8 City Line Avenue, so that's out. You heard me say I  
9 own and operate restaurants. Actually, the zoning  
10 allows for another restaurant on that particular  
11 piece. I don't think it would work there because  
12 there's not enough parking. What I do own, as I  
13 said, was 200 apartments, and residential seems to  
14 make the most sense for that particular piece since  
15 there's very little demand for anything else.

16 I am for this ordinance because the  
17 projects that I have mentioned in the past, it seems  
18 anytime that I have gone in front of the Zoning  
19 Board for a variance, there's certain people in the  
20 neighborhood who are opposed to anything. If I get  
21 the zoning, then they appeal it. And my most recent  
22 hearing, it took 22 months before I got the zoning  
23 that was properly required. So if this passed I  
24 think that would eliminate a hurdle and save a lot  
25 of time. I think one of the benefactors would be

1 BILL NOS. 990760, 990761

2 the City for increased tax dollars.

3 COUNCILMAN KENNEY: Thank you very much  
4 for your testimony.

5 Any questions for these witnesses?

6 Thank you very much for your attendance  
7 and your patience today.

8 The Chair now calls Ed Weiner, Virginia  
9 Restemeyer, Tom Connolly, Mr. Sklaroff, if there's  
10 Mr. Kelson here.

11 Please identify yourself for the record.

12 MR. WEINER: My name is Ed Weiner.

13 COUNCILMAN KENNEY: Please proceed.

14 MR. WEINER: Back when I first moved to  
15 Manayunk, nearly 14 years ago, my wife and I took a  
16 stroll along what was then a Main Street that was  
17 beginning to show signs of becoming what it is  
18 today. There was tremendous excitement in the air.  
19 Abandoned buildings were being renovated. They were  
20 removing the two-story-high weed trees that were  
21 growing up through the roofless building that is now  
22 Le Bus. We were witnessing a sleeping place roar  
23 awake. We started speaking with a longtime,  
24 resident somebody we didn't know but just began  
25 chatting with. Manayunk can be a friendly place.

BILL NOS. 990760, 990761

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2 We said to him that people were saying that Manayunk  
3 was going to be the next New Hope. He looked at us  
4 and said, "Forget New Hope. This place is No Hope."  
5 His wish, which we subsequently heard echoed by  
6 others as well over the years, his wish was that  
7 everything on Main Street would fail. That might  
8 mean Main Street becoming a ghost town again, but at  
9 least it would be his ghost town.

10 Then, last month, I had the opportunity  
11 to be part of the task force made up of a coalition  
12 of representatives of a few civic and special  
13 interest groups that was created to respond to City  
14 Planning Commissions overlay proposal for Venice  
15 Island. We had several meetings and hammered out a  
16 compromise position which recommended, among other  
17 things, limited residential development on the  
18 island. But before this report could be made  
19 public, the local civic organization's executive  
20 board took it up as its own property and changed the  
21 task force's document to more directly reflect some  
22 members own personal biases and stripped all  
23 language about residential from the report, making  
24 it seem as if the sense of the entire community  
25 arrived at after considerable deliberation was that

BILL NOS. 990760, 990761

1 industrial and office space was what was wanted.  
2 That was not and is not the case, and it has  
3 shattered our valuable coalition.  
4

5 In 14 years, the persistent negativity  
6 and ax-grinding has hasn't changed all that much  
7 even as Manayunk has. We have a few who claim to  
8 represent the community who would rather see nothing  
9 than anything new, who would rather scream at a  
10 problem than explore a rational possible logical  
11 solution. There sense of losing control of what was  
12 once their town is completely understandable. But  
13 the fact is, Manayunk is changing and those who will  
14 do anything to deny that, including wrapping  
15 themselves in the cloak of environmental concern  
16 when it really anti-development and anti-outsiders  
17 that they espouse are out of step with the times and  
18 with the changing community and its differing wishes  
19 and values and interests.

20 Not that the City Planning  
21 Commissioner's plan is perfect or "the" answer.  
22 Residential would not have been my first choice.  
23 Filling a cultural void by making it an island of  
24 the arts was my pet idea, but it is in the face  
25 alternatives a sensible one. One that needs to be

BILL NOS. 990760, 990761

1  
2 nutured within an overriding context of a rational  
3 coherent plan that sees the island as a totality and  
4 not just separate developable parcels and one that  
5 never forgets the impact on and what is owed to the  
6 longtime residents on the mainland.

7 Those fighting against City Planning's  
8 overlay just don't get it. That by working to  
9 defeat a plan that sets limits on developers'  
10 natural tendencies to over-build and under-care,  
11 they are exposing the community to far worse  
12 horrors. It is all well and good to want to plant  
13 trees on the island, I want to see that too, but not  
14 if the trade-off planting seeds of our own undoing.

15 This should not be a place held hostage  
16 by those who rally around no hope, nor is it New  
17 Hope. Frankly, hope, I think, has nothing to do  
18 with it. But reality does. Reality is not sexy or  
19 the stuff idealism or fun or dreams. Reality  
20 definitely bites. But a big dose of it in the form  
21 of approving the ordinances before you and City  
22 Planning Commission's overlay is what's needed here  
23 and now. Thank you.

24 COUNCILMAN KENNEY: Thank you for your  
25 testimony.

1 BILL NOS. 990760, 990761

2 Ms. Restemeyer, would you like to add?

3 Please identify yourself for the record.

4 MS. RESTEMEYER: My name is Virginia  
5 Restemeyer. I am a member of the Manayunk community  
6 and I'm on the board of the Manayunk Neighborhood  
7 Council.

8 Thank you for allowing me the  
9 opportunity to speak about the proposed Venice  
10 Island residential ordinance and zoning overlay. My  
11 opinion may differ from other community members  
12 being heard today. Mostly you will be hearing from  
13 partisans. Almost every person in this debate is a  
14 stakeholder, financial stakeholders who want to  
15 protect their investments, ecological stakeholders  
16 who want to protect nature, and Manayunk  
17 stakeholders who want to protect their way of life.  
18 I am none of these. I am a stakeholder only in the  
19 best future for the island.

20 I have lived in the Manayunk area for  
21 nearly 14 years and believe I am a good citizen. I  
22 have been a member of several civil groups, although  
23 not all 26 that currently exist in the 21st Ward.  
24 This past year I rejoined Manayunk Neighborhood  
25 Council and became a board member. Although I am

BILL NOS. 990760, 990761

1 affiliated with this group, I cannot allow their  
2 position to speak for me on Venice Island  
3 development.  
4

5 Capitalism has always driven the use  
6 land. What was profitable in the 18th Century was  
7 farming, in 19th it was industrialization, and in  
8 our current economy it seems to be housing.  
9 Manayunk is what it is because of the capital lists  
10 who changed it. First the canal owners followed by  
11 the land owners, the mill owners, and the railroad  
12 owners, and in recent memory, the business owners on  
13 Main Street. Every one of these entrepreneurs  
14 changed the face of Manayunk for better or worse  
15 although it's landscape seems natural to us now.  
16 Venice Island was never a natural island. It was  
17 landfill from the digging of the canal and for a  
18 good portion of it's history it was covered in wall  
19 to wall factories. Residential use of the island  
20 seems to have less of a negative impact than  
21 anything the island has experienced in its 180-year  
22 life.

23 This proposed ordinance will, I feel,  
24 protect the island from rampant suburban-type  
25 development but also protect the neighborhood from

1 BILL NOS. 990760, 990761  
2 industrial and commercial uses which have a more  
3 deleterious effect on the community. My stance  
4 isn't pro development, but rather responsible  
5 regulation of it, which has been suggested by  
6 Councilman Nutter and the Planning Commission.

7 The Plan Commission's recommendation,  
8 all residential use with a limit on density, is  
9 conservative and practical and it is in accord with  
10 the Manayunk business community. Manayunk  
11 Neighborhood Council's recommendation, all  
12 industrial and commercial use, is counter-indicative  
13 of our changed economy and detrimental to the  
14 neighborhood. As a civic group, Manayunk  
15 Neighborhood Council has an enormous number of  
16 issues to deal with. And all those their voices are  
17 loud, their membership is small and the group  
18 functions with a skeleton crew. For the Venice  
19 Island debate, protocol was not followed. Two  
20 officers of the board unilaterally determined that  
21 Manayunk Neighborhood Council is opposed to  
22 development, most is especially residential  
23 development. No vote was taken among the board  
24 members, neither was a consensus taken of the  
25 membership which is only about a hundred people, nor

BILL NOS. 990760, 990761

1  
2 the community at large, roughly 10,000 to 12,000  
3 people. There was an attempt to pole the membership  
4 with a survey from which about a dozen responses  
5 returned. My voice has been misrepresented by these  
6 community spokespersons. Based on what I have seen,  
7 I don't think Manayunk Neighborhood Council  
8 represents the many varied voices of Manayunk.

9 Residential use of Venice island seems  
10 the most sensible and least harmful course for the  
11 neighborhood. Naturally, what kind of residential  
12 and how dense are questions which need to be  
13 addressed. One hopes that what comes to the island  
14 will be architecturally respectful and reflective of  
15 what came before, that the developers will be  
16 sensitive to the history of this region. I support  
17 responsible residential development that looks to  
18 long-range planning and reuses existing buildings  
19 as I am open to new structures that refer to the  
20 pre-existing industrial style. Therefore, what we  
21 need in Manayunk is an overall plan that sets forth  
22 guidelines for development of the island, including  
23 facade review to ensure that this now variable piece  
24 of land does not become a free-for-all in its future  
25 development. The island comes with certain baggage,

BILL NOS. 990760, 990761

1  
2 it is in a floodway. But it's potential for  
3 complementing the neighborhood as a viable  
4 residential alternative to the Cliffside  
5 mill-workers' houses should be encouraged. This  
6 legislation, I hope, will ensure that. Thank you.

7 COUNCILMAN KENNEY: Thank you for your  
8 testimony. Are there any questions for Ms.  
9 Restemeyer?

10 Mr. Kelson, please proceed.

11 MR. KELSON: Thank you, Councilman.  
12 Peter Kelson representing Dranoff Properties which  
13 is proposing to develop the Namico Soap factory site  
14 for residential housing. Very briefly, what we are  
15 proposing to do is to take the historic structures  
16 and renovate them into 160 luxury apartments. On  
17 site will also be contain 214 parking space, one  
18 parking space for every bedroom unit which is  
19 accordance with the Planning Commission  
20 recommendations.

21 I would like to offer to the Committee  
22 an vantage point which I think maybe helpful. It is  
23 ironic that the development that we propose, and I'm  
24 sure the developments that you will here about from  
25 others in the room, would actually benefit the

BILL NOS. 990760, 990761

1  
2 floodway situation if it is approved. Let me be  
3 specific as to why. When we renovate the Namico  
4 property, what we will actually do is remove a  
5 great deal of structure, almost 50 percent of what  
6 exist there now; and we will replace it with a  
7 smaller amount of structure, but structure that is  
8 actually constructed in a way to leave the 14 feet  
9 from the ground floor to the bottom of the structure  
10 open. Very simply, from a common sense standpoint  
11 and a common engineering standpoint, that will  
12 facilitate the flow of floodwaters on the site. It  
13 will also enable the flood situation to be bettered  
14 because you will be removing structure that right  
15 now actually contributes to the floodway problems on  
16 Venice Island. So it is ironic that you will hear  
17 option to the floodway development today when in  
18 fact the development that we propose would better  
19 the situation and create a viable energetic  
20 residential component to this cultural resource in a  
21 matter which would be consistent with the Planning  
22 Commission recommendations.

23 If the Committee has any questions. We  
24 have brought engineering data with us and  
25 engineering experts who can help answer the question

1 BILL NOS. 990760, 990761

2 of floodway development. I think the Law Department  
3 and Planning Commission made it very clear that  
4 floodway development is in fact appropriate and  
5 permitted so long as it is done in a matter which is  
6 designed from an engineering standpoint to not  
7 increase, and the Namico situation which would  
8 actually decrease the impact on the 100-year flood.  
9 I thank you for your time.

10 COUNCIL PRESIDENT VERNA: Thank you.

11 Tom Connolly, Michael Sklaroff.

12 COUNCILMAN NUTTER: Madam Chair, before  
13 the gentleman starts, if I could just respond to one  
14 of the issues raised by Ms. Restemeyer. In the  
15 amendments that were put forward by the Planning  
16 Commission, there is a new Section 4 that proposes  
17 to have facade controls and reviews by the Planning  
18 Commission on facade issues. That was one of the  
19 items that was discussed on Monday night. Thank  
20 you, Madam Chair.

21 COUNCIL PRESIDENT VERNA: Thank you.

22 MR. SKLAROFF: Madam Chairman, members  
23 of the committee, my name is Michael Sklaroff. I'm  
24 the attorney for the purchaser of the Connolly  
25 Container property, Cotton Street Landing, Limited

BILL NOS. 990760, 990761

1  
2 Partnership. However Mr. Connolly has asked that I  
3 make a statement in his absence. He was here for  
4 the first four and a half hours since 9 a.m. He had  
5 to leave, he actually had to go overseas. He has an  
6 audience with his Holiness Pope John, II, and he is  
7 going to accept an award for the humanitarian  
8 efforts of the Connolly family, only something so  
9 important would have prevented him from staying and  
10 testifying today. So humbly I will speak words that  
11 he would have said.

12 COUNCILMAN NUTTER: Mr. Sklaroff, I'm  
13 sorry to interrupt you. Is it really possible for  
14 you to humbly speak or is this the first opportunity  
15 we're having a humble spoken word by you? Can we  
16 note this for the record today?

17 (Laughter.)

18 MR. SKLAROFF: There's an old proverb  
19 that he who is a hero holds back the wisecracks, so  
20 I am silent.

21 (Laughter.)

22 COUNCILMAN NUTTER: Very good.

23 MR. SKLAROFF: In any event, the Conolly  
24 family has been a member of this community, an  
25 employer, and land owner since 1959. I think it is

BILL NOS. 990760, 990761

1  
2 generally known that the Connolly family has been a  
3 benefactor and supporter of people and institutions  
4 in the Philadelphia area since that time, and I  
5 would say and Mr. Connolly would say that there  
6 probably is not a neighborhood or institution in the  
7 City that hasn't benefited from the generosity of  
8 the Conolly family. And no community has benefited  
9 more from their generosity and participation and  
10 their citizenship than the Manayunk community. This  
11 property -- and I'm not going to go into the details  
12 of this proposal. I will tell you that it is a  
13 proposal for 270 units on 3.1 acres. It would  
14 occupy the former Conolly site and the two other  
15 residential developments are now proceeding before  
16 the Zoning Board of Adjustment, and this is not the  
17 time to tell you how wonderful the project is, as  
18 I'm sure the other two are, or why they should be  
19 entitled to variances and other approvals. That's  
20 for the Zoning Board. We're here on the  
21 legislation. And it is quite clear that the  
22 property no longer has a future for industrial  
23 purposes. We now have, and Mr. Connolly has an  
24 opportunity to sell the property for development.  
25 He went through a process, a request for proposal

BILL NOS. 990760, 990761

1  
2 process. He didn't take the highest bid or the most  
3 prominent developers necessarily, but he did take a  
4 very prominent responsible developer and a developer  
5 with a good plan. They took that plan to the  
6 community. That plan initially had a hotel, it had  
7 retail commercial, and it had 270 units and it had  
8 much parking. It now does not have a hotel or a  
9 retail commercial, it has just those 270 units. And  
10 that was part of the process of meeting with the  
11 community. Nevertheless, and as I said, the plan  
12 has been submitted for zoning approvals and is now  
13 pending. Our concern here is process. We agreed  
14 with the general concept of the Planning Commission  
15 that these sites should be rezoned to residential  
16 development. We agree with their concerns about the  
17 floodway and the floodplain. We agree with their  
18 concerns about the traffic impact. And we would  
19 seek to satisfy all of those concerns. However, all  
20 of the process that you've heard about, the meetings  
21 that were describe between the community and civic  
22 groups and special interest groups, Mr. Connolly was  
23 not invited to that. He did not participate. Now,  
24 Mr. Malumian (ph) who is the principal of the  
25 purchaser had some meeting with the Planning

BILL NOS. 990760, 990761

1  
2 Commission, but there were many meetings where he  
3 was dis-invited. So from Mr. Connolly's  
4 perspective, he would like to be at the table. He  
5 has input. There are elements of his proposal that  
6 would be excluded by this ordinance. There are  
7 elements of his proposal which we would like to  
8 present to City Council as being worthy of  
9 consideration in this ordinance. We're not against  
10 the other projects; we think they're fine, but ours  
11 is the only one of the three that cannot proceed  
12 because of the strictures in this ordinance. And we  
13 think that, really, given the involvement of this  
14 Connolly family in this community for all those  
15 years that it is unconscionable that their interest  
16 should not be taken into account in this ordinance.  
17 And what we're asking for is an opportunity for  
18 input on behalf of the Connolly family. You're  
19 asking for a delay in consideration of the ordinance  
20 so that we can get our input. If we're  
21 unpersuasive, that's fine; but Mr. Connolly needs an  
22 opportunity to put his case before the City Council  
23 and before the Planning Commission in a meaningful  
24 way because this ordinance is going to govern  
25 development of Venice Island in the future and it's

1 BILL NOS. 990760, 990761  
2 going to have a tremendous impact on their interest.  
3 Thank you for the opportunity.

4 COUNCIL PRESIDENT VERNA: Thank you.  
5 The Chair recognizes Councilman Nutter.

6 COUNCILMAN NUTTER: Thank you, Madam  
7 Chair. Good afternoon, Mr. Sklaroff. Just for the  
8 record, Mr. Sklaroff, is it true that we've had on,  
9 I believe, at least one, possibly two occasions, you  
10 and I and Mr. Malumian have met about his proposal;  
11 is that correct.

12 MR. SKLAROFF: Exactly, yes.

13 COUNCILMAN NUTTER: And I believe that  
14 the sum and substance of those discussion, and they,  
15 I believe, both took place at a time when the  
16 proposal was a much larger and more intense proposal  
17 at those times.

18 MR. SKLAROFF: Correct.

19 COUNCILMAN NUTTER: And on both of those  
20 occasions, I'm quite sure that at the end of the  
21 meeting I suggested that you continue to have  
22 meetings and discussions with people out in the  
23 residential community and the various community  
24 groups and organizations. I think I provided  
25 probably at a minimum names and addresses, I think I

1 BILL NOS. 990760, 990761

2 did not give you phone numbers because I generally  
3 don't do that; is that correct.

4 MR. SKLAROFF: Not only correct, but you  
5 were one of the civic leaders with whom we met and  
6 was part of the process in changing the plan. But  
7 the point of it is, when we got down to the  
8 nitty-gritty and there was an ordinance which was  
9 being moved through the Planning Commission, Mr.  
10 Connolly was not invited to the table. He did not  
11 have a meaningful opportunity and Mr. Malumian was  
12 also non-included in what we believe to be a  
13 meaningful way.

14 COUNCILMAN NUTTER: I understand your  
15 perspective on that, but Mr. Malumian at least has  
16 met with the Planning Commission on his particular  
17 proposal; isn't that correct.

18 MR. SKLAROFF: Mr. Malumian has had  
19 meetings, however, there have been meetings when the  
20 specifics of the ordinance were being hammered out  
21 as testified to between the civic groups and special  
22 interests, and I use the same phrase that was used,  
23 Mr. Connolly's interest and Mr. Malumian's interest  
24 were not included. Now, we don't have major  
25 problems with this bill. But the problems we do

1 BILL NOS. 990760, 990761

2 have the bill have a major impact on our  
3 development, and I think the bill will benefit from  
4 an opportunity for Mr. Connolly and Mr. Malumian to  
5 make their interest known.

6 COUNCILMAN NUTTER: Well, I understand  
7 that, and I don't think they're prohibited from  
8 making their interest known at the Planning  
9 Commission, neither Mr. Malumian nor any other  
10 developer has by way of their plans you are not at  
11 any disadvantage as it relates to City Council  
12 because City Council is not going to receive a  
13 presentation from Mr. Dranoff, we're not going to  
14 receive a presentation from Mr. Netison, and we're  
15 not presentation from you and your client. I mean,  
16 none of those proposals are going to end up in this  
17 body. All of those discussions are over at the  
18 Planning Commission or out with the community.

19 MR. SKLAROFF: Councilman Nutter, I  
20 think that is accurate description.

21 COUNCILMAN NUTTER: I believe it is an  
22 extremely accurate description.

23 MR. SKLAROFF: If I may finish.

24 COUNCILMAN NUTTER: Absolutely.

25 MR. SKLAROFF: I don't think that is an

1 BILL NOS. 990760, 990761

2 accurate description of the process. This bill was  
3 hammered out in discussions with people where we  
4 were not present. This bill prevents two  
5 developments to go ahead and one development not to  
6 go ahead. There was input at a time which was  
7 sensitive where we were not invited to the party.

8 COUNCILMAN NUTTER: But Mr. Sklaroff --

9 MR. SKLAROFF: And City Council needs to  
10 know that.

11 COUNCILMAN NUTTER: But let's not poison  
12 this record. Please to do not leave the impression  
13 with the Members of Council that somehow these  
14 planning controls were put in place strictly to  
15 deal with or solely to deal with two proposals or  
16 five proposals, or any number of proposals. This is  
17 a process that started sometime ago before there  
18 were any proposals. Those are the facts.

19 MR. SKLAROFF: Councilman, I am not  
20 poisoning the record and I am MAKING no aspersions.  
21 All I will say to you is --

22 COUNCILMAN NUTTER: I just want to make  
23 sure that we're very clear about what happened and  
24 what didn't happen. Everyone has an opportunity to  
25 go and talk to the Planning Commission. I can't

1 BILL NOS. 990760, 990761

2 stop that.

3 MR. SKLAROFF: Councilman Nutter, you  
4 are as sophisticated in these matters as anyone.  
5 And whether you are at the table or not is part of  
6 an ongoing process, some of it formal and some of  
7 informal. When this bill was drafted, we did not  
8 have input. Evidence of that the fact that there  
9 are of the three developments, two would be  
10 permitted by this ordinance, and one for reasons of  
11 density would not be permitted.

12 COUNCILMAN NUTTER: Is that because  
13 those developments or those developers have tried to  
14 make their projects in conformance with the  
15 direction that the planning was moving? And let me  
16 finish, it sounds like your client has also  
17 attempted to do the same thing because when this  
18 started you were doing a hotel, retail commercial,  
19 and residential. Your testimony here today is that  
20 you have eliminated the hotel, you've eliminated  
21 commercial and retail, and only real item of dispute  
22 and discussion here is that you want to be at 270  
23 units of residential and the FAR for the zoning  
24 controls won't allow as much residential as you  
25 would like; isn't that the fact?

1 BILL NOS. 990760, 990761

2 MR. SKLAROFF: No, that is absolutely  
3 not the fact. Our site has been recognized from the  
4 beginning as having more potential for density. The  
5 270 residential units was never an issue. I'm not  
6 going to comment on the other two projects. I will  
7 assume that their densities are suitable for sites  
8 and our density is suitable for our site, and that's  
9 the case we're presenting to the Zoning Board.

10 COUNCILMAN NUTTER: So you'd like --

11 MR. SKLAROFF: Excuse me, just let me  
12 finish if I might. What happens as a result of the  
13 process is, which Mr. Connolly and Mr. Malumian  
14 believe they were not fairly included in, and I'm  
15 not talking about the formal process. I'm talking  
16 about the real community special interest process  
17 here which is fine.

18 COUNCILMAN NUTTER: But you met with the  
19 community yourself.

20 MR. SKLAROFF: We were not included not  
21 included in the process and the end result is that  
22 two projects can go forward under this zoning and  
23 one can't.

24 COUNCILMAN NUTTER: I understand.

25 MR. SKLAROFF: And given what Mr.

1 BILL NOS. 990760, 990761

2 Connolly has done for this community, that is not  
3 acceptable from our perspective. It will be for  
4 City Council to decide. So what we're asking here  
5 is straightforward. We're asking for the  
6 opportunity to have this delayed somewhat. There's  
7 no hurry on this. There are already pending  
8 applications. There's a real question as to whether  
9 it's going to affect them or not. But we would like  
10 to know that when the day is done, our reasonable  
11 proposal on the Connolly property is consistent with  
12 the ordinance. And we're asking for the opportunity  
13 for there to be an amendment to the ordinance to  
14 take the Connolly development into account. Thank  
15 you.

16 COUNCILMAN NUTTER: I understand. Thank  
17 you.

18 MR. SKLAROFF: Thank you, Madam Chair.

19 COUNCIL PRESIDENT VERNA: Thank you.

20 COUNCILMAN NUTTER: Mr. Krakower, do I  
21 understand you have --

22 MR. KRAKOWER: I have number of people  
23 who I will probably bring in as a group when I'm  
24 finished. I want to do sort of an opening if I can  
25 to set a stage for what we're going to do next, if I

1 BILL NOS. 990760, 990761

2 may.

3 Madam President, Members of the City  
4 Council Rules Committee, I also want to thank the  
5 Committee for an opportunity to make this  
6 presentation. I would like the record to reflect in  
7 all fairness that it is now 8 minutes after 4:00  
8 and for the very first time the members of the  
9 Council are going to hear from those people who  
10 object to the Planning Commission proposal and hear  
11 reasons why. We have a couple things I'd like to  
12 point out. For one thing, I represent approximately  
13 a dozen civic and neighborhood organizations.

14 COUNCILMAN NUTTER: If I could interrupt  
15 you, and I apologize, for one second. If you want  
16 to make that point for the record, then I will make  
17 the point for the record that the witness list for  
18 this hearing reflected that the first people to  
19 testify after the government people was Elizabeth  
20 Durella, President Manayunk Neighborhood Council.  
21 Let's be a record be clear about that.

22 MR. KRAKOWER: That is correct, and I am  
23 replacing her.

24 COUNCILMAN NUTTER: I'm not talking  
25 about who you're replacing. What I'm saying is, is

1 BILL NOS. 990760, 990761

2 that the community people were asked and had the  
3 opportunity and were listed as testifying first  
4 after the Planning Commission and the Law  
5 Department. They requested to come on later on.

6 MR. KRAKOWER: I understand. It's a  
7 question of the sequence, but I would that we will  
8 be given full opportunity here and now because there  
9 are many, many very serious concerns.

10 I first want to put on the record that  
11 I'm representing the Manayunk Neighborhood Council,  
12 the Friends of Manayunk Canal, a number of other  
13 organizations, the Sierra Club, and approximately a  
14 half dozen other groups whose names I need not  
15 recite, as well many, many individuals. I would  
16 venture to say that these organizations and  
17 individuals probably number in the hundreds of  
18 people who are residents of Manayunk and the area  
19 immediately here by Venice Island.

20 Our people oppose the ordinance to  
21 rezone this island residential. We start by  
22 pointing out that the name of the island is Venice  
23 Island. There's a reason for that. It's not Denver  
24 Island, it's Venice island. And we're going to show  
25 you photographs and documents and diagrams that I

BILL NOS. 990760, 990761

1  
2 think more than a lot of words will show you why  
3 residential development on this island is improper  
4 us, is dangerous in fact. Let me point out, if I  
5 may first of all, we not only oppose the ordinance,  
6 but we wish to put on the record that we oppose this  
7 process of relative haste in an ordinance of this  
8 kind, this serious a matter to have to be considered  
9 the last hour of the last day on which it could be  
10 considered within this Session of Council. This is  
11 a matter that deals -- we think we'll show you  
12 this -- deals with the very safety of people who are  
13 going to live, not only on the island, but around  
14 the island. It is a matter that should be given  
15 full deliberation; and full deliberation, we submit,  
16 includes the liberation from engineers and experts,  
17 some of which we have here today who were never  
18 heard by the Planning Commission. It's funny, Mr.  
19 Sklaroff's comments that his client was not at the  
20 table when the details were being worked out.  
21 Neither were our people. There were opportunities  
22 for meetings, but not opportunities where we could  
23 present nuts and bolts hard facts and expertise with  
24 regard to the use that's proposed. We submit that  
25 what should have been happening here is that open

BILL NOS. 990760, 990761

1  
2 hearings -- something like we're doing today --  
3 should have been available but not with such a time  
4 pressure as we are right now. We believe in essence  
5 that this bill, this ordinance, should be tabled and  
6 held over for the next Session of Council and it is  
7 not an appropriate ordinance to be done at this 11th  
8 hour as the chariot turns back into a pumpkin.

9           Now, I have a number of people --  
10 there's some specific legal points I want to make.  
11 First of all, Councilman Nutter asked, and I think  
12 it's very important, the difference between a  
13 floodway and a floodplain. And I think it's  
14 extremely important to recognize, because otherwise  
15 you'd get some disingenuous comments, frankly, like  
16 that some of the construction that was done in a  
17 flood fringe or a floodplain was in the floodway.  
18 I'm very familiar with the construction in  
19 Councilwoman President Verna's area around 24th and  
20 Locust. I think it's well known for 15 years I've  
21 represented the Center City Residents Association.  
22 That construction is in what is known as the  
23 floodway fringe, not the floodway. And I ask before  
24 you vote on any this ordinance that you look at  
25 Section 1606, 14-1606 of the Philadelphia Code

BILL NOS. 990760, 990761

1  
2 dealing with floodplain controls, Section 3D, E, and  
3 F are definitions. These are statutory definitions  
4 enacted by this Council. They make clear that there  
5 are three separate items, one is the floodplain,  
6 another is the floodway, and the other is the  
7 floodway fringe. And the difference is the  
8 floodplain is the entire area that is subject to  
9 flooding. Whether that flooding is six inches deep  
10 and barely moving or whether it's six feet deep and  
11 rushing like a torrent; that's the floodplain. The  
12 heart of that area, and the definition is the area  
13 of the floodplain that's required to carry and  
14 discharge floodwaters of a given magnitude, that is  
15 the floodwaters that are moving at a given speed and  
16 at a given depth. In other words, that's the river  
17 and that's the floodway. And then the code provides  
18 that the fringe is that portion of the floodplain  
19 that's outside the floodway. So you have the  
20 floodway is actually, you can almost consider it  
21 part of the river, and then the outer banks are the  
22 flood fringe, and all of it is the floodplain.

23 Now, the 24th and Locust project -- and  
24 I have, by the way, an expert here on mapping, who  
25 does mapping for FEMA, for the Federal Emergency

BILL NOS. 990760, 990761

1  
2 Management Administration. The area that is being  
3 discussed as part of the floodplain is really the  
4 flood fringe, it's not the floodway. In the area  
5 down along 24th Street and Locust Street, you may  
6 notice, for example, that the Schuylkill River is  
7 within concrete barrier banks, they've actually  
8 built walls of concrete. That defines the floodway  
9 at that portion of the Schuylkill River. Outside of  
10 it is the fringe. In it is the floodway.

11 Up in Manayunk there is no specific  
12 concrete wall. But there is the difference between  
13 a floodway, meaning the area in which, as you will  
14 see photographs, trucks are actually carried down  
15 the street, down the island. And I think when you  
16 look at some of the documents, some of the  
17 photographs of what happened on this island, and I'm  
18 not talking about many, many years ago; I'm talking  
19 about in 1999, this past spring. And you see what  
20 went on, then you can recognize, first of all, this  
21 major difference between a floodway and the flood  
22 fringe. And that's one of the main points I think.  
23 So that when people talk about whether construction  
24 is in the flood fringe, for example, the  
25 construction along the Delaware River along Penn

1 BILL NOS. 990760, 990761

2 Street and along the area that was referred to  
3 previously by Mr. Costello, is within the fringe of  
4 the Delaware River, not within the floodway of the  
5 Delaware River.

6 I also have a couple other things to  
7 point out.

8 COUNCIL PRESIDENT VERNA: The Chair  
9 recognizes Councilman Kenney.

10 COUNCILMAN KENNEY: Mr. Krakower, I'm  
11 sorry. I notice this is very technical in nature,  
12 and I do appreciate the way in which you're telling  
13 us about floodplains and fringes, but the question  
14 that I have is that if we were rezone the way it's  
15 being requested, there would have to be a lending  
16 institution that would have to finance any  
17 residential project that would go forward on this  
18 island. Would any financial institution that you're  
19 aware of lend money to any developer who is going to  
20 build a residence, a commercial operation, or  
21 anything in such an area that it was likely it was  
22 going to be swept away by flood?

23 MR. KRAKOWER: Councilman Kenney, may I  
24 answer? Some financial institutions granted  
25 mortgages on the homes in Logan that we now know as

1 BILL NOS. 990760, 990761

2 the sinking homes of Logan. Some mortgage companies  
3 granted mortgages on houses on Wissinoming Avenue  
4 which we all had the experience with only recently.  
5 Mortgage companies make those mistakes.

6 COUNCILMAN KENNEY: Well, prior to any  
7 code that had jurisdiction over backfill and other  
8 issues. I recognize that. But when it comes to  
9 something as basic as whether or not a structure is  
10 going to be flooded or washed away, would not bank,  
11 that lending institution, that mortgage company,  
12 want to have their own engineers determine that this  
13 is in fact a safe or an unsafe area to do it?

14 And the other question is that what  
15 would stop Main Street from being flooded and over  
16 run with water if we got enough rain? Is there  
17 anywhere in the city with the exception on top of  
18 Billy Penn's hat that is so totally safe from  
19 potential flooding that we could guarantee that it  
20 would never receive floods?

21 MR. KRAKOWER: Councilman, may I  
22 respond?

23 COUNCILMAN KENNEY: Yes. It's been a  
24 long day, and I'm just trying to figure out --

25 MR. KRAKOWER: The issue is likelihood.

BILL NOS. 990760, 990761

1  
2 It's not a question of absolute guarantees, of  
3 course not. The issue is to what extent is the  
4 potentiality. The federal government, for  
5 example -- and I have people here, I'm going to turn  
6 this matter over to them soon, who work in these  
7 areas will tell you there's a difference between  
8 something that is extremely remote and something  
9 that's likely, that is at least more foreseeable.  
10 And the question is, are we and are you as the  
11 Council of Philadelphia undertaking a reasonable  
12 risk or an unreasonable risk? And the other  
13 question is, has this matter been given the full and  
14 proper deliberation? Have you heard from all the  
15 people on the other side you should have heard from?  
16 I'm going to let some of these people talk now  
17 because I believe, from what I've heard, that they  
18 have not been fully heard.

19 Let me just point out that one of the  
20 questions, by the way, just to point out some of the  
21 concerns I have as a lawyer. I'm limited. I have  
22 engineers here, I have geologists here, I have all  
23 kinds of people who have expertise in this area, and  
24 I don't, I'm just a humble little old lawyer. But I  
25 have to wonder also about whether there isn't

BILL NOS. 990760, 990761

1  
2 possibly a spot zoning issue here when you take this  
3 small an area and rezone it for what appears to, at  
4 least to me, to be an accommodation for a specific  
5 developer or two specific developers without really  
6 taking into consideration all of the needs of all of  
7 the area in this matter. One of the things that the  
8 Planning Commission has indicated in its memorandum  
9 is that Council is required to allow a certain level  
10 of development in a given area. I respectfully  
11 submit to you I've been before the Pennsylvania  
12 Supreme Court and can cite you a cases where the  
13 Supreme Court has held to the contrary, that no  
14 developer has a right to a specific level of  
15 development other than what the development rights  
16 were when he purchased it. When Mr. Dranoff and the  
17 other man who's buying from Mr. Connolly and Mr.  
18 Malumian, when they bought this property, they knew  
19 it was zoned G-2 and they knew it was in a floodway,  
20 not the flood fringe, a floodway. And therefore,  
21 for them to contend, if they are, that if they're  
22 not given these added development rights or this  
23 residential development that they're rights are in  
24 some way being infringed is contrary to my  
25 understanding of a number of Supreme Court cases.

1 BILL NOS. 990760, 990761  
2 COUNCILMAN KENNEY: I may be wrong, and  
3 again, as far as that argument's concerned, my  
4 understanding from my experience here is that G-2  
5 Industrial being the most expansive potential zoning  
6 designation, that anything less than that was a  
7 reduction. What confuses me is that I have never  
8 seen a group of residents who have opposed the  
9 reduction of a G-2 industrial site to anything -- I  
10 mean, they may have complaints about the commercial  
11 C designation and what may be the commercial use of  
12 it, those arguments I've heard. But I've never  
13 heard anybody argue that they didn't want -- that  
14 they still wanted to maintain a G Industrial zoning  
15 designation for any parcel of land. I would always  
16 think that going lower than G was always in the best  
17 interest, generally, of what the community wanted  
18 and especially when it comes to residential  
19 development, I thought that that was --

20 MR. KRAKOWER: Ordinarily, Councilman  
21 Kenney, that is correct. But you have a unique  
22 situation here. It's the uniqueness that I want  
23 this Body to consider. This is on an island. It's  
24 an island that's only acceptable by four small  
25 bridges. It's an island you haven't heard anything

BILL NOS. 990760, 990761

1  
2 about yet. The soil on which that island is  
3 composed of, from what I understand, it's man-made  
4 fill. There are questions about the ability of that  
5 fill to hold up the proposed houses. We've seen no  
6 engineering from any of this proposed development.  
7 We have an island that is difficult to reach. We  
8 have an island that gets flooded regularly and it  
9 gets flooded severely. I want you to look at  
10 photographs. This is the problem.

11 COUNCILMAN KENNEY: But I just want to  
12 go back to my original question that I broke in and  
13 so rudely interrupted you. Why then would anyone  
14 want to build or finance a residential housing  
15 project on this desolate, unreachable, flooded-out  
16 island?

17 MR. KRAKOWER: Because it can be sold  
18 and turned into a profit. And if would you like, we  
19 can get you a list of the areas in which that has  
20 happened that afterwards people say, "Why did they  
21 build here? Why did they do this?" They're  
22 available. FEMA has documents of those. They're  
23 available on the internet. Look up "floods org" and  
24 you'll see the stories about people who did the same  
25 thing, decided they could make a profit.

1 BILL NOS. 990760, 990761

2 COUNCILMAN KENNEY: From my perspective,  
3 unless I hear something different, I've got to  
4 believe that the market, the lending market would  
5 determine what does or does not get done there as a  
6 result of their investigation and their analysis of  
7 the feasibility of building on a particular parcel  
8 of land, whether it's this island or any other  
9 island.

10 MR. KRAKOWER: With all due respect, and  
11 I'm going to complete with this, I'm going to appeal  
12 to this Council to reach to a higher sense of civic  
13 duty and responsibility than the market. There are  
14 things which the market will allow for profit which  
15 would be detrimental to the interest of the people  
16 of this City, not just in with regard to this  
17 particular project.

18 COUNCILMAN KENNEY: I'm not in any way  
19 indicating that the market should be a moral compass  
20 for us. What I'm saying is, is that the market in  
21 its amorality to me is a protection in itself  
22 because they're not going to lend to anybody who's  
23 got some crazy scream to build on something that's  
24 going to sink or float away.

25 MR. KRAKOWER: But they do. I'm going

1 BILL NOS. 990760, 990761

2 to call on some witnesses to make some comments.

3 COUNCILMAN KENNEY: Councilman Nutter.

4 COUNCILMAN NUTTER: Hold on for a

5 second. Let me go back to a couple of the things

6 that you said. Is your list the same as the list

7 that was shared with us in terms of who you plan to

8 call?

9 COUNCILMAN KENNEY: This is who I have

10 list as far as the order. I have Kathy Tomaski,

11 Darlene Macina, Robin Mann, Wendy Lathrop, Ernest

12 Cohen. Is that the same list?

13 MR. KRAKOWER: Yes, that is the list.

14 COUNCILMAN NUTTER: Let me go back to

15 one of your statements. Now, I've never been the

16 greatest with distances, but you made a statement

17 that the Planning Commission's actions or possible

18 subsequent actions by Council may result in, your

19 phrase was spot zoning, which is normally a phrase

20 that would go with, you know, here's a property or

21 here's a house and we're going to change the zoning

22 for that. Now, do you know the distance from what

23 generally is referred to as the northern tip to the

24 southern tip of this island? I mean, isn't it a

25 little large to be considered spot zoning?

1 BILL NOS. 990760, 990761

2 MR. KRAKOWER: Well, the problem is,  
3 from what I understand, Councilman Nutter, not all  
4 of it is included in this bill. This ordinance only  
5 relates to something like a third of it, and when  
6 you consider the width of it, I'm not too sure. I  
7 mean, I am not making a flat statement. I think  
8 it's something that could be examined. I'm just  
9 concerned because I don't think the process here was  
10 really fair to the total community.

11 COUNCILMAN NUTTER: I hear what you're  
12 saying. So you don't know the distance that we're  
13 talking about, square footage?

14 MR. KRAKOWER: I do not.

15 COUNCILMAN NUTTER: Second, what I've  
16 taken from the testimony, and I've had discussions  
17 with many community people about this, the essence  
18 of your position is we should do nothing at the  
19 moment. I guess I have a couple difficulties with  
20 that position. One --

21 MR. KRAKOWER: That's not quite  
22 accurate, but I'm going to listen to you, sir.

23 COUNCILMAN NUTTER: You asked us to  
24 delay taking any action.

25 MR. KRAKOWER: On this particular

1 BILL NOS. 990760, 990761

2 ordinance.

3 COUNCILMAN NUTTER: Well, on this  
4 particular ordinance at this particular time, taking  
5 no action means do nothing. You understand that,  
6 you've been around the block a few time.

7 MR. KRAKOWER: Yes, I have been.

8 COUNCILMAN NUTTER: So from the take no  
9 action, do nothing in that context, what you are  
10 then asking us to do is to just leave the current  
11 G-2 industrial zoning in place until some future  
12 point in time when there is more discussion, more  
13 process, and the like; is that correct.

14 MR. KRAKOWER: Perhaps this coming  
15 spring. That's all I'm talking about.

16 COUNCILMAN NUTTER: But at some point in  
17 time. Now, how does the absence, dislike them as  
18 you may, you can state for the record that you think  
19 they are absolutely worthless. But how does the  
20 absence of any controls on any development help the  
21 community when we know for a fact that on any given  
22 day of any given week anyone can go to the Zoning  
23 Board and seek relief from a very broad now possibly  
24 impossible zoning classification of G-2 Industrial?  
25 How does that help the community?

1 BILL NOS. 990760, 990761

2 MR. KRAKOWER: For one thing, I would  
3 hope that the Zoning Board also would give careful  
4 deliberation to this matter. The Zoning Board, for  
5 example, right now has before it a request for a  
6 variance, as you well know, Councilman Nutter.

7 COUNCILMAN NUTTER: Yes, I do.

8 MR. KRAKOWER: You were at the first  
9 hearing.

10 COUNCILMAN NUTTER: Yes, I was. At  
11 which hearing I expressed my own concerns about some  
12 of the these issues and concluded with if the Zoning  
13 Board does take an action they need to provide for  
14 certain provisos. That is was my testimony at the  
15 Zoning Board.

16 MR. KRAKOWER: Correct, which we  
17 wholeheartedly agree. However, the problem here is  
18 that neither the Zoning Board nor this Committee,  
19 and to our knowledge, nor the Planning Commission  
20 has heard input some of the expertise that we have  
21 to offer. That whenever we wanted to --

22 COUNCILMAN NUTTER: Prior to today had  
23 these experts, new or old, contacted the Planning  
24 Commission with their views?

25 MR. KRAKOWER: I believe they have.

1 BILL NOS. 990760, 990761

2 They're here, some of them are here today, and that  
3 certainly can be asked of them.

4 COUNCILMAN NUTTER: Why don't we get  
5 them up?

6 MR. KRAKOWER: May I just make one  
7 point?

8 COUNCILMAN NUTTER: Sure.

9 MR. KRAKOWER: As recently as day before  
10 yesterday, I believe, the Planning Commission had  
11 another meeting, and I believe Councilman Nutter,  
12 you were present.

13 COUNCILMAN NUTTER: Yesterday?

14 MR. KRAKOWER: Day before yesterday,  
15 Monday.

16 COUNCILMAN NUTTER: Yes, I was there  
17 Monday.

18 MR. KRAKOWER: At that meeting, however,  
19 there was no input or opportunity for input from the  
20 people I'm talking about who are here with expertise  
21 to try to show the Planning Commission the error of  
22 their ways.

23 COUNCILMAN NUTTER: Let's be fair to the  
24 record, though, Mr. Krakower. First, you were not  
25 at the meeting; is that right?

1 BILL NOS. 990760, 990761

2 MR. KRAKOWER: I was not. That is  
3 correct.

4 COUNCILMAN NUTTER: Second, don't leave  
5 the impression that -- and I don't know who you're  
6 talking about. But if anyone didn't have any input  
7 at the Monday meeting, it can only mean that they  
8 weren't at the Monday meeting, correct.

9 MR. KRAKOWER: I would assume so.

10 COUNCILMAN NUTTER: Because anyone who  
11 was at the Monday meeting certainly had a full  
12 opportunity for I think a couple hours to have  
13 input, right,?

14 MR. KRAKOWER: I don't know; I wasn't  
15 there.

16 COUNCILMAN NUTTER: Well, I was there,  
17 and anyone who was there had an opportunity to  
18 speak, respond, criticize, review or anything else,  
19 so let me just state that for record.

20 MR. KRAKOWER: Okay. I wasn't there;  
21 I'm not going to disagree with you.

22 COUNCILMAN NUTTER: Let me at least put  
23 into the record just so my colleagues have some  
24 context. Most people generally don't run around  
25 with copies of Philadelphia Code or the

BILL NOS. 990760, 990761

1  
2 classification section. In G-2 Industrial today as  
3 a matter of right, a person could come to L & I and  
4 apply for permits to do things such as have a  
5 heliport, the killing, dressing, packing and  
6 canning of poultry, rabbits and other small game  
7 including cleaning, packing, grading, drying, and  
8 freezing eggs; the manufacturer of aircrafts,  
9 including component parts and axiliary equipment;  
10 fire arms, guns, mortars, military tanks, and  
11 components, torpedo tubes, Y-guns, flame throwers  
12 and other ordinance except the manufacture, use,  
13 handling, or storage of explosive in any forms.

14 Mr. Krakower, were you here for some of  
15 the discussion about a Planning Commission and the  
16 Law Department on the issue that has been debated  
17 back and forth on whether or not you can build in a  
18 floodway or a floodplain?

19 MR. KRAKOWER: Yes, I've been here all  
20 day today, Councilman.

21 COUNCILMAN NUTTER: Well, so have I.  
22 And is there any disagreement from your perspective  
23 on --

24 MR. KRAKOWER: Absolutely there is.

25 COUNCILMAN NUTTER: Why is that?

1 BILL NOS. 990760, 990761

2 MR. KRAKOWER: Because as I read  
3 Section 1606, and I read it differently than the  
4 Members of the Planning Commission do or than the  
5 representative of the Law Department. I believe  
6 that the language is clear that as you read it, I  
7 don't think it's as difficult as they would make it.

8 COUNCILMAN NUTTER: Okay, you don't have  
9 to take me back through it.

10 MR. KRAKOWER: Building within the  
11 floodway is distinguished from building within the  
12 floodplain. I think that's the problem. You can  
13 build in the floodplain; you cannot build in the  
14 floodway. That's why I started with that  
15 distinction.

16 COUNCILMAN NUTTER: All right. Why  
17 don't you bring your folks on. Your testimony is  
18 you disagree with the City Planning Commission and  
19 City's Law Department on this particular issue.

20 MR. KRAKOWER: Let me just state why.  
21 Because I believe they are not distinguishing  
22 between the floodplain and the floodway.

23 COUNCILMAN KENNEY: What I'd like to do,  
24 if I can, is ask Mr. Krakower to remain at the table  
25 as the counsel to this group, and if you could just

1 BILL NOS. 990760, 990761

2 move to the side what I'd like to do is bring up  
3 people in threes.

4 MR. KRAKOWER: Yes, Councilman Kenney,  
5 that's exactly what I'd like to do. Sally Willig.

6 COUNCILMAN KENNEY: This is the order  
7 that your group is interested in? I was given  
8 another order. And I have no preference.

9 MR. KRAKOWER: Because of the hour and  
10 certain people have a need to leave, I'd like to be  
11 able to change that order so I can get people who  
12 must go and get them on.

13 COUNCILMAN KENNEY: No problem.

14 MR. KRAKOWER: Sally Willig.

15 COUNCILMAN KENNEY: This is in no way  
16 means to limit the scope of your testimony, you're  
17 free see whatever you want about whatever you want.  
18 If you could just for our sake and for rest of us  
19 kind of stay on issues that haven't been discussed  
20 before. So if one person brings up one issue, if  
21 you could either elaborate or go to another issue so  
22 we're not being redundant. But if you feel the need  
23 to say whatever it is you want to say, please go  
24 right ahead.

25 What I had like to do is ask you to

BILL NOS. 990760, 990761

1  
2 please identify yourself for the record and then  
3 proceed with your testimony. We'll let everybody  
4 testify first and then we'll have questions. Thank  
5 you.

6 MS. TOMASKI: My name is Kathy Tomaski.  
7 I'm the former president of the Manayunk  
8 Neighborhood Council. Manayunk Neighborhood Council  
9 is the recognized civic in the Green Lane corridor.  
10 When I was president last year, we had 163 members,  
11 exclusive of approximately 40 members counted as  
12 one. So if you were three in a family, you were  
13 counted as one. I volunteered to work with Mary  
14 Tracy on the cigarette billboard plight in the  
15 corridor. I am also a democratic committee woman  
16 for the last 13 years in the 4th Division of the  
17 21st Ward bordering the Main Street corridor, which  
18 by the way, all of you were carried by my division.  
19 I am a devout activist in the Philadelphia  
20 unemployment project, the Mt. Valley, Instrumental  
21 in Pennsylvania social problem solvings. I am  
22 awardee of several various honor of community  
23 activism. Last, but not least, I am a widow having  
24 5 children, 15 grandchildren, 10 of whom live in the  
25 Manayunk area bordering the canal. They attend a

BILL NOS. 990760, 990761

1  
2 local school such as Roman Catholic High School,  
3 Roxborough High School, St. John's Elementary, two  
4 headed toward Hallahan, St. Josaphat's, Green Lane  
5 Nursery, and Jenks in Chestnut Hill. We are true  
6 Philadelphians and true Manayunkers. Therefore, I  
7 people qualified to give testimony here today.

8 I had a conversation with Tom Connolly  
9 when I was president a few years ago and I asked him  
10 to please get involved in what was happening in the  
11 Main Street corridor and he, quote, told me he  
12 didn't want to get involved with the Manayunk  
13 Development Corporation and only dealt with the  
14 Catholic charities in the Manayunk area. So I'd like  
15 to give my testimony so the others can go on.

16 A few days ago, I read an article in the  
17 Philadelphia inquirer concerning ambitious proposed  
18 Bill 300 commonly known as "Growing Greener." The  
19 expenditure was estimated a \$500 million dream, but  
20 apparently other members of the State Senate had  
21 their own take on the proposal. Whenever the  
22 decision, it is certainly a start in the right  
23 direction. I believe the suburban sprawl of  
24 developments has hit a nerve in the densely  
25 republican counties such as Chester, Delaware,

BILL NOS. 990760, 990761

1  
2 Montgomery, and Berks. They are all saying no.  
3 They want to keep their green space. Isn't that why  
4 they're willing to create green bond issues?

5 In the meantime, back in Philadelphia  
6 the City commonly known as "it's not what you know  
7 but who you know," the community has absolutely no  
8 say in policies that adversely affect te health,  
9 welfare, and safety of our family, friends, and  
10 neighbors. After losing in court on highly  
11 publicized apartment complex in the heart of dense  
12 Manayunk, a Dan Edison property, we lost hope and  
13 faith in the powers that we elected to represent the  
14 community of Manayunk in the 21st Ward. Also, the  
15 thoughts of one so-called group, Central Manayunk  
16 Council headed by John Tiegs and Vince Esposito have  
17 not a clue as the zoning overlay is decided here  
18 today as they touted development.

19 The Manayunk Neighborhood Council, along  
20 with other credible organizations, have done the  
21 research proving that the whole island off Main  
22 Street in Manayunk would be in serious danger of a  
23 catastrophe if the development is approved. Wasting  
24 gasoline could run into the Schuylkill River and the  
25 environment.

1 BILL NOS. 990760, 990761

2 I used to be a believer that the  
3 residential development at the canal wouldn't be so  
4 bad, but Floyd has been a sign from God saying no.  
5 Does the City of Philadelphia want to risk a class  
6 action lawsuit for promoting and approving a  
7 catastrophe?

8 Now, the FEMA issue comes into play. If  
9 FEMA is willing to cover million dollar complexes,  
10 what's left for the real victims? So tax  
11 abatements, flood insurance at taxpayers' expense is  
12 a slap in the face of the taxpayers of Pennsylvania.

13 Please take my testimony into  
14 consideration and act responsibly. Kathy Tomaski.

15 COUNCILMAN KENNEY: Thank you very much  
16 for your testimony.

17 Ma'am could you please identify yourself  
18 for the record.

19 MS. Willig: Yes. I'd like to give each  
20 of you a handout to look at while I am talking.

21 COUNCILMAN KENNEY: The Sergeant-at-Arms  
22 will bring it up.

23 MS. WILLIG: Good afternoon,  
24 Councilmembers, I appreciate your hearing us at this  
25 time of day. This is very important issue, as

BILL NOS. 990760, 990761

1  
2 Stanley Krakower has indicated, that should not be  
3 done with haste. I live near Poenixville in Chester  
4 County, Pennsylvania. I earned a PhD in Geology in  
5 1988 from the University of Pennsylvania, and since  
6 that time have been teaching there on a part-time  
7 basis out of the Departments of Earth and  
8 Environmental Science and Landscape Architecture and  
9 Regional Planning. I teach a number of different  
10 courses including wetlands, environmental geology,  
11 regional field ecology.

12 An underlying goal of all of these  
13 courses is to increase students' understanding of  
14 ecosystems processes and functions so that they can  
15 make wise land-use decisions. In looking at case  
16 histories of various natural disasters, it becomes  
17 clear that when humans fail to understand and  
18 respond to recurring destructive landscape processes  
19 such as flooding, tragedy is inevitable.

20 As you consider the future land-use of  
21 Venice Island, you must not ignore the  
22 well-documented history of periodic severe floods  
23 submerging Venice Island and Manayunk.

24 Less than three months ago, rainfall  
25 from Hurricane Floyd began falling in the Schuylkill

BILL NOS. 990760, 990761

River basin early in the morning, and over the next 18 hours up to 10 inches of rain fell, 10 inches of rain fell at Valley Forge. This led to dramatic flooding along Schuylkill.

If you would turn to the first attachment, you can see information from the Delaware River Basin Commission, a summary of Hurricane Floyd, and in there it says parts of Manayunk and Venice Island were submerged.

If you glance at the photos here in front of you, you can see ones taken by both residents of Manayunk and by the Philadelphia Inquirer showing the submerges and the dangerous conditions that were produced.

I'd like you to look at this hydrograph to see a very important point. Hydrographs are graphs of rise in water level, change and discharge over time. What you will see, there is time along the bottom. The upper diagram shows discharge, the lower one shows rise in water level. The water level rose extremely quickly. According to the proprietors of Little Wood Dies at Shurs and Manayunk Lane, they've there, there's four generations, they've seen many floods; this one rose

1 BILL NOS. 990760, 990761

2 faster than any they had ever seen, faster than  
3 Hurricane Agnes. That makes for very difficult  
4 evacuation of areas.

5 A little more three years ago in January  
6 of 1996, three feet of snow rapidly melt and we had  
7 unprecedented flooding throughout Pennsylvania  
8 including on the Island of Manayunk. I've taken an  
9 excerpt from the Philadelphia Inquirer article at  
10 the time called "Ranging Rivers Punish Region." You  
11 can read through it on your own, but it says,  
12 "Hardest hit in the city was Manayunk along Main  
13 Street."

14 The 50-year flood of Philadelphia was  
15 Hurricane Agnes in June of '72. The FEMA report of  
16 1996 for the City of Philadelphia has a little exert  
17 based on "Philadelphia Evening Bulletin" accounts,  
18 and it says, "Manayunk was hard hit by the flood  
19 with some houses swept away and all its factories  
20 closed leaving approximately a thousand workers  
21 temporarily unemployed. Manayunk's Main Street and  
22 River Road were so deeply flooded they had to  
23 evacuated and guarded against looting."

24 The hundred-year flood on record  
25 occurred in 1869. Again, "Philadelphia Evening

BILL NOS. 990760, 990761

1  
2 Bulletin" accounts give you some feel for it. "Two  
3 canal boatmen were drowned when their canal boat  
4 was overturned in the Manayunk area. Property  
5 damages were estimated to be a million dollars for  
6 the Manayunk area alone. Contributing to the debris  
7 carried by this swollen river were great quantities  
8 of lumber...Ice from the Pennsylvania Ice and Coal  
9 Company, innumerable barrels and hogsheads, canal  
10 boats, numerous freight cars and every other movable  
11 object from the Pennsylvania Rail Yards. The  
12 Schuylkill River valley was covered by a vast  
13 expanse of water that submerged, without a ripple,  
14 the Flat Rock Dam near Manayunk and passed 11 feet  
15 of water over the Fairmount Dam."

16 So that's just to give you a sense of  
17 the scale of flooding that has taken place and could  
18 take place again in the area of Manayunk.

19 Why does it flood so severely at  
20 Manayunk? There is a reason of this. It's a  
21 combination of both the natural configuration of the  
22 Schuylkill River Valley in that area and human  
23 modifications at the time to the floodplain in a  
24 hydrologic cycle.

25 If you take a look at the next

1 BILL NOS. 990760, 990761

2 attachment, the pull-out, it shows a section from a  
3 report by Alter, a USGS report in 1967.

4 COUNCILMAN KENNEY: You're going to have  
5 to continue to use the microphone. You can pick it  
6 up.

7 MS. WILLIG: The main think I want to  
8 show you is from the Conshohocken Curve all the way  
9 down to Venice Island, a distance of some three  
10 miles is straightaway. There's a steep narrow  
11 valley cut in the hard Wissahickon rock and the  
12 water low flow conditions is impounded somewhat by  
13 the Flat Rock Dam to create lake-like conditions.  
14 But at high flow, it is not a flood control  
15 structure. The water comes raging down through  
16 here. It's essentially a chute and hits an area of  
17 naturally exceptional hard rock, a constriction, at  
18 the northern end of Venice Island. You're familiar  
19 with the Flat Rock Tunnel, the on-ramp to the  
20 Gladwyne, right in that area, and the water is  
21 forced through there and it rises to a more dramatic  
22 degree below there from Flat Rock Dam down to mile  
23 marker 14.

24 If you look at Attachment Figure 6, this  
25 shows the rise in water level from Conshohocken down

BILL NOS. 990760, 990761

1  
2 to the Falls Bridge. Are you able to find that?  
3 And this was based on high water marks by  
4 significant floods up to 1967. And this is probably  
5 the most important thing I want you to walk my talk  
6 here today is that Venice Island is unique. It  
7 floods more dramatically at Venice Island than it  
8 does upstream or downstream of Venice Island along  
9 the Schuylkill River. And you can see that by the  
10 significantly higher rise in surface water  
11 elevations. For the 1933 flood, water rose 25 feet  
12 at the Green Lane Bridge; that's pretty significant.

13 Additional impacts to the hydrology  
14 there are storm sewer inputs to the Manayunk Canal.  
15 There are five six-foot diameter storm sewer  
16 outfalls into the canal, so that just exacerbates  
17 the problem when there's severe flooding.

18 So finally, if you look to the future  
19 use of Venice Island, you've got many options.  
20 You're thinking about one here today. What is  
21 another consideration is extension of the greenway  
22 that Philadelphia now has south of the confluence  
23 with the Wissahickon along the Schuylkill River  
24 Drive. It would promote the recreational use of the  
25 island which is great at the moment in its current

1 BILL NOS. 990760, 990761  
2 condition where there's not great access to many  
3 parts of the Island. It would also promote natural  
4 habitat there.

5 In conclusion, I strongly oppose Bills  
6 990760 990762 which would rezone portions of the  
7 island to residential and have the City of  
8 Philadelphia knowing place its citizens in harm's  
9 way. I urge you to be thoughtful in your  
10 decision-making and understand that you have a  
11 legitimate basis, that Venice Island periodically  
12 floods severely, for saying no to rezoning to  
13 residential. Thank you.

14 COUNCILMAN KENNEY: Thank you for  
15 testimony.

16 MR. KRAKOWER: May I ask Dr. Willig one  
17 question?

18 COUNCILMAN KENNEY: Mr. Krakower, I'm  
19 sorry, this is not a courtroom. Testimony is given,  
20 and we ask questions.

21 Please identify yourself for the record.

22 MS. TERELLA: Hi, my name is Liz Terella  
23 (ph) and I'm president of the Manayunk Neighborhood  
24 Council and I'm a board member on the Manayunk  
25 development corporation. I have a short little

BILL NOS. 990760, 990761

1  
2 letter that I want to read to you and then it looks  
3 like stack but I'll only be pulling a couple things  
4 out of here that I've noted in my little my book  
5 here that has to do with some errors and omissions  
6 and inaccuracies.

7 Madam Chairman, ladies and gentlemen,  
8 thank you for the opportunity to speak today.  
9 Although the neighborhood had hoped this would not  
10 be necessary to speak on this matter in the  
11 particular manner that we must. We had expected  
12 that consensus could be reached in regard to Venice  
13 Island before we would be speaking to you. We were  
14 promised by the City Planning Commission and our  
15 Councilman Mr. Nutter that the community's input  
16 would be considered. That has not happened. And so  
17 here we are today.

18 I have spoken here before about the fact  
19 that my grandchildren can say they have roots in  
20 Manayunk that go deep, over 100 years and plus. All  
21 well and good, but that's the past, and we speak of  
22 the future. In light of the fact that if you call  
23 it whether the last year of the old millennium or  
24 the first year of the new millennium, we are  
25 entering a new age. This should call for us to look

BILL NOS. 990760, 990761

1 at lessons learned and some things differently.

2  
3 The Senate of Pennsylvania and other  
4 speak of municipal cooperate, and we see in the  
5 plans Venice island little of that. By rushing so  
6 quickly for residential, have we spoken Lower Merion  
7 Township about this development? As a member of the  
8 board of Manayunk Development Corporation, I know it  
9 has taken a long time and great effort and the hard  
10 work of Representative Kathy Manderino and others to  
11 finally get something moving in changing the traffic  
12 sequence at I-76. This was done through MDC and  
13 these other factions, thinking that the sequence  
14 would help the problem on the Green Lane Bridge.  
15 Have we mentioned to them the plans for Venice  
16 Island and all the commuter traffic it will  
17 generate? Is this our good faith effort? In that  
18 same vein, has the City of Philadelphia put forth  
19 the type of effort for other options from Venice  
20 Island that we have taken in regard to other areas  
21 similar issues. We are asking for time. What is  
22 the rush? To give patent approval to this zoning  
23 overlay so that we would not have to face the same  
24 developers in court and therefore take the risk of  
25 losing seems ridiculous. We are currently

BILL NOS. 990760, 990761

1  
2 developers 3, neighborhood 0, but we're still  
3 standing and would rather take our chances with an  
4 informed constituency, which is what we're currently  
5 doing, than give up our rights. The good people of  
6 Manayunk, whom I love and respect, have endured  
7 enough. We are not against development, but we have  
8 become a regional destination without regional  
9 infrastructure.

10 The numbers for planning analysis as  
11 used in the Commission's draft plan are incorrect  
12 and do not match the numbers from the traffic  
13 engineering study. In the draft plan they said they  
14 used planning analysis numbers, not actual  
15 engineering numbers, but I have the numbers from the  
16 traffic study. The problem is commuter traffic, not  
17 commercial trips. And if I may make an aside, they  
18 mentioned that commuter trips are much more trips  
19 for square footage, et cetera. Manayunk is not a  
20 place -- they're using those commercial numbers are  
21 used for suburban trips, you run out to the hardware  
22 store, you run out here and there. Manayunk is not  
23 that kind of place. You come and you park. They're  
24 not trips back and forth because you can't park so  
25 you come once and stay and walk around. We need a

BILL NOS. 990760, 990761

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breather.

The Civics neighborhoods bordering the island and river Umbria Street neighbors, Manayunk Neighbors Council and Wissahickon neighbors are all opposed to the zoning overlay. But since that time Wissahickon neighbors community, they went to them and they said no opposition, although I do have a letter stating their reservations about the manner in which this plan was drafted with no community input.

As I said, Manayunk Neighborhood Council, we're opposed to the zoning overlay at this time, and you good people should be also.

Philadelphia is called the city of homes and they speak about the density of Manayunk and you can see that small island and you've see the little place where they would be building. That will encompass the same number of homes as the 4400 block of Baker Street, 4500 block of Baker Street, 4400 block of St. David's, 4500 block of St. David's, 4500 block of Richie, 4500 of Smith, 4400 block of Mansion, 4300 block of Silverwood, 4400 block of Silverwood, 100 block Green Lane, 100 block of Conarroe, 100 block of Carson, 100 block of Day

BILL NOS. 990760, 990761

1  
2 Street, 100 block of Maiden, 100 block of Grape, 100  
3 block of Levering, 100 block of Cotton, 100 block of  
4 Rector, and 100 block of Roxborough Avenue, and will  
5 take our section of Manayunk from one that has one  
6 of the highest incidents of owner occupied  
7 properties in the City to one of the lowest by  
8 virtue of apartments.

9 I have recently worked on a project with  
10 MDC. They've gotten a grant and other things to  
11 promote single family home ownership in Manayunk.  
12 Mr. Netison has brought in over 200 apartments, and  
13 we're speaking now of 700 more. That's 900  
14 apartments, not counting the illegal rentals that we  
15 speak about. We will no longer be a community of  
16 homeowners.

17 Another thing that one thing that was  
18 said today was that we want to leave the island G-2.  
19 That is incorrect. We were invited to a meeting on  
20 September 9th that came about because we entered a  
21 motion MDC that MDC write a letter to the planning  
22 commission requesting that they please sit down with  
23 the community because our request for the planning  
24 commission to sit down to the community went  
25 unheard. There actually had to be a motion entered

BILL NOS. 990760, 990761

1  
2 and seconded, and then we were invited on September  
3 9th to meet with the Planning Commission. That was  
4 -- Barbara Kaplan in one of her letters says that  
5 they changed the draft plan from 1.9 to 1.35 based  
6 on comments made at the meeting with the community  
7 representatives. Michael Nutter, Councilman Nutter  
8 and others were there Kathy Manderino, that was not  
9 a working meeting, that was an information meeting  
10 where we went in and they gave us the draft plan.  
11 And the only questions or comments we had were  
12 clarification. That was not a working meeting. We  
13 were asked to go form a task force and form our own  
14 draft development plan for Venice Island, which we  
15 did. In ours we said that we acknowledged that  
16 Venice Island almost entirely falls within the  
17 floodway of the Schuylkill River. We firmly support  
18 the local, state, and federal floodway regulations  
19 that prohibit new construction or development in  
20 floodway. However, to protect the interest of the  
21 community, should those regulations be ignored, we  
22 present the following development plan. In our plan  
23 we ask for commercial, recreational, cultural,  
24 technical, and light industrial. And I won't go  
25 into our plan. We presented our plan, faxed it on

BILL NOS. 990760, 990761

1  
2 November 17th. In another letter I have from  
3 Barbara Kaplan, she states, "No one is leaving the  
4 community out of this process. We are anxious to  
5 hear your comments and are ready and willing to  
6 evaluate them in the same manner as we have  
7 evaluated those of the business community." We  
8 presented this on November 17th and I have the  
9 minutes from the Planning Commission meeting the  
10 next morning where this recommendation was put in,  
11 the next morning. How much thought was given to our  
12 recommendation? It was at the meeting on the 20th  
13 with a recommendation that MDC was going to make to  
14 the Planning Commission asking that they raise the  
15 FAR from 1.0 to 1.5. Our meeting was October 23rd.  
16 By October 28, and in fact I think the letter went  
17 in October 28, that same day I received a letter  
18 from Barbara Kaplan stating that they had changed it  
19 to 1.35 with a couple days' notice.

20 COUNCILMAN KENNEY: I'm sorry, what's  
21 the FAR.

22 MS. TERELLA: FAR is the foot area  
23 ratio. For example, if a lot is a thousand square  
24 foot, you can put a thousand square foot building.

25 COUNCILMAN KENNEY: Thank you.

1 BILL NOS. 990760, 990761

2 MS. TERELLA: In their own draft plan at  
3 1.0 ratio, they state that traffic is at peak  
4 capacity. Then they said that if they were able to  
5 go to 1.35 because they eliminated the commercial.  
6 The only commercial that was in the original plan  
7 was accessory to the apartments, not commercial that  
8 would have generated these so-called so, so many  
9 trips. Also in the letter from Barbara Kaplan she  
10 wants to say, "In closing, I would to remind you  
11 that any zoning legislation must have the support of  
12 both the residential and business segments of the  
13 community in order to be enacted by City Council and  
14 the Mayor."

15 In the traffic survey that was done by  
16 Boles Smyth Associates and was directed by  
17 Councilman Nutter's office, the Mayor's office, the  
18 Philadelphia City Planning Commission, SEPTA, the  
19 Philadelphia Streets Department, the Philadelphia  
20 Parking Authority, PIDC, business and community  
21 representatives, Manayunk Development Corporation  
22 and Manayunk Neighborhood Council. The study was  
23 contracted through PIDC. Their findings say  
24 regarding quality of life and economic viability,  
25 "The parking" -- now, this goes to refute what was

BILL NOS. 990760, 990761

1  
2 said here today, that the infrastructure is enough.  
3 "The parking and access infrastructure is currently  
4 inadequate to effectively accommodate the increasing  
5 demands which in turn impact the overall quality of  
6 life in Manayunk." This study was done April of  
7 1997, and we've had more development since then with  
8 no changes in the infrastructure.

9 Also, in speaking about one of the  
10 highest traffic times, it was said that Saturday is  
11 the time of most commercial activity and therefore  
12 residential would be good. Here, these counts  
13 showed Friday to be the heaviest travel day of the  
14 week. On the Green Lane Bridge, Wednesday and  
15 Friday were equal. Also, their own studies here say  
16 that on Friday there were 1300 cars going up the  
17 street at 6:00 p.m. a Friday here at 5:00 p.m., 480  
18 -- over the bridge, I'm sorry. 1300 going over the  
19 bridge. But Friday at 5:00 p.m. there were only 480  
20 cars, and at noon on Saturday 430. Less. It states  
21 that commuter traffic.

22 I don't have it with me today, but I  
23 also have a letter that I thought I had where Mr.  
24 Tom Connolly wrote a letter to Manayunk Neighborhood  
25 Council saying he didn't understand why we had a

BILL NOS. 990760, 990761

1  
2 problem with commercial development since anybody  
3 who knows Manayunk knows that all the problems are  
4 commuter traffic and that Main and Green Lane is  
5 nightmare. I will send that you.

6 I have a letter from Umbria Street  
7 Neighbors speaking about it.

8 I have a letter to the Zoning Commission  
9 that deals with the traffic, the floodway issues,  
10 and the fact that we are trying to promote home  
11 ownership.

12 There is was also something said here  
13 today that I personally took a little bit of umbrage  
14 to, and that was that Manayunk people, you know,  
15 it's a class thing. Fifteen years ago I was giving  
16 seminars at North Light called Yunkers and Yuppies.  
17 I believe that people have the same rights if  
18 they've been in a place a hundred years or a day and  
19 a half. If I moved to New Jersey tomorrow, I expect  
20 to have the same rights as anybody who's ever been  
21 there. There was something said there that our  
22 problem is with the class of people, and that was  
23 said by Mr. Ed Weiner. This is an E-mail that when  
24 I saw it, I want Mr. Ed Weiner off the committee for  
25 the task force. And if I might read it. "I believe

1 BILL NOS. 990760, 990761

2 lots of people have hopped on to the floodway  
3 bandwagon" --

4 MR. WEINER: That was a private E-mail.

5 MS. TERELLA: No, it wasn't. It was  
6 sent to everybody.

7 COUNCILMAN KENNEY: First of all, as  
8 temporary Chair of the Committee, we're willing to  
9 listen to issue relative to floodways, flood  
10 fringes, traffic, but I'm not going to allow a  
11 personal attack or personal argument. It's not  
12 germane.

13 MS. TERELLA: This is not a personal  
14 attack.

15 COUNCILMAN KENNEY: I don't want it in  
16 the public. I don't want it in the record.

17 MS. TERELLA: I'll send copy to each  
18 member.

19 COUNCILMAN KENNEY: You can do that.

20 MS. TERELLA: I will do that because  
21 what was said today here was not true.

22 COUNCILMAN KENNEY: He has an opinion  
23 and you have an opinion, and you're both expressing  
24 it.

25 MS. TERELLA: But here he gives his

1 BILL NOS. 990760, 990761

2 opinion of Manayunkers.

3 COUNCILMAN KENNEY: That's between you  
4 and him.

5 MS. TERELLA: It's not between me and  
6 him, sir; it's between this Council, too. This is  
7 our City Council. I'll make copies.

8 What I want to say is I also want to  
9 show -- this is something else. Am I allowed to  
10 say? I won't go into that either. I'll give you  
11 copy where some things that were said today are  
12 quite different that what was said there.

13 Also I guess I'll wrap it up-- oh, wait  
14 a few more things. The "Review," the local  
15 newspaper has editorials speaking about the folly of  
16 building in a floodplain. They are opposed. They  
17 end by saying, "We say again no matter what  
18 developers tell us about the strength of proposed  
19 buildings on Venice Island, their plans will some  
20 day dissolve into river silt if they were are  
21 allowed to build in the floodway. We say again,  
22 City Council must take a strict stand on floodway  
23 development." And they actually had three  
24 editorials.

25 And my final thing is, as I had said to

BILL NOS. 990760, 990761

1 Councilman Nutter, I was going to read this. This  
2 was Councilman Nutter's position on the Dranoff  
3 proposal before the Zoning Board. "The members of  
4 the Zoning Board are probably familiar with the  
5 events of September 16, 1999, when the City  
6 experienced extremely heavy rainfall resulting from  
7 Hurricane Floyd. This led to severe flooding in  
8 many locations in Philadelphia and especially in the  
9 vicinity of Venice Island and Main Street Manayunk.  
10 The application before you was a site which suffered  
11 serious flooding and which is located within the  
12 floodway. I, therefore, question the wisdom in  
13 converting this former factory building into  
14 apartment units. Local, state, and federal laws and  
15 regulation prohibit certain structures and  
16 expansions of existing structures in floodways.  
17 Furthermore, these laws and accompanying regulations  
18 specifically encourage actions which reduce flood  
19 loss and minimize the impact on health, safety, and  
20 welfare if flooding occurs. Given the most recent  
21 event and location of this property, the Board  
22 should deny this application." And then, of course,  
23 as he says, he did say that if they were to do it,  
24 there would be provisos.  
25

1 BILL NOS. 990760, 990761

2 I have taken enough time. Thank you  
3 very much for your time and attention.

4 COUNCILMAN KENNEY: Thank you.

5 COUNCIL PRESIDENT VERNA: Thank you.

6 Darlene Macina, Robin Mann, and Wendy Lathrop.

7 MS. MACINA: Hi, Rules Committee. Thank  
8 you for taking the time all day to listen to us.  
9 It's been very painful for us, too, over the last  
10 four months. My name is Darlene Macina. I'm with  
11 Friends of the Manayunk Canal. I established the  
12 organization. We are Friends of Fairmount Park  
13 Group. I moved into Manayunk, bought a house 17  
14 years ago because of the Manayunk canal towpath and  
15 access to the river. I'm a rower and waterways are  
16 very important to me and pedestrian access as well.

17 I want to ask if you can acknowledge the  
18 package that I sent to your office on last Friday  
19 and had on some time to look at it. There are a  
20 number of articles from various papers, specifically  
21 the "Inquirer," which I think really bring home the  
22 fact of what Floyd did in Manayunk.

23 We are stewards of a modest park land.  
24 Our area focuses a narrow band of land adjacent to  
25 Venice Island and the Manayunk Canal which is

BILL NOS. 990760, 990761

1  
2 parallel to the Schuylkill River. Our members  
3 represent a broad array of park-users, both local  
4 and regional. They are of all ages, incomes, and  
5 colors. They come from North Philadelphia in Center  
6 City, they come up from the cliffs of Manayunk.  
7 They com from Montgomery County, they come from  
8 Westchester. Manayunk is a center for -- is a  
9 destination for the region, and we like that. Our  
10 members are users of the Schuylkill River, the  
11 Manayunk Canal, and towpath. They are active and  
12 passive users such as bird-watchers, kayakers,  
13 rowers, joggers, runners, cyclists, and fishermen  
14 and women who sit along the canal for hours. All of  
15 our members support smart economic development which  
16 is sustainable and beneficial for the entire region.  
17 We all benefit from smart growth and development.  
18 We encourage projects that compliment and enhance  
19 the existing community.

20 I also would like to mention that FMC  
21 was nominated to the Fairmount Park Residential  
22 Citizen Advisory Board and we serve on that  
23 committee because of the work we do and the kind of  
24 research and reports that we have submitted. In  
25 additions, we have received grants and in-kind

1 BILL NOS. 990760, 990761

2 services which amount to thousands of dollars and  
3 some of that work you can see here today. Through  
4 these efforts, we have produced professional reports  
5 and research about Venice Island and our park land.  
6 In fact, I think we are the experts of this area  
7 which we're talking about today. And I hope you do  
8 have the time to read some of the reports, and  
9 they're all on our web site if they're not in your  
10 packet. We have distributed our reports to MDC,  
11 Philadelphia Planning Commission, Councilman Nutter,  
12 and other groups. Our reports have been cited a  
13 number of times.

14 We come to you today to state our  
15 opposition to the two bills 990760 and 990762 and I  
16 would like this testimony to apply to tomorrow's  
17 hearing at well.

18 We have met as a group on this issue of  
19 land use in the floodway on an average of once a  
20 week for three hours for about four months. We're  
21 tired. Our dedication and commitment is rooted in  
22 our personal lives and professional lives. That's  
23 why we've been here today since 9 o'clock. We don't  
24 get paid for this. We have tried to look at the  
25 broad picture of economic development for the City

1 BILL NOS. 990760, 990761

2 of Philadelphia as well as the quality of life and  
3 the quality of experience in neighborhood for both  
4 ourselves and the guests of our community. We've  
5 tried to look at the economic viability and cost  
6 expenditures of new construction in the floodway and  
7 environmental repercussions of construction in the  
8 Schuylkill River floodway. Our conclusion is as  
9 follows:

10 We find that development along the  
11 Schuylkill River in Manayunk will lead to increased  
12 flooding thereby endangering the loss of property  
13 and life, creating health and safety hazards and  
14 cause the wasteful and unnecessary expenditure of  
15 public funds for protection and disaster relief  
16 efforts. To prevent such adverse conditions and  
17 consequences, it would seem necessary to impose  
18 restrictions and regulations for development on  
19 Venice Island. I want you to know what I just read,  
20 that last couple of sentences, was pulled exactly  
21 from the City Code; that actually wasn't my text.

22 I would like to call your attention to a  
23 letter in your packet which I dropped off, members  
24 of us, we dropped it off on Friday, from the  
25 Delaware River Basin Commission, which was signed by

BILL NOS. 990760, 990761

1  
2 Carol Collier, Executive Director. I believe a copy  
3 of this was sent to Commissioner Margaret Taglioni  
4 (ph) and it was addressed to members of both the  
5 House and Senate urging them to consider buy out in  
6 conversions of floodways and doing so to consider  
7 this as a part of the planning process as opposed  
8 dealing with these types of lands and disaster  
9 responses.

10 Lastly, I want to say that we strongly  
11 support the mechanism of the zoning overlay. The  
12 zoning overlay is the basic approach many  
13 municipalities have used to regulate floodplains to  
14 comply with the federal flood insurance program.  
15 However, we feel this important issue of the future  
16 of Venice Island, the floodway, should be given more  
17 careful consideration and time. We do believe there  
18 is an alternative plan and we ask you for that time  
19 and to work more closely with the stakeholders that  
20 you see here today and the experts. Thank you for  
21 your time.

22 COUNCIL PRESIDENT VERNA: Thank you.

23 MS. MANN: Madam Chairman, Members of  
24 the Rules Committee, I'm Robin Mann. I'm speaking  
25 on behalf of the Southeastern Group of the Sierra

1 BILL NOS. 990760, 990761

2 Club, of which I serve as chair of the wetlands and  
3 water quality committee. I'm speaking to express  
4 our strong opposition to bill 990760 and 762 to  
5 amend the City's Zoning Code.

6 The Sierra club is a national  
7 organization with chapters active in all 50 states  
8 dedicating to promoting the protection of our  
9 natural heritage for present and future generations.  
10 The Southeastern Group has approximately 8,000  
11 members residing in Philadelphia, Montgomery,  
12 Delaware, Chester Counties. Many of our members are  
13 actively involved through the club and other  
14 conservation initiatives in efforts to improve water  
15 quality and restore watersheds in the Delaware  
16 Valley.

17 The Sierra Club is not opposed to all  
18 growth and development. We are opposed to poorly  
19 planned development that is wasteful of scarce  
20 resources. Our current national anti-sprawl  
21 campaign is aimed at highlighting the positive steps  
22 the communities and state governments can take to  
23 promote smart growth. We encourage open protection,  
24 land use, and transportation planning, and urban  
25 revitalization, all of which can help to limit

BILL NOS. 990760, 990761

1  
2 environmental impacts of development and to promote  
3 livability. We do oppose new development in the  
4 wrong place. And especially oppose new development  
5 in floodplains. The protects of undisturbed  
6 floodplains from development, the prevention of more  
7 intensive redevelopment in the floodplain and the  
8 restoration of floodplains through mitigation  
9 measures are important, not only for the range of  
10 environmental benefits they provide from flood surge  
11 protections to water quality improvement, but also  
12 for the benefits in terms of protection of life and  
13 property.

14 Bill Nos. 990762 and 990760 would allow  
15 new residential development in the floodway of the  
16 Schuylkill River by rezoning the southeastern  
17 portion of Venice Island for low-density residential  
18 use. We firmly oppose this measure because it would  
19 put more people in harm's way directly in the path  
20 of future flooding. It would aggravate the problems  
21 that Manayunk must handle in times of flooding  
22 emergencies. And it would increase the  
23 already-heavy burdens on city, state, and federal  
24 taxpayers for flood damage relief and related public  
25 spending.

1 BILL NOS. 990760, 990761

2 We also oppose this measure because it  
3 would forfeit the very significant opportunity that  
4 the City presently has to find a creative  
5 forward-thinking and broadly supported solution  
6 regarding comprehensive planning for the island. In  
7 our view, such a plan would be respectful of the  
8 island's location in the floodplain of the  
9 Schuylkill River by providing for restoration of  
10 substantial portions of the floodplain and expanded  
11 dedicated open space, not just a 5 foot ribbon along  
12 the riverbank.

13 Twenty years ago a forward-thinking city  
14 government adopted restrictions on the types of  
15 development activities that could occur in the  
16 floodplain and in the floodway for the expressed  
17 purpose of insuring proper protection of the  
18 citizens. I won't reiterate. Darlene just quoted  
19 from the code. Now, so soon after the major  
20 flooding brought on by hurricane Floyd is not the  
21 time for the City to abandon that commitment.  
22 Approving Bill No. 990602 would do exactly that.

23 Over the last quarter century, other  
24 municipalities around the country have taken  
25 measures to opt out of the flood-and-rebuild cycle

BILL NOS. 990760, 990761

1  
2 and improve their flood protections. I have listed  
3 a number of cities that have taken measures and have  
4 learned the hard way to move their citizens to  
5 higher ground. You can read them in the text. In  
6 short, cities are moving the residents to higher  
7 ground out of, not into, the path of floods.

8           Around the country we are seeing a  
9 growing appreciation of the need for floodplain  
10 protection and restoration and a growing recognition  
11 that more extensive development in floodplains is  
12 foolhardy and dangerous. In the present instance,  
13 Philadelphia is facing developers' pressures to make  
14 a short-sighted decision that would benefit private  
15 interests and place added long-term burdens on the  
16 City's resources and limited state and federal  
17 relief funds. Approving this rezoning would be a  
18 step backwards for Philadelphia, not forward  
19 progress. Thank you the opportunity.

20           COUNCIL PRESIDENT VERNA: Thank you.

21           MS. LATHROP: My name is Wendy Lathrop,  
22 and I have some photos and a copy of my testimony  
23 I'd like to also hand forward.

24           COUNCIL PRESIDENT VERNA: We will make a  
25 copy of your testimony available to the stenography

1 BILL NOS. 990760, 990761

2 and it will be included in the transcript.

3 (Testimony attached to transcript.)

4 MS. LATHROP: My name is Wendy Lathrop.  
5 I'm a land surveyor and planner with 25 years of  
6 experience and mapping and land-use regulation. I  
7 have significant amount of experience particularly  
8 with floodplains, the wetlands. At this point in  
9 time I have been serving as an advisor to the  
10 Federal Emergency Management Agency on a flood  
11 mapping program since 1995. On that particular  
12 Council, I represent the American Congress in  
13 Surveying and Mapping, which is an organization of  
14 approximately 7,000 surveyors, cartographers, and  
15 geodesists throughout the country. On that Council  
16 we make recommendations to improve the  
17 implementation of mapping and regulations to  
18 protect lives and property from the hazards of  
19 flooding affecting our citizens throughout this  
20 country. It's in relationship to that particular  
21 background that I wish to make my testimony.

22 More directly and personally, I'm also  
23 very familiar with Manayunk area. I just recently  
24 moved back to the area. I live just across the  
25 river on the Bala Cynwyd side which, to me, means

BILL NOS. 990760, 990761

1  
2 that I am directly affected because water, when it  
3 rises, does not rise only on one side of the river.  
4 It will effect my side as well. I'm a frequent  
5 visitor to Manayunk, both to visit friends and to  
6 travel along the towpath. I can't say that I do a  
7 tremendous amount of shopping there because I'm not  
8 the shopping type, but I do spend quite a bit of  
9 time along the towpath.

10 I do want to make some clarifications  
11 regarding some of the testimony that was made a  
12 little bit earlier regarding floodways and flood  
13 fringes. And I also want to address directly the  
14 terminology that the City Planning Commission has  
15 written in regards to its recommendation to change  
16 the zoning of the island to residential. In its  
17 preamble it talks about preserving the constraints  
18 to development are significant historical past  
19 environmental constraints, traffic constraints, and  
20 location entirely within the floodway. It then goes  
21 on to say that they should only permit development  
22 that will complement the existing constraints and  
23 then at the conclusion for some reason instead of  
24 saying how to best implement that, it merely says  
25 that the use would cause the least amount of traffic

BILL NOS. 990760, 990761

1  
2 would be residential. It does not say that this is  
3 the best use for the area; it merely says that this  
4 is one that will cause the least vehicular traffic.  
5 There is a big difference between them.

6 And at this point, I'd like to refer you  
7 to some of the photographs that were taken directly  
8 after Hurricane -- actually at the point that it hit  
9 Philadelphia, it was downgraded from a hurricane to  
10 a tropical storm. If these photo are not  
11 sufficient, you can take a ride down Kelly Drive and  
12 look at the tree that's stuck in the bridge down by  
13 East Falls about 12 feet above the water level. If  
14 you think in terms of what kind path the water is  
15 taking, I can't see from this side, but one of this  
16 photographs is from front page of the Philadelphia  
17 Inquirer that shows tractor-trailers smashed up  
18 against each other from the path of water. Now,  
19 this was not the hundred-year flood. If the water  
20 is moving tracor-trailers to this extent, and this  
21 is only considered a 25-year flood, that's  
22 one-quarter the strength of what is considered a  
23 100-year flood, which is really a misnomer. It's  
24 not in terms of it happens once every 100 years; it  
25 means it has a 1 percent opportunity per year of

BILL NOS. 990760, 990761

1  
2 occurring and every year it has that same 1 percent  
3 chance. That's why in 1996 in January of 1996 which  
4 was when I moved back to the area, I was privileged  
5 to experienced another flood just three years ago,  
6 also not a 100-year flood but also causing  
7 significant amount of damage.

8           The difference between a floodway and a  
9 floodplain. The floodplain entire area that is  
10 covered by water at some point in time. A flood is  
11 considered the covering of land by water where land  
12 is not normally submerged. And floods come in  
13 different frequencies and intensities. We refer to  
14 100-year or 1 percent annual chance of flood as the  
15 one that is the trigger mechanism for regulations.  
16 There are other floods that are calculated when  
17 development is planned. We look at the 500-year  
18 flood or the one they has .2 percent chance of  
19 occurring a year, a 50-year flood, which has a 2  
20 percent chance, a 10-year flood, and a 25-year  
21 flood. But the one that is considered the trigger  
22 to make regulations go into place according to the  
23 Federal Emergency Management Agency and thereby  
24 through the states and the communities that  
25 participate in the national flood insurance program

BILL NOS. 990760, 990761

1  
2 is the 100-year flood. We have not experienced a  
3 100-year flood for a significant amount of time, yet  
4 we have seen water raging through our streets and  
5 causing significant damage much more frequently than  
6 that. We are looking at areas that will cause  
7 significant damage to property as well as endanger  
8 lives. A person cannot walk through water like  
9 that.

10 A floodplain covers the area -- at this  
11 point we're talking about the hundred-year  
12 floodplain or the regulatory floodplain. A  
13 floodplain covers the entire area. Within it is an  
14 area called the floodway which carries the greatest  
15 volume of water at the greatest velocity. The  
16 purpose of reserving the floodway as free from  
17 obstruction from water is to allow that water to get  
18 out of there so the water can then go back down and  
19 return to pre-flood levels. It is important to keep  
20 that area free from obstructions or we get  
21 situations such as this with tractor-trailers. If  
22 we put something in the way such as a building --  
23 let me back up a bit and talk about the floodway  
24 down by the Locust Point Development.

25 There is a misstatement by Mr. Lombardo

BILL NOS. 990760, 990761

1  
2 that floodways only occur in areas that are  
3 non-tidal. The Schuylkill River is tidal below the  
4 Fairmount Dam. And in fact, the floodway of the  
5 Schuylkill is contained entirely within concrete  
6 walls at the area where it goes by Locust Point.  
7 However, that area, the terrain is very different  
8 from what it looks like in Manayunk. In that area  
9 we have a very flat -- we have a contained channel  
10 that water is basically contained in concrete walls  
11 and then we have a flat area. So when the water  
12 comes up, it can go a significant distance at a  
13 shallow depth and not travel as great a velocity nor  
14 causes much damage. As when it's constricted in a  
15 very narrow steep-sided valley, as we do have in  
16 Manayunk, in the situation such as Manayunk, the  
17 water has nowhere to go but directly up and up very  
18 rapidly. And that means that we have a significant  
19 increase in damages to property and danger to lives.

20 Another problem is that in the area of  
21 Manayunk, the river is coming down a straight path  
22 so it has a chance to build up velocity. As it  
23 approaches Locust Point, it has taken several bends.  
24 As it goes by the art museum it takes a bend, for  
25 instance. When you have meanders such as that, that

BILL NOS. 990760, 990761

1  
2 makes the water slow down. So that, again, the  
3 floodway is more able to be contained.

4 Talking about obstructions in the  
5 floodway, there are none in the area near Locust  
6 point. That part of the water is completely open  
7 with exception of the bridge as that crosses through  
8 there, the one near the Walnut Street Bridge, South  
9 Street, all those. Those actually are obstructions  
10 when the what we call the base flood elevation or  
11 the level to which water rises in a flood is  
12 reached, that calculation is based upon there being  
13 no obstructions to water flow. In other words, they  
14 calculate what opening is in the bridge to allow the  
15 water going through, but don't take into account the  
16 fact that a car may be getting washed away or a tree  
17 such as the one that's stuck in the bridge down by  
18 East Falls. That's a pretty dramatic reminder of  
19 what happens. The base flood elevation is dependent  
20 completely upon there being no obstructions.

21 When the developers that we've heard  
22 earlier today talk about improving the flow of  
23 water, they are talking about taking buildings out  
24 and putting new elevated buildings in. There are  
25 several objections to this. Number one is it is

BILL NOS. 990760, 990761

1  
2 better to take buildings out, but when you constrict  
3 water from the sides and leave it open to travel  
4 through, water travels in a much different manner  
5 than if you put certain pilings or stilts in there,  
6 then you create a situation called scour or vortices  
7 which cause swirls and the water will travel in a  
8 different way. Things will no longer go in a  
9 straight path; they'll start swirling around.  
10 That's a totally different kind of a damage. I am  
11 not a hydraulic engineer and I cannot give you  
12 specific figures on that, but I will tell you that I  
13 have observed that. I have been caught in the  
14 floods in midwest in 1997. I was evacuated from  
15 Paducah, Kentucky, when the rivers crested there, so  
16 I know what it looks like.

17 I also wanted to mention -- I hope that  
18 I've clarified to you the difference between the  
19 floodway and flood fringe at this point. On the  
20 maps, I believe there's one of the Namico site here,  
21 the floodway on the flood insurance rate maps that  
22 are issued by the Federal Emergency Management  
23 Agency, the dark gray area along here -- there are  
24 two different kinds of floodplains shown on here.  
25 One is the 500-year floodplain or .2 percent

BILL NOS. 990760, 990761

1  
2 opportunity of the water reaching that level in a  
3 year. The dark gray is the regulatory flood zone or  
4 the 100-year flood zone. And you'll see within that  
5 there is an area that is shaded. That shaded is the  
6 floodway. You'll see that all of Manayunk, with the  
7 exception of a large boulder area up in the north  
8 end of it, is entirely covered by floodway.

9           It has the policy of the Federal  
10 Emergency Management Agency to promote, not only  
11 proper regulations to control existing hazards in  
12 the floodplain and the floodway, but they are using  
13 the approach called mitigation which is not only to  
14 fix things after they have gone wrong, but to  
15 prevent future damages and in 1997 came up with a  
16 plan called project impact. This is to prevent --  
17 they call it "let's break the disaster rebuild  
18 disaster cycle." And I would predict that this  
19 particular situation would be a similar disaster  
20 rebuild disaster cycle with vehicles crashing into  
21 the stilts on the elevated buildings or the cars  
22 going down and getting stuck on the openings of the  
23 bridges down stream, essentially causing an  
24 obstruction and further raising the floodwaters.

25           In the guidelines for project impact for

BILL NOS. 990760, 990761

1  
2 residential mitigation, the first plan that they  
3 have is if there are existing buildings, get them  
4 elevated or demolish them. In regards to new  
5 construction, the answer is don't put it there. And  
6 I ask that this City Council also take that same  
7 approach to mitigation and prevent damages. We have  
8 a problem with residential versus other kinds of  
9 uses. When you have a commercial or industrial use,  
10 you can close the doors and send people home. If  
11 you have residential use there, going home is not an  
12 option. Those people must be evacuated. I don't  
13 know if any of you are familiar with exactly how  
14 tight those four accessways are to the island. They  
15 are not inter-connected. In other words, if you  
16 will be on one part of the island, you cannot exit  
17 by another bridge. You must go out the same way  
18 that you came in.

19 COUNCIL PRESIDENT VERNA: I believe  
20 Councilman Kenney has a question he would like to  
21 ask.

22 COUNCILMAN KENNEY: Just so I can try to  
23 understand two things. Number one, do you work for  
24 FEMA?

25 MS. LATHROP: I do not; I'm an advisor.

1 BILL NOS. 990760, 990761

2 COUNCILMAN KENNEY: And you're not  
3 speaking on behalf of FEMA.

4 MS. LATHROP: I am not speaking on  
5 behalf of FEMA. I am speaking as a concerned  
6 citizen with floodplain management knowledge.

7 COUNCILMAN KENNEY: Is the testimony no  
8 development on Venice Island?

9 MS. LATHROP: Reuse is fine.

10 COUNCILMAN KENNEY: Give me some  
11 examples what would be acceptable on Venice Island  
12 in your opinion. Residential seems to be the big  
13 bugaboo here so I'm wondering whether or not --

14 MS. LATHROP: The reason is because of  
15 safety issues, the evacuation is much more difficult  
16 when you have residents. You cannot force a  
17 resident to leave his or her home. You can force an  
18 employee to leave.

19 COUNCILMAN KENNEY: But you still have  
20 to evacuate them both.

21 MS. LATHROP: You would have to evacuate  
22 them both, but somebody who is working in a retail  
23 or industrial site, they're willing to go home.

24 COUNCILMAN KENNEY: They're happy to get  
25 out of work, you mean.

1 BILL NOS. 990760, 990761

2 MS. LATHROP: Well, perhaps so.

3 COUNCILMAN KENNEY: I'm just trying to  
4 get an idea as to what type of development is  
5 acceptable. I'm confused. If this is such a  
6 treacherously dangerous plot of land, what is  
7 acceptable in any kind of development there?

8 MS. MACINA: Well, every time we come up  
9 with ideas, we're immediately debated. So I guess I  
10 would want to reserve our answer unless someone else  
11 wants to come forth, because I do think that with,  
12 you know, thinking out of the box, feeling like our  
13 back's up against the wall, we have to go with  
14 residential because we don't have another  
15 alternative because the Zoning Board's not going to  
16 protect us, and that's our only recourse. Well, I'm  
17 not so sure. I think that there are other  
18 alternatives, and, you know, we've thrown around  
19 some ideas. I mean, one thing for sure is Manayunk  
20 was a textile center, and it's possible to get some  
21 manufacturing back. I mean, the City has been able  
22 to build incentives for different kinds of use like  
23 the navy yard and like other sites in Philadelphia.  
24 We don't know.

25 COUNCILMAN KENNEY: The only incentive

1 BILL NOS. 990760, 990761

2 you can give to textile manufacturing would be the  
3 slave wages that they pay in the far east. I mean,  
4 I don't know how we can compete with.

5 MS. LATHROP: I would offer the  
6 observation that the City Planning Commission itself  
7 two times in 1982 and in 1983 wrote reports in which  
8 it said that as industry left the island that that  
9 area open and returned to recreational due to the  
10 high hazard of building in that area.

11 COUNCILMAN KENNEY: The problem that we  
12 face here is, is that somebody owns that land. I  
13 don't know whether you can take a person's private  
14 property that they purchased --

15 MS. LATHROP: We are not taking  
16 property. If somebody buys a piece of property and  
17 those regulations are on the books, that is not a  
18 taking. Public notice is made as soon as -- those  
19 regulations have been on the book for 20 years.

20 COUNCILMAN KENNEY: My question was as  
21 to what's acceptable development there, if any.

22 MS. MACINA: Obviously, Smurfit still  
23 thinks it's acceptable. In fact, it's one of the  
24 successful industries in Philadelphia. So it is  
25 acceptable to possibly think that that is a

BILL NOS. 990760, 990761

1 potential use, to continue to have industry there.  
2  
3 Now, I guess don't want to debate the issue because  
4 I'm not looking to fill those spaces, but I don't  
5 think it's very fair to say to us that residential  
6 is the only use and that we have to make a decision  
7 right here and today to have a vote on this bill. I  
8 think what you've heard today is that we think it's  
9 not a good public safety decision.

10 COUNCILMAN KENNEY: My own opinion is  
11 that on one hand it's unsafe for residents, but on  
12 the other hand I'm being told that it's not unsafe  
13 for other types of development which would bring  
14 employees or other people there. It's either unsafe  
15 or it isn't, and I don't know if I necessarily want  
16 to work or live in a place that is most likely to be  
17 swept away by a raging flood.

18 MS. LATHROP: I agree with you. I would  
19 have to say that I would not want to either live nor  
20 work in an area that was going to be threatened by  
21 water. In terms of safety -- I also have a dispute  
22 with you regarding the flood insurance later on,  
23 because I think you have misunderstanding there.

24 COUNCILMAN KENNEY: I never mentioned  
25 flood insurance.

1 BILL NOS. 990760, 990761

2 MS. LATHROP: You mentioned earlier.

3 COUNCILMAN KENNEY: What I mentioned was  
4 that people would be unlikely to lend a developer  
5 money to develop --

6 MS. LATHROP: If you are required by the  
7 government to have an insurance policy, does it  
8 matter to you whether you get the money from the  
9 person you lent it to or from the insurance agency?  
10 I think not. You're getting your money back.

11 COUNCILMAN KENNEY: So in other words,  
12 First Union Bank would lend any developer money to  
13 build a residential development in an area that's  
14 likely to be swept away by a raging flood.

15 MS. LATHROP: As long as they had that  
16 flood insurance, yes. I have talked to bankers  
17 about this, too. We have bankers on our advisory  
18 council.

19 COUNCILMAN KENNEY: Well, we tend to  
20 disagree on that. We will disagree on that. I  
21 think that's a little silly a position, actually.

22 MS. MACINA: I do believe, and I think  
23 it would be hard to argue that when you have a home  
24 where you put your head on the pillow to rest and  
25 you keep your personal belongings, if you are not

BILL NOS. 990760, 990761

1  
2 there during the time of evacuation or in the middle  
3 of the day and there's a traffic jam on the  
4 Schuylkill Expressway and the trains are not moving  
5 very fast, you still want get home and get your  
6 things. People, when they're personal property is  
7 at risk of damage or being lost, people act  
8 irrationally. I think the risks are much greater  
9 when you're talking about places where people live  
10 as opposed to where they're employed. People pretty  
11 much leave the job pretty quickly if they're getting  
12 let off work early. I think that would be hard to  
13 argue.

14 COUNCILMAN KENNEY: I just want to get  
15 an idea as to the dichotomy of public safety issues  
16 when talking about development, bringing people onto  
17 this area.

18 MS. MACINA: I think there's a great  
19 difference between where people live and where  
20 people work. I think people act irrationally about  
21 their personal belongings, whether it be an  
22 animal -- I mean, this has been recorded.

23 COUNCIL PRESIDENT VERNA: Thank you. I  
24 believe Councilman Cohen has a question or would  
25 like to be recognized.

1 BILL NOS. 990760, 990761

2 COUNCILMAN COHEN: I'd like to be  
3 recognized. I don't know whether it's a question;  
4 it's a concern. I share in Councilman Kenney's  
5 concerns. I'm not sure really what we're talking  
6 about. Are we concerned -- I'm talking of those who  
7 came here in opposition and expressing that opinion.  
8 Are we concerned about the safety of people coming  
9 or are we concerned about what development of Venice  
10 Island does for those who already live in other  
11 parts of Manayunk? I mean, what is the issue that's  
12 being raised? I can see there's a difference  
13 between residential and business. At least a worker  
14 at a plant, if he or she is in a dangerous place is  
15 there only for 8 or 10 hours, and people who live  
16 there may be there for 24 hours, young kids, parents  
17 who are taking care of the young kids. I see those  
18 differences. But I'm not sure what we're talking  
19 about. If this place is going to be developed,  
20 everything I've been reading recently with all the  
21 floods moves in the direction of saying it's foolish  
22 to develop a place that is likely to have problems.  
23 We have problems in Philadelphia with the singing  
24 homes and they're create chaos and where there are  
25 lots of row houses in different parts of the City

BILL NOS. 990760, 990761

1  
2 today we're concerned about the fact that homes are  
3 beginning to sink there, we're not exactly sure why.  
4 The 5700 block of Kimball Avenue, nobody knows why  
5 suddenly one home right in the middle of the block  
6 began to sink. We know there are all kind of little  
7 creeks and other things underground. We don't know  
8 whether we're going to have sinking home problems  
9 all over the City. Seems to me strange to be  
10 talking about development of any kind on this area.  
11 But then again we here proposals that maybe  
12 something else could be developed there.

13 MS. MACINA: Well, if we said to you we  
14 think that those private properties should be  
15 demolished and managed as increased park space -- in  
16 fact, this was in a City Plan Commission on  
17 recreation along the Schuylkill riverfronts in  
18 Philadelphia in 1986 or so. It talked about  
19 increasing park space on Venice Island as the  
20 private businesses left and land acquisition. But  
21 if I said that to you today, you would -- and we  
22 have sort of said this, but we kind of think nobody  
23 is going to accept that, people are going to laugh  
24 in our face if we say convert it to park space and  
25 create it as a University Pennsylvania environmental

BILL NOS. 990760, 990761

1  
2 ecology site. I mean, have the University of  
3 Pennsylvania buy it. I can't tell you how many  
4 students I've met there looking at the unique  
5 qualities of the island. There are other uses, and  
6 I think there are maybe other options for  
7 acquisition and there should be enough time to look  
8 into these other options.

9 COUNCILMAN COHEN: I was going to ask  
10 Councilman Nutter how long has this been the subject  
11 of discussion in the community? Councilman Nutter,  
12 may I ask you a question? I notice in material we  
13 have, there's a letter to you from the Zoning Board,  
14 November 22nd of this year which indicated  
15 opposition, I assume to this proposal, or was it  
16 some proposal?

17 COUNCILMAN NUTTER: There's a particular  
18 application currently pending in front of the Zoning  
19 Board of adjustment, Councilman, generally referred  
20 to as the Carl Dranoff property. That application  
21 is still in front of the Zoning Board. There were  
22 three issues that I outlined in my letter. One was  
23 the community wanted a continuance, and I asked the  
24 Board to grand a continuance which they chose not  
25 to. I then said to the Board that I was opposed to

BILL NOS. 990760, 990761

1  
2 the -- I was concerned about this proposal in the  
3 particular area and I was out the day after  
4 Hurricane Floyd and I continue to have concerns  
5 about development in this area. I did state  
6 opposition to the application based on those  
7 concerns, but I also recognize that according to the  
8 code development can take place in these areas. And  
9 with that mind, what I said to the Board, and I'll  
10 read this part into the record, it was not read in  
11 earlier, "If the Board after full review of the  
12 testimony decides to grant the request of variances,  
13 however, then I strongly recommend that the Board  
14 consider including the following provisos:

15 "One, applicant shall prepare  
16 engineering studies which demonstrate that the  
17 proposed development will not result in any increase  
18 of the flood levels and will not increase danger of  
19 flooding. Such studies shall be submitted to the  
20 Planning Commission for its review and approval  
21 prior to construction.

22 "Two, applicants shall secure any and  
23 all permits or authorizations required by the  
24 Federal Emergency Management Agency and the  
25 Pennsylvania Department of Environmental Protects

1 BILL NOS. 990760, 990761

2 for the proposed development prior to construction.

3 "Three, applicants shall prepare in  
4 consultation with the City's Emergency Management  
5 Office, police and fire department, an emergency  
6 evacuation plan prior to occupancy."

7 That's rest of the letter.

8 COUNCILMAN COHEN: What would be wrong  
9 with that?

10 MR. KRAKOWER: Councilman Nutter, may I  
11 interject, sir, that I am not aware of this  
12 ordinance having any of those requirements in it;  
13 none. So that's point number 1. This ordinance has  
14 no such requirements as any of those three provisos.  
15 The second problem with regard to Councilman Cohen's  
16 prior question is that my clients here are not  
17 prepared candidly to answer the question "If we  
18 don't do this, what else can we do?" The problem is  
19 that we have not been afforded a real opportunity to  
20 address that proactive response. We have been given  
21 the position by the Planning Commission that they  
22 have a developer or two developers that have three  
23 that have their own plans which those developers  
24 have formulated they make a profit based on those  
25 plans and that's what they want the City to do,

BILL NOS. 990760, 990761

1  
2 period. And before we can respond, "We want this  
3 instead," first we must at this 11th hour of the  
4 59th minute of the last day hope to preclude the  
5 waiver of the rules by this Rules Committee an  
6 enactment by City Council of the present ordinance  
7 without having had full opportunity to explore the  
8 very things that we are talking about today.

9 I know Councilman Nutter asked, do we  
10 want to do nothing. No, we don't want to do  
11 nothing. We want the following: First, that this  
12 ordinance should be tabled. We realize that means  
13 it will be picked up by the next Council, but I believe  
14 everyone in this room will be on that next Council.  
15 That secondly, we are ready to work with the  
16 Planning Commission, but with the Planning  
17 Commission also considering the testimony of people  
18 like Dr. Willig and Wendy Lathrop and the other  
19 experts. These are people that have worked with  
20 FEMA, advised FEMA, who are engineers. And let us  
21 also be at the table when these plans are going on  
22 to discuss alternatives. We believe that similar to  
23 the stadium bill for the Phillies and the Eagles  
24 that within reasonable time in the spring we can  
25 come up with active alternatives, but first the door

BILL NOS. 990760, 990761

1  
2 must be open. If the door is closed and there's  
3 already a determination that the business community,  
4 and that's who met with the Planning Commission, the  
5 business community and three developers and the  
6 Planning Commission have said, "This is what we want  
7 to do," then there's no way we can possibly make  
8 alternative suggestions unless we can do it, not in  
9 this atmosphere of the doors closing, but rather in  
10 an atmosphere of mutual collaboration where we don't  
11 have this kind of time pressure.

12 COUNCILMAN NUTTER: Mr. Krakower, let me  
13 respond. Let me just respond to one issue that the  
14 gentleman raised. Mr. Krakower, you made a  
15 statement that the present bill does not contain the  
16 requirements that I had articulated as proposed  
17 provisos in my letter to the Zoning Board of  
18 November 22nd. The only problem with your  
19 statement, Mr. Krakower, is that some of the issues  
20 that I was referring to are also issues that are  
21 covered presently by the Zoning Code in Sections  
22 14-1606 and in Sections 14-1801. They are not being  
23 amended by this particular bill, and all of those  
24 provisions are in effect still, even with the  
25 passage of this bill. The one has nothing to do

1 BILL NOS. 990760, 990761

2 with the other. They don't need to be in this  
3 particular bill; they're already in the Philadelphia  
4 Code.

5 MR. KRAKOWER: Councilman, one of my  
6 concerns, however, is I believe that enactment of  
7 this ordinance will in effect have affect on Section  
8 1606.

9 COUNCILMAN NUTTER: Why?

10 MR. KRAKOWER: Because there are parts  
11 of this ordinance which contradict Section 1606 or  
12 appear to raise internal conflict. I believe that  
13 that matter --

14 COUNCILMAN NUTTER: What are they?

15 MR. KRAKOWER: I believe that permitting  
16 this particular ordinance with respect to this  
17 locale can be interpreted, and a court eventually  
18 would probably wind up doing so -- though no means  
19 am I giving you an opinion right off the cuff. But  
20 I think it could raise the question as to whether  
21 there is a conflict between that provision of 1606  
22 which says there should be no construction in a  
23 floodway, again, not plain, but floodway.

24 COUNCILMAN NUTTER: Which is then  
25 incorporated by direct reference and then superseded

1 BILL NOS. 990760, 990761

2 by 14-1801, Item No. 3 that reads, "Where the  
3 property in question is situated within areas  
4 subject to flooding as provided in Section 14-1606."  
5 That means the entire 14-1601 is now brought into  
6 and subject to all the powers and controls of  
7 14-1801(3), which continues to say relating to  
8 floodplain controls "The Zoning Board of Adjustment  
9 shall consider the following criteria when granting  
10 a variance under 14-1801(1)(c)." That is the  
11 conflict here. People are not reading the statute  
12 or the section of the Code to understand that if you  
13 only want to read 14-1606 by itself, you could be  
14 correct. We had that testimony on the record. When  
15 you read 14-1801, it references everything in  
16 14-1606 and makes it subject to 14-1801(3).

17 MR. KRAKOWER: 14-1801 only comes up if  
18 the matter goes to the Zoning Board. If you enact  
19 this new change into 16-16 and the applicant such as  
20 Mr. Dranoff and the others go to the L & I, they can  
21 get permits over-the-counter, don't have to go to  
22 the Zoning Board. They can get their permits  
23 without going to the Zoning Board.

24 COUNCILMAN NUTTER: So is your testimony  
25 now that they are then subject to no controls

1 BILL NOS. 990760, 990761  
2 whatsoever and they don't have to deal with FEMA,  
3 they don't have to deal with hundred-year flood  
4 levels? Is that your testimony?

5 MR. KRAKOWER: I don't see where they  
6 would, that's correct. At this point another  
7 problem is at this point if they go to the Zoning  
8 Board, they are asking for approval from the Zoning  
9 Board without these engineering studies. They want  
10 to submit them later. So far, not a single study of  
11 the kind that you mentioned or have been in this  
12 proviso that you would suggest --

13 COUNCILMAN NUTTER: But don't they need  
14 to proceed.

15 MR. KRAKOWER: They have indicated they  
16 do not. They are proceeding without them. And what  
17 they want to do is get a Zoning Board to say, "We  
18 will approve this subject to your subsequent  
19 approval by these other agencies. The problem there  
20 is that there's an implication. If you go to FEMA  
21 and you go to the State later and you go with in  
22 hand a document says the Zoning Board has given you  
23 preliminary approval, there's an implication that  
24 you already have the favorable pat on the head from  
25 the Zoning Board.

1 BILL NOS. 990760, 990761

2 COUNCILMAN NUTTER: Don't you still have  
3 to do all the hydrological studies and the like to  
4 be able to be able to convince FEMA and the  
5 Department of Environmental Resources or EPA that  
6 you can in fact prove that you're not going to  
7 increase the 100-year flood level? Don't you still  
8 have to do that?

9 MR. KRAKOWER: You still have to do it  
10 but this would make it a lot easier to persuade  
11 those people, would give them a leg up.

12 COUNCILMAN NUTTER: So your testimony is  
13 that FEMA really cares one way or the other whether  
14 someone has a zoning permit in their hand?

15 MR. KRAKOWER: I think it has some  
16 influence. It gives them a favorable imprimatur.

17 COUNCILMAN NUTTER: Okay, thank you.

18 COUNCIL PRESIDENT VERNA: Councilman  
19 Cohen.

20 COUNCILMAN COHEN: Go with me on  
21 assumption. Let me address it to the attorney, Mr.  
22 Krakower. Assuming that Council passes the bill in  
23 its present form, does the developer then go at some  
24 later time to the Zoning Board or does that finish  
25 everything up? What's your understanding?

1 BILL NOS. 990760, 990761

2 MR. KRAKOWER: Technically, particularly  
3 Councilman Nutter's provisions are not part of this  
4 bill. I believe that the implication is that the  
5 developers no longer have to go to the Zoning Board  
6 at all. They may have to go to the Zoning Board for  
7 building permits, but they are entitled to zoning  
8 permits. And I'm making the distinction between the  
9 zoning permit and the building permit. They're  
10 entitled to the zoning permit from L & I. Now, once  
11 they have the zoning permit, they next have to go  
12 get a building permit. That may require that they  
13 obtain some of these engineering studies. But once  
14 they have a zoning permit in their hand, there is an  
15 impact on the next level that you go to.

16 COUNCILMAN COHEN: The question I'm  
17 trying to get at is, is it that they are trying to  
18 change the rules under which they would go to the  
19 Zoning Board? I'd like a view from both of you.

20 MR. KRAKOWER: I believe they are. They  
21 very much would be changing the rules under which  
22 they have to go to the Zoning Board. Now they have  
23 to go for a variance.

24 COUNCIL PRESIDENT VERNA: Mr. O'Neil, I  
25 see you shaking your head. Did you want to be

1 BILL NOS. 990760, 990761

2 recognized?

3 MR. KRAKOWER: The difference is now  
4 they need a variance. With this they will not need  
5 a variance.

6 COUNCIL PRESIDENT VERNA: Excuse me,  
7 please. I think we have Mr. O'Neil from the Law  
8 Department here.

9 You were shaking your head. Are you in  
10 agreement or disagreement with what was said?

11 MR. O'NEIL: If you're asking me the  
12 question, I'm in disagreement.

13 COUNCIL PRESIDENT VERNA: Please  
14 approach the witness table, Mr. O'Neil.

15 COUNCILMAN COHEN: We're not asking you  
16 folks to leave, just make room.

17 COUNCIL PRESIDENT VERNA: Mr. O'Neil,  
18 please give us your interpretation.

19 MR. O'NEIL: First, Council President, I  
20 apologize. I didn't realize that I was shaking my  
21 head and, as I said, I apologize. That's impolite  
22 and perhaps a little unprofessional.

23 COUNCILMAN COHEN: That comes from us  
24 being lawyers and thinking about something. Go  
25 ahead.

1 BILL NOS. 990760, 990761

2 MR. O'NEIL: In any event, the answer is  
3 they still have to go to the Zoning Board.

4 COUNCILMAN COHEN: Did they have the  
5 option? Why is this bill here -- could they have  
6 gone to the Zoning Board right now and requested a  
7 variance to encompass all the things they hoped to  
8 get by this ordinance?

9 MR. LOMBARDO: Rich Lombardo from the  
10 Planning Commission. I think there's been sort of  
11 like a shell game going on here. This ordinance is  
12 not an environmental ordinance. It's not a  
13 floodplain ordinance.

14 COUNCILMAN COHEN: Whoa, whoa, whoa.  
15 You're going to have to play by my rules when I ask  
16 a question because I want to be able to understand  
17 the answer. Just speak a little bit slower. Now,  
18 did they have to go City Council or did they have  
19 the option? As in many cases applicants have the  
20 option of going either to City Council or to the  
21 Zoning Board. Was that option here or does this  
22 come here because it has to come here if the  
23 applicant wishes the kind of relief they're seeking?

24 MR. LOMBARDO: This is coming here, not  
25 because applicants are seeking relief. This is the

BILL NOS. 990760, 990761

1  
2 end result of a many-year planning process to look  
3 at what is the future of Venice Island. This is not  
4 a floodplain ordinance. It is an ordinary to change  
5 the land use from industrial to residential.

6 COUNCILMAN COHEN: It has nothing to do  
7 with any developers seeking any kind of use in the  
8 land?

9 MR. LOMBARDO: There are developers out  
10 there -- I want to put this clear on the record.  
11 There are developers out there seeking variances  
12 from the Zoning Board. We did not confer with any  
13 of those developers in terms of developing these  
14 controls. These controls were developed strictly,  
15 as I stated beginning of my testimony, based an  
16 analysis, the background traffic and the impact of  
17 development on the traffic situation in Manayunk and  
18 along Main Street. The fact of the matter that some  
19 development may meet these regulations and some  
20 development may not is not an issue of ours. We  
21 were basically calling it this is what we think is  
22 the best level of development. All of the  
23 development, if you pass this bill or don't pass  
24 this bill, still has to go to the Zoning Board  
25 because of the flood regulations. Those flood

BILL NOS. 990760, 990761

1 regulation are not being changed by this  
2 legislation. And it's disingenuous for Mr. Krakower  
3 to say that you would be changing them because the  
4 way it works on practical matter is that all the  
5 zoning maps of the City show the floodway boundaries  
6 on the maps. When someone walks into L & I with the  
7 plan in that area, before the L & I examiner even  
8 reviews their application, they send them over to  
9 our environmental unit, Marty Soffer, to begin  
10 review under the federal and state and city  
11 floodplain regulations. Marty will not even release  
12 the plans back to the examiner until a basic level  
13 of information as well as the developer being made  
14 aware of their need to do an engineering study as  
15 taken place. At that point, it then goes back to  
16 the examiner for any other either issuance -- not  
17 issuance but any other refusals or review the L & I  
18 examiner to do. Now, I think to make it sound like  
19 the City will willy-nilly now just ignore federal  
20 and state flood regulations and issue permits  
21 because we have a bill that says you can now do  
22 residential development on the island rather than  
23 commercial and industrial development is being  
24 unfair to this Committee and unfair to the people in  
25

BILL NOS. 990760, 990761

1  
2 this room. That is not what this is all about. And  
3 to s spend all this time talking about flooding and  
4 the flood regulations when there is not one thing  
5 being proposed today that change those floodplain  
6 and flood regulations. Everyone will still have  
7 their opportunity to argue before the Zoning Board  
8 and to argue before the Planning Commission in a  
9 public foreman of a public hearing their opinions  
10 about whether or not things should proceed in the  
11 floodway of the Schuylkill River. And that is all I  
12 would like to put on the record.

13 COUNCILMAN COHEN: From your point of  
14 view, the passage of this bill does not improve the  
15 position of these developers before the Zoning  
16 Board; is that what your conclusion is?

17 MR. LOMBARDO: It improves it to the  
18 degree that they are no looking for a variance from  
19 the underlying industrial zoning. They would now  
20 would not -- at least a variance for use. They may  
21 still need variances for setbacks or for legal other  
22 issues, but they will not be looking for a variance  
23 for use. The use will become residential instead of  
24 commercial and industrial. So to the degree that  
25 they have a residential development would help them.

1 BILL NOS. 990760, 990761

2 It would remove that use refusal from the zoning  
3 variance process.

4 COUNCILMAN COHEN: See, the reason I  
5 think there's a lot of confusion, this bill comes to  
6 us the way normal zoning applications come to City  
7 Council. A District Councilmember generally  
8 introduces -- when I say generally, I mean 99.9,  
9 maybe a hundred percent of the time. It's the  
10 District Councilmember who introduces zoning  
11 legislation, and the rest of the Council is not  
12 involved. Generally speaking, we expect the  
13 District Councilmember to carry out all the  
14 discussions with people and to then make a  
15 recommendation to the Council, which we nearly  
16 always honor. It's very rare that the Council as a  
17 whole does not honor the recommendation of District  
18 Councilman. I came here today expecting a normal  
19 problem. To me, this is becoming a very major  
20 environmental issue, and I have spent my years in  
21 Council working very hard and I never knew that  
22 there was any environmental issue, and I don't know  
23 why the Planning Commission did not communicate with  
24 other people in City Council, you know, why they  
25 didn't, for example, even inform me that they're

1 BILL NOS. 990760, 990761

2 dealing with a major environmental issue like this  
3 seems to be, and that's the reason I'm so concerned.  
4 I thought we were just dealing with normal issues  
5 that we deal.

6 MR. LOMBARDO: We are changing the rules  
7 that apply to the environmental issue. Those rules  
8 are unchanged. They were mandated upon us by the  
9 federal government; we being the City, not the  
10 Planning Commission. We are still going to enforce  
11 those regulations.

12 One other thing I want to point out. We  
13 were involved -- I was personally involved at the  
14 time we adopted those regulations. The federal  
15 government was were very clear. When they did not  
16 want us to allow something, they made us put the  
17 word in "prohibited." They went so far as making us  
18 put in language that would not allow the Zoning  
19 Board to grant variances from some of the  
20 regulations. In this particular area, they did not  
21 make us prohibit the use; they made us allow for a  
22 public hearing before the Zoning Board of Adjustment  
23 as a method of determining whether proper  
24 engineering had been done. The proper engineering  
25 is being done to prevent environmental problems.

1 BILL NOS. 990760, 990761

2 COUNCILMAN COHEN: Yes, but what you're  
3 asking to us to do at the close of the day when  
4 we're winding up our session, you're wanting us to  
5 take on good faith everyone else's advice. I was  
6 not at all prepared to consider when Mr. Krakower  
7 and Councilman Nutter debated an legal issue. I  
8 can't comprehend that legal issue and evaluate it  
9 and say, "Let me check out something first." I  
10 think this represents a lot of environmental issues.  
11 We may wind up with a conclusion that you have after  
12 we consider them, but I just think it's  
13 inappropriate to ask City Council to take action on  
14 this matter. This is not a simple zoning matter.  
15 And I think if you feel that it needs quick action,  
16 we're going to be back in session very soon. The  
17 new Council is going to be sworn in on January 3rd.  
18 I'd like to know what I'm voting on, and I would  
19 like to be able to make a decision. I tried to  
20 follow you, Mr. Krakower and Councilman Nutter.  
21 Councilman Nutter is not a lawyer, but he sure  
22 sounds like one and a very good one.

23 COUNCILMAN NUTTER: I've been trained by  
24 you, Councilman Cohen.

25 COUNCILMAN COHEN: The two of you were

1 BILL NOS. 990760, 990761

2 discussing something and I was struggling, and I  
3 think I'm a pretty good lawyer. I'm concerned that  
4 follow that. I have questions I would like to ask  
5 of Ms. Willig at great length, but we've got a heavy  
6 schedule ahead of us still. There's a 1 o'clock  
7 meeting that hasn't even started yet today. So I  
8 think this should have been brought to the attention  
9 to the whole Council long before the final day for  
10 getting bills passed.

11 COUNCILMAN KENNEY: Thank you,  
12 Councilman. Any other questions?

13 COUNCILMAN COHEN: Not at this moment.

14 COUNCILMEN KENNEY: Unless there's some  
15 issue to raise, we still have a list of witnesses  
16 that need yet to testify on this bill.

17 MS. MACINA: Councilman Cohen, I really  
18 recognize what you're saying, and I think you're  
19 absolutely right, this should not necessarily take  
20 place here and we haven't had the time or the  
21 opportunity to really discuss this in debt with all  
22 the stakeholders. In fact, I actually think that  
23 there's been maybe motivation to keep us out because  
24 we are a group of experts, that we'd like to bring  
25 this information forward to the community. We've

1 BILL NOS. 990760, 990761

2 had public forums. We've invited different people  
3 to attend. In fact, I think many of City Council  
4 were invited at different times where we had experts  
5 out there. And so I do think that this should given  
6 more time and consideration.

7 COUNCILMAN KENNEY: Thank you. We will  
8 break for the stenographer.

9 (Brief recess.)

10 COUNCILMAN KENNEY: We are back in  
11 session. Please identify yourself for the record  
12 and proceed with your testimony. Again, I just want  
13 to caution on one area, that if the issue has been  
14 already discussed, we can it either break some new  
15 ground or be assured as we can with issues that  
16 already have already been talked about on had  
17 record. Thank you.

18 MR. ERNEST COHEN: My name is Ernest  
19 Cohen. I've been a registered professional engineer  
20 in Pennsylvania since 1974. I have a Doctorate in  
21 Electrical Engineering, primarily because I want to  
22 apply system engineering to nonmilitary areas.  
23 Before I came engineer, I was also a mathematician  
24 and computer programmer.

25 I looked at an interesting question,

BILL NOS. 990760, 990761

1  
2 what is the true probability for flood. Ms. Lathrop  
3 has given the information that there were 20 floods  
4 dating back to 1757 to just a few months ago. So to  
5 spread it out a little bit to 250 years and 20  
6 floods, this is an average of one flood every 12 and  
7 a half years. But my question was, what is the true  
8 probability of a flood? And based upon this, it's a  
9 very technical thing, and the equations are written  
10 down. You can check them out with any statistician.  
11 The probability of a flood is not exactly ever one  
12 every 12 and a half years. Remember, this the  
13 flooding of Venice Island itself. The hundred-year  
14 flood level, how the water is rising in Manayunk is  
15 another story.

16 Now, it may be that we have a low  
17 probability of flood and they've just been very  
18 unlucky these last 250 years, in which case we're  
19 talking about a flood every about 22 to 30 years.  
20 And maybe they've been very lucky and have had fewer  
21 floods than the true probability, in which case the  
22 probability of a flood is about every eight years.  
23 So we're not sure where it is in between, but both  
24 of these assumptions, the range of probability of  
25 floods is between 8 and, let's say 30 years.

1 BILL NOS. 990760, 990761

2 Now the question, of course, is the  
3 future. And this is just a probability. And there  
4 are a few things. One is -- it's not conclusive by  
5 a long shot, but in the first hundred years they had  
6 eight floods. And in the last hundred years of this  
7 period they had 10 floods. So it appears probable,  
8 it's not inconsistent to say that the flooding is  
9 increasing.

10 Now, the EPA who is dealing with various  
11 problems like this has been worried about global  
12 warming. They had a conference about two years ago  
13 on the effect of global warming of Pennsylvania.  
14 Basically it said there's going to be more  
15 precipitation, more rain, but it's not going to be  
16 lots of drizzly days; it's going to be more --

17 COUNCIL PRESIDENT VERNA: Mr. Cohen, I  
18 don't mean to interrupt you. And I know that  
19 everybody's been extremely patient, they've been  
20 here since 9 o'clock this morning, but we do have  
21 two other public hearings that have been scheduled  
22 and people have been waiting since 1 o'clock this  
23 afternoon to testify. I know that you're talking  
24 about flooding. Can you talk about the bill before  
25 us? Are you in favor or opposed to it?

1 BILL NOS. 990760, 990761

2 MR. COHEN: I am opposed to it because  
3 -- I'll put it bluntly. If they hadn't built things  
4 in Venice Island back a hundred years or so ago when  
5 the canal was an important way of moving industrial  
6 and coal particularly, they would not be allowed to  
7 build on it today. However, things have been built.  
8 And the question is what do you do about it. And  
9 there is a legal loophole through which changes can  
10 be made to an area that's already been developed.

11 On the other hand, you have to ask  
12 whether it's wise to do it or whether, as other  
13 people talked about, 10 to 15 years ago when they  
14 said "Well, maybe when the factories close, they  
15 should just revert to nature. This doesn't say  
16 close down the factory that exists and is running.  
17 But if they abandon the property, don't build  
18 because under FEMA rules they would not be allowed  
19 to build today from scratch. I mean, that's very  
20 simple. So the question now is do we try to use a  
21 legal loophole to push development there or do we do  
22 what should have been done in the first place and  
23 not build on the flooded area, areas subject to  
24 flood.

25 COUNCIL PRESIDENT VERNA: Thank you, Mr.

1 BILL NOS. 990760, 990761

2 Cohen. Our next witness is Dorothy Berner.

3 MS. BERNER: My name is Dorothy Berner.

4 And for the stenographer, my last name is spelled  
5 B-E-R-N-E-R. I am a Professor Emerita in biology at  
6 Temple University. I'm Philadelphia born and bred  
7 and have lived my whole life in the Schuylkill River  
8 watershed. My area of expertise is in working with  
9 small fresh water animals that are generally  
10 included in what you call zoa plankton, and some of  
11 these animals are particularly sensitive to  
12 pollution, flooding, siltation, and so on. I have  
13 served as a consultant to the US Environmental  
14 Protects Agency in the development of their  
15 short-term biological test for toxicity of  
16 effluence. That test is probably used by our sewage  
17 plant here and many industries around Philadelphia.

18 Because of my concern about water  
19 quality, I became a member of the Riverkeepers  
20 Network. And I am now on the advisory board for  
21 Schuylkill Riverkeepers, which is a field office of  
22 Delaware Riverkeeper network.

23 Today I am speaking in the place of  
24 Chari Towne who is the director for Schuylkill  
25 Riverkeeper because she was unable to attend. And

BILL NOS. 990760, 990761

1  
2 you have the statement that she wrote in front of  
3 you. I am going to skip through parts of that  
4 because of the time constraints.

5 One thing I would like to have on the  
6 record is that Schuylkill Riverkeeper did write to  
7 the Planning Commission, knowing this Venice Island  
8 issue was coming up, and asked to be able to attend  
9 their meetings and speak on this issue. They  
10 received no reply from the Planning Commission, so  
11 here I am today. We are concerned -- I would just  
12 like to add for those who don't know, that  
13 Riverkeeper is a private, nonprofit environmental  
14 organization with over 6,000 members throughout the  
15 Delaware watershed. From the Schuylkill office,  
16 Riverkeeper works to protect and restore the  
17 Schuylkill River, its tributaries, and habitats.  
18 Most of its work is done by citizen volunteers. It  
19 has a very small office staff.

20 We are concerned for the future of  
21 Venice Island and the impact to the Schuylkill River  
22 that will result, should the zoning change currently  
23 proposed be approved. Riverkeeper opposes the use  
24 of the floodway for residential development and  
25 urges you to protect the Schuylkill River as well as

BILL NOS. 990760, 990761

1  
2 public health, safety, and welfare by denying any  
3 proposal that encourages new residential  
4 construction in the floodway. There are two  
5 environmental impacts associated with such  
6 development. Firstly, parking areas associated with  
7 residential development will threaten water quality  
8 with increased impervious surfaces and associated  
9 stormwater runoff. This is an issue that hasn't  
10 been discussed today. Urban stormwater is polluted  
11 with oil and antifreeze leaked from motor vehicles,  
12 weathered paint and wood preservatives, fertilizers,  
13 pesticides and litter dropped on sidewalk, streets,  
14 and parking lots. Would the runoff from these new  
15 parking areas be properly treated or would it go  
16 directly through storm drains into the Schuylkill?  
17 Would the addition of residential units result in  
18 increased litter, soda cans, plastic bottles, food  
19 containers in the river? Riverkeeper is concerned  
20 about these impacts to water quality. Secondly, the  
21 most significant environmental impact of new  
22 construction maybe its impact upon the floodway,  
23 that area of land carrying the bulk of floodwaters  
24 during a significant rain event.

25 I am going to skip the next two and a

BILL NOS. 990760, 990761

half paragraphs because I reiterate what has already been said today concerning floodways and things that can impact on them.

Recent flood associated with Hurricane Floyd clearly made the case against living in the flood fringe, let alone the floodway for many residents of the Darby and Neshaminy Creek watersheds. Other communities are working to reduce flood losses by acquiring flood-prone lands, relocating people from harm's way and utilizing these lands for parks, recreation, and open space.

A 1990 US Army Corps of Engineers study evaluated the floodplain in Manayunk for the likelihood of potential non-structural flood damages; that is, traffic disruptions, access limitations, and emergency management, and found that "the new mixed commercial/industrial structure has increased damage potential in the floodplain." This is speaking specifically of Manayunk. Certainly, the addition of residential development to the floodway increases the identified damage potential.

The Corps study was particularly concerned with the difficulty in getting emergency

BILL NOS. 990760, 990761

1  
2 rescue equipment to the Manayunk area. The  
3 interests of the river and public health, safety,  
4 and welfare would best be served by efforts that  
5 increase awareness of the existing flood threat  
6 rather than by dismissing flood impact with  
7 proposals for elevated walkways for evacuation or  
8 car catchers that will in reality impede flood  
9 flows.

10 On behalf of our members, volunteers,  
11 and the river, we urge you to reject any proposal  
12 that would encourage the construction of new  
13 residential development in the floodway but to seek  
14 alternative zoning for Venice Island. Open up the  
15 floodway to protect the Schuylkill River and its  
16 surrounding urban community. You will be protecting  
17 public health, safety, and welfare in the process.  
18 Thank you.

19 COUNCIL PRESIDENT VERNA: Thank you.

20 The Chair recognizes Councilman Cohen.

21 COUNCILMAN COHEN: In your statement  
22 right at very end you suggested different zoning.  
23 Could you be more specific? Just in your very last  
24 few sentences.

25 MS. BERNER: I don't know all the zoning

BILL NOS. 990760, 990761

1  
2 possibilities in Philadelphia. I would just support  
3 what other people have said and say that rather than  
4 assuming that new construction is the only way to  
5 go, that from the Riverkeeper point of view, open  
6 land is the best situation to have in a floodway if  
7 you can manage it. How that would be effected for  
8 Venice Island, I wouldn't want to conjecture at this  
9 point.

10 COUNCILMAN COHEN: Thank you.

11 COUNCIL PRESIDENT VERNA: Thank you very  
12 much.

13 Any other questions from Members of the  
14 Committee?

15 - - -

16 COUNCIL PRESIDENT VERNA: Thank you.

17 Are there any questions from members of the  
18 committee? This concludes list of witnesses that we  
19 have on the two bills.

20 My understanding is there is written  
21 testimony submitted regarding bill 990760 and  
22 990761. We will make it part of the record and give  
23 it to the stenographer.

24 (Testimony attached.)

25 COUNCIL PRESIDENT VERNA: The Clerk will

1 BILL NOS. 990760, 990761

2 read the title of Bill No. 990846.

3 The Chair recognizes Councilman DiCicco.

4 COUNCILMAN DI CICCO: Thank you, Madam  
5 Chair. At this time I will ask for the withdrawal  
6 of the bill.

7 COUNCIL PRESIDENT VERNA: Thank you.

8 This concludes the public hearing of the Committee  
9 on Rules.

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COUNCIL OF THE CITY OF PHILADELPHIA  
PUBLIC MEETING  
COMMITTEE ON RULES

- - -

Wednesday, December 9, 1998

- - -

Public Meeting conducted by the  
Committee on Public Property and Public Works, held  
in Room 401, City Hall, Philadelphia, Pennsylvania,  
on the above date, to consider action on the  
following:

BILL NOS. 960064, 990331, 990673, 990678, 990719,  
990729, 990760, 990761, 990812, 990817, 990844,  
990847, 990848, 990849

PRESENT:  
COUNCILWOMAN ANNA C. VERNA, Chair  
COUNCILMAN DAVID COHEN  
COUNCILMAN JAMES F. KENNEY  
COUNCILMAN MICHAEL A. NUTTER  
COUNCILMAN FRANK DICICCO  
COUNCILMAN BRIAN J. O'NEILL  
COUNCILMAN DARRYL L. CLARKE  
COUNCILMAN W. THACHER LONGSTRETH

- - -

1 COMMITTEE ON RULES - PUBLIC MEETING

2 COUNCIL PRESIDENT VERNA: We will now  
3 begin the public meeting.

4 The Chair recognizes Councilman Kenney  
5 regarding Bill No. 990064.

6 COUNCILMAN KENNEY: At the request of  
7 the individuals who requested this bill who had an  
8 opportunity to be heard over the last four years, I  
9 have requested that the Committee withdraw this  
10 bill. With that Bill No. 26 at my request with the  
11 understanding of the people involved in its original  
12 request is withdrawn.

13 COUNCIL PRESIDENT VERNA: Thank you.  
14 Bill No. 26 has been withdrawn.

15 The Chair recognizes Councilman DiCicco  
16 regarding Bill No. 990331.

17 COUNCILMAN DI CICCO: I move the  
18 adoption of the amendment read in the record earlier  
19 today on Bill 990331.

20 (Duly seconded.)

21 COUNCIL PRESIDENT VERNA: It has been  
22 moved and seconded that the amendment be adopted.

23 COUNCILMAN COHEN: Has there been any  
24 kind of agreement on the matter?

25 COUNCILMAN DI CICCO: I think you were

1                   COMMITTEE ON RULES - PUBLIC MEETING  
2           out of the room at the time. Mr. Ackelsberg  
3           testified that there is an agreement. We will have  
4           it in a draft or a written form between now and time  
5           the bill is voted on next week. There is an  
6           understanding, and a memorandum will be coming  
7           forward.

8                   COUNCILMAN COHEN: Very good thank you.

9                   COUNCIL PRESIDENT VERNA: It has been  
10          moved and seconded that the amendment be adopted.

11                   All in favor will signify by saying aye.

12                   Those opposed?

13                   The ayes have it. The motion is  
14          carried.

15                   The Chair recognizes Councilman DiCicco.

16                   COUNCILMAN DI CICCO: Thank you, Madam  
17          Chair. I move the adoption of Bill No. 990331, as  
18          amended, be reported had out of this Committee with  
19          a favorable recommendation and that the Rules of  
20          Council be suspended so as to permit first reading  
21          at the next session of Council.

22                   (Duly seconded.)

23                   COUNCIL PRESIDENT VERNA: It has been  
24          moved and properly seconded that Bill No. 990331 be  
25          reported out of Committee with a favorable

1                   COMMITTEE ON RULES - PUBLIC MEETING  
2       recommendation, also a recommendation that the Rules  
3       of Council be suspended so as to permit first  
4       reading at our next meeting.

5                   All in favor will signify by saying aye.

6                   COUNCILMAN COHEN: I want to thank  
7       Councilman DiCicco for his persistence. I think it  
8       is very good mark for City Council. I think this  
9       Committee ought to recognize Councilman DiCicco.

10                  COUNCIL PRESIDENT VERNA: I would echo  
11       the gentleman. Job well done.

12                  All those in favor will signify by  
13       saying aye.

14                  Those opposed?

15                  The motion is carried.

16                  The Chair recognizes Councilman Nutter  
17       regarding bill 990673.

18                  COUNCILMAN NUTTER: Thank you, Madam  
19       Chair. I move the adoption of the amendments read  
20       into the record during the public hearing for which  
21       I have additional copies if members would like.

22                  (Duly seconded.)

23                  COUNCIL PRESIDENT VERNA:

24                  COUNCIL PRESIDENT VERNA: It has been  
25       moved and seconded that the amendments be adopted.

1 COMMITTEE ON RULES - PUBLIC MEETING

2 All in favor will signify by saying aye.

3 Those opposed?

4 The ayes have it. The motion is  
5 carried.

6 The Chair recognizes Councilman Nutter.

7 COUNCILMAN NUTTER: Madam Chair, I move  
8 that Bill No. 990673, as amended, be reported out  
9 with a favorable recommendation, and a further  
10 recommendation that the Rules of Council be  
11 suspended so as to permit first reading at our next  
12 session of Council.

13 (Duly seconded.)

14 COUNCIL PRESIDENT VERNA: It has been  
15 moved and seconded that Bill No. 990673, as amended,  
16 be reported out of Committee with a favorable  
17 recommendation, also a recommendation that the Rules  
18 of Council be suspended so as to permit first  
19 reading at our next meeting.

20 All in favor will signify by saying aye.

21 Those opposed?

22 The ayes have it. The motion is  
23 carried.

24 The Chair recognizes Councilman Cohen  
25 regarding Bill No. 990678.

1 COMMITTEE ON RULES - PUBLIC MEETING

2 COUNCILMAN COHEN: Madam Chair, I move  
3 that bill be amended.

4 COUNCIL PRESIDENT VERNA: Is there a  
5 second?

6 (Duly seconded.)

7 COUNCIL PRESIDENT VERNA: It has been  
8 moved and seconded that Bill No. 990678 be amended.

9 All in favor will signify by saying aye.  
10 Those opposed?

11 The ayes have it. The motion is  
12 carried.

13 The Chair recognizes Councilman Cohen.  
14 I move that Bill No. 990678, as amended, be reported  
15 out of Committee with a favorable recommendation and  
16 with the request for suspension of rules to permit  
17 first reading the next session of Council.

18 COUNCIL PRESIDENT VERNA: It has been  
19 moved and seconded that Bill No. 990678, as amended,  
20 be reported out of Committee with a favorable  
21 recommendation, with a further recommendation that  
22 the Rules of Council be suspended so as to permit  
23 first reading at our next meeting.

24 All in favor will signify by saying aye.

25 Those opposed?

1 COMMITTEE ON RULES - PUBLIC MEETING

2 The ayes have it. The motion is  
3 carried.

4 The Chair recognizes Councilman O'Neill  
5 regarding 990719.

6 COUNCILMAN O'NEILL: Madam Chair, I move  
7 Bill No. 990719 be reported out of Committee with a  
8 favorable recommendation and that the Rules of  
9 Council be suspended so as to permit first reading  
10 at our to next session of Council.

11 (Duly seconded.)

12 COUNCIL PRESIDENT VERNA: It has been  
13 moved and seconded that Bill No. 990719 be reported  
14 out of Committee with a favorable recommendation and  
15 that the Rules of Council be suspended so as to  
16 permit first reading at our to next session of  
17 Council.

18 All in favor will signify by saying aye.

19 Those opposed?

20 The ayes have it. The motion is  
21 carried.

22 The Chair recognizes Councilman Kenney  
23 regarding 990729.

24 COUNCILMAN KENNEY: Madam Chair, I move  
25 Bill No. 990729 be reported out of this Committee

1 COMMITTEE ON RULES - PUBLIC MEETING

2 with a favorable recommendation, also a  
3 recommendation that the Rules of Council be  
4 suspended so as to permit first reading at our next  
5 Council session.

6 (Duly seconded.)

7 COUNCIL PRESIDENT VERNA: It has been  
8 moved and seconded that Bill No. 990729 be reported  
9 out of this Committee with a favorable  
10 recommendation, also a recommendation that the Rules  
11 of Council be suspended so as to permit first  
12 reading at our next meeting.

13 All in favor will signify by saying aye.

14 Those opposed?

15 The ayes have it. The motion is  
16 carried.

17 The Chair recognizes Councilman Nutter  
18 regarding Bill No. 990760.

19 COUNCILMAN NUTTER: Madam Chair, there  
20 were voluminous amendments put forth. Copies were  
21 distributed to the Members, Bills 990760 as well as  
22 990761. Those amendments have not been read into  
23 the record. They are somewhat brief. I'd like to  
24 read in the amendments.

25 COUNCIL PRESIDENT VERNA: Read the

1 COMMITTEE ON RULES - PUBLIC MEETING

2 amendments for Bill No. 990760.

3 COUNCILMAN NUTTER: Bill No. 990760

4 proposed amendments are on Page 3 (3) where it reads  
5 the following: "Prohibited uses," strike, shall be  
6 prohibited; insert, regulations prohibitions and/or  
7 controls shall apply to the following noted areas:

8 On Page, (c)(.4), insert, any type of  
9 recreational or cultural use subject to the use  
10 qualifications and/or restrictions of the underlying  
11 zoning classification.

12 Insert a new (4) entitled Facade  
13 Controls. (a) no building shall be erected nor any  
14 facade altered on any building or land fronting on  
15 any street located within the area described in  
16 paragraph (2)(b) or (2)(c) above unless plans of the  
17 facade have been approved by the Planning  
18 Commission. The Planning commission shall have  
19 sixty days to take action, after which it approval  
20 shall be presumed;

21 On Page 5, (.b), the sentence reads,  
22 "All structures 25 feet or more in height above the  
23 actual ground level at the base of th structure  
24 shall set back from the" -- strike, Conrail  
25 right-of-way no less than 25 feet; insert, Manayunk

1 COMMITTEE ON RULES - PUBLIC MEETING

2 Canal no less than 25 feet from the Conrail  
3 right-of-way no less than 10 feet.

4 (.c), strike the word after "Conrail  
5 right-of-way," "a."

6 Page 6, (b), insert a new section (e),  
7 the type of material shall be selected from a list  
8 of types, sizes of species of plants, and numbers of  
9 plants that are appropriate to achieve adequate  
10 screening and appropriate for the location of the  
11 parking facility; provided, that on Venice Island  
12 the plant material shall be of species of plants  
13 indigenous to the island and/or the Schuylkill River  
14 bank. This list shall be prepared and maintained by  
15 the City Planning Commission, in conjunction with  
16 Fairmount Park Commission.

17 Those are all the amendments, Madam  
18 Chair. For Bill No. 990760, I move adoption of  
19 those amendments.

20 (Duly seconded.)

21 COUNCIL PRESIDENT VERNA: Councilman  
22 Cohen.

23 COUNCILMAN COHEN: I don't recollect  
24 testimony for or against any of these amendments; is  
25 that right? I didn't hear any discussion by any

1 COMMITTEE ON RULES - PUBLIC MEETING

2 witnesses.

3 COUNCILMAN NUTTER: There was no  
4 discussion. It was referenced. I'm not sure given  
5 how events, if you were in the room at the time.  
6 These are issues discussed at the City Planning  
7 Commission offices on Monday of this week. It is  
8 certainly my impression from that meeting there is  
9 agreement on those items. They didn't go to any  
10 longer discussion earlier today.

11 COUNCILMAN COHEN: Okay. Very good.

12 COUNCILMAN NUTTER: I move the adoption  
13 of the amendments of Bill No. 990760.

14 (Duly seconded.)

15 COUNCIL PRESIDENT VERNA: It has been  
16 moved and seconded that the amendments of Bill No.  
17 990760 be adopted.

18 All in favor will signify by saying aye.

19 Those opposed?

20 The ayes have it. The motion is  
21 carried.

22 Chair recognizes Councilman Nutter.

23 COUNCILMAN NUTTER: Madam Chair, I move  
24 that Bill No. 990760, as amended, be reported out of  
25 this Committee with a favorable recommendation and

1 COMMITTEE ON RULES - PUBLIC MEETING

2 further recommendation that the Rules of Council be  
3 suspended so as to permit first reading at our next  
4 session.

5 COUNCIL PRESIDENT VERNA: The Chair  
6 recognizes Councilman Cohen.

7 COUNCILMAN COHEN: I would like ask that  
8 this bill, I'd like Councilman Nutter to consider  
9 holding this bill. Many aspects of it, I just  
10 became acquainted with it. The environmental aspect  
11 troubles me. There are a lot of technical and legal  
12 issues raised during the discussion. I don't know  
13 if I should be voting for or against the bill; I  
14 just don't know enough about it. I suggest this  
15 bill be held and reintroduced again by you and come  
16 up early and discuss it so we all have an  
17 opportunity to understand it.

18 COUNCILMAN NUTTER: I understand and  
19 appreciate the request, Councilman, as we've  
20 discussed on a couple occasions at side bar. One,  
21 and this was discussion on Monday, that would  
22 essentially put us in a position where we  
23 realistically couldn't revisit issues until about  
24 April of next year. I do have a very strong concern  
25 about the prospect of leaving this area in a G-2

1                   COMMITTEE ON RULES - PUBLIC MEETING  
2       Industrial without some of the provisions that  
3       criteria in the bill do provide. Some controls are  
4       better than no controls. So I will have to  
5       respectfully decline the request. As the Councilman  
6       knows, we will not vote on this matter until  
7       Thursday, December 16. In the interim I'll be more  
8       than happy, Councilman, to have further meetings and  
9       discussions about this issue and try to bring him up  
10      to any further speed he would like to be.

11                   COUNCILMAN COHEN: I think it's wrong to  
12      have this bill come up at this late stage where all  
13      of the concerns that have been expressed and been  
14      considered by Council for the first time and to have  
15      this bill pushed through. I think there is no need  
16      to wait until April. I don't know what you're  
17      referring to with respect to this bill won't come up  
18      until April. It may or may not. I don't think  
19      it's any reason to push this through. I have made  
20      the request. I think request a fair ought to be  
21      honored.

22                   COUNCILMAN NUTTER: Councilman, with all  
23      due respect, let me add to the record, not to extend  
24      the day, while a bill at this point in time this  
25      issue of zoning and zoning controls in Manayunk has

1                   COMMITTEE ON RULES - PUBLIC MEETING  
2       been a rather extended process over a considerable  
3       amount of time. I know some members of the  
4       Community feel that and it's certainly true that the  
5       final plan was not available for serious discussion  
6       until the meeting of September 9th. But as  
7       testified, there were various planning events and a  
8       variety of meetings. I will not say whether the  
9       process is perfect or not. I'm sure many would  
10      state it would be viewed as imperfect. We do vote  
11      by the committee on the bill.

12                   With regard to the April comment,  
13      normally there are no hearings on any bills during  
14      the general budget season process, and at least  
15      historically we have done that in the months  
16      January, February, March.

17                   COUNCILMAN COHEN: Councilman, I'm  
18      suggesting this is more than a zoning bill. I  
19      thought we were considering a zoning bill. I now  
20      find it to be a major environmental issue.

21                   COUNCILMAN NUTTER: I understand.

22                   COUNCILMAN COHEN: That's what I'm  
23      concerned about.

24                   COUNCILMAN NUTTER: Okay. There's  
25      motion pending.

1 COMMITTEE ON RULES - PUBLIC MEETING

2 COUNCIL PRESIDENT VERNA: It has been  
3 moved and properly seconded that Bill No. 990760, as  
4 amended, be referred out of Committee with a  
5 favorable recommendation, and with a further  
6 recommendation that the Rules of Council be  
7 suspended so as to permit first reading at our next  
8 meeting.

9 All in favor will signify by saying aye.

10 Those opposed?

11 COUNCILMAN COHEN: No. I change from  
12 the abstention because I think the denial to my  
13 request is unreasonable and I think I'm voting no on  
14 the bill. I am concerned about the environmental  
15 issues, and apparently there has been no opportunity  
16 for this Council to consider merits of that  
17 question.

18 COUNCIL PRESIDENT VERNA: The record  
19 will note that Councilman Cohen voted no to the  
20 motion.

21 COUNCIL PRESIDENT VERNA: The Chair  
22 recognizes Councilman Nutter regarding Bill No.  
23 990761.

24 COUNCILMAN NUTTER: There were  
25 amendments proposed that were similar to the

1                   COMMITTEE ON RULES - PUBLIC MEETING  
2 previous bill. These need to be consistent. On  
3 Page 5 of Bill 990761(.1), the sentence should read,  
4 Every point on a structure shall be a minimum  
5 horizontal distance from every lot line which --  
6 strike, is not a; insert, is not a boundary line  
7 between the lot and a river, stream, canal, railroad  
8 right-of- way or a -- street line in accordance with  
9 the following requirements.

10                   In point B in the same section, that  
11 sentence should read, For building over 25 feet in  
12 height equal every point on the structure shall be  
13 a -- strike, minimum horizontal distance of 25 feet  
14 from every lot; insert, minimum average horizontal  
15 distance of 25 feet from every lot line but in no  
16 case less than 10 feet.

17                   (.2), the sentence should read, Every  
18 point on a structure which faces a -- strike, street  
19 shall be a minimum horizontal distance from the  
20 centerline of said street; insert, river, stream,  
21 canal, railroad right-of-way or a street shall be a  
22 minimum horizontal distance from the centerline (or  
23 the combined centerlines) of said river, stream,  
24 canal, railroad right-of-way or a street -- equal to  
25 the height of that point above the mean ground level

1 COMMITTEE ON RULES - PUBLIC MEETING

2 at the base of said structure.

3 There are no other amendments to Bill  
4 990761. I move the adoption of those amendments.

5 (Duly seconded.)

6 COUNCIL PRESIDENT VERNA: It has moved  
7 and second that the amendments be adopted.

8 All in favor signify by saying aye.

9 Those opposed?

10 The ayes have it. The motion is carried  
11 the Chair recognizes Councilman Nutter.

12 COUNCILMAN NUTTER: Madam Chair, I move  
13 that Bill 990761 as amended be reported out of this  
14 Committee with a favorable recommendation and a  
15 further recommendation that Rules of Council be  
16 suspended so as to permit first reading at our next  
17 session.

18 (Duly seconded.)

19 COUNCILMAN COHEN: Mr. President, I make  
20 my request again that this bill than held. I make  
21 it of Councilman Nutter.

22 COUNCIL PRESIDENT VERNA: Councilman  
23 Nutter.

24 COUNCILMAN NUTTER: Yes, Madam Chair.  
25 Councilman, I think I would, again, respectfully

1 COMMITTEE ON RULES - PUBLIC MEETING

2 respond in the same fashion that I did in the  
3 earlier discussion about Bill 990760 and for the  
4 same reasons I would have to respectfully decline  
5 the request.

6 COUNCIL PRESIDENT VERNA: It has moved  
7 and seconded that Bill No. 990761 be reported out of  
8 Committee with a favorable recommendation, as  
9 amended, also a recommendation that the Rules of  
10 Council be suspended so as to permit first reading  
11 at our next session of Council.

12 All in favor will signify by saying aye.  
13 Those opposed?

14 COUNCILMAN COHEN: No.

15 COUNCIL PRESIDENT VERNA: The record  
16 will reflect that Councilman Cohen voted no.

17 The next bill to be considered is Bill  
18 No. 990812. The Chair recognizes Councilman  
19 DiCicco.

20 AUDIENCE MEMBER. Excuse me, ma'am. May  
21 I ask a clarification question, please?

22 COUNCIL PRESIDENT VERNA: Sorry, we're  
23 in a public meeting. If you'll wait until after the  
24 public meeting, we'll be happy to recognize you.  
25 Thank you.

1 COMMITTEE ON RULES - PUBLIC MEETING

2 COUNCILMAN DI CICCO: Thank you, Madam  
3 Chair. I move for the amendment to Bill 990812 -- I  
4 don't know if we read this in the earlier, but I'll  
5 supply the Chair and the stenographer with a copy of  
6 that amendment. And I also understand that there's  
7 an amendment being offered by Councilmember O'Neill.

8 COUNCIL PRESIDENT VERNA: Are you moving  
9 for the adoption of the amendment?

10 COUNCILMAN DI CICCO: I move for the  
11 adoption of the amendment that I am introducing to  
12 Bill No. 990812.

13 (Duly seconded.)

14 COUNCIL PRESIDENT VERNA: It has been  
15 moved and seconded that the amendment submitted by  
16 Councilman DiCicco be adopted.

17 All in favor will signify by saying aye.

18 Those opposed?

19 The ayes have it. The motion is  
20 carried.

21 The Chair recognizes Councilman O'Neill.

22 COUNCILMAN O'NEILL: Madam Chair, I'm  
23 moving the following amendment, as I mentioned  
24 during the hearing, Section B, Subsection 3, adding  
25 the language -- actually, one sentence being added

1 COMMITTEE ON RULES - PUBLIC MEETING

2 at that end of that section would read as follows,  
3 in the Tenth Councilmanic District, only an owner  
4 occupied dwelling unit would be eligible for this  
5 exemption.

6 (Duly seconded.)

7 COUNCIL PRESIDENT VERNA: It has been  
8 moved and seconded that the amendment offered by  
9 Councilman O'Neill be adopted.

10 All in favor will signify by saying aye.

11 Those opposed?

12 The ayes have it. The motion is  
13 carried.

14 The Chair recognizes Councilman DiCicco.

15 COUNCILMAN DI CICCO: Thank you, Madam  
16 Chair. I move that Bill No. 990812 as amended by  
17 both myself and Councilman O'Neill be reported out  
18 of this committee with a favorable recommendation  
19 and also that the Rules of Council be suspend so as  
20 to permit first reading at our next session of City  
21 Council.

22 (Duly seconded.)

23 COUNCIL PRESIDENT VERNA: It has been  
24 moved and seconded that the Bill No. 990812 be  
25 reported out of Committee with a favorable

1 COMMITTEE ON RULES - PUBLIC MEETING

2 recommendation, as amended, also a recommendation  
3 that the Rules of Council be suspended so as to  
4 permit first reading at our next meeting.

5 All in favor will signify by saying aye.

6 Those opposed?

7 The ayes have it. The motion is  
8 carried.

9 The Chair recognizes Councilman O'Neill  
10 regarding bill 990817.

11 COUNCILMAN O'NEILL: Madam Chair, I move  
12 that Bill No. 990817 be reported out of this  
13 Committee with a favorable recommendation, and a  
14 further representation that the Rules of Council be  
15 suspended to allow first reading at our next  
16 session.

17 (Duly seconded.)

18 COUNCIL PRESIDENT VERNA: It has been  
19 moved and seconded that Bill No. 990817 be reported  
20 out of Committee with a favorable recommendation,  
21 and also a recommendation that the rules of Council  
22 be suspended so as to permit first reading at our  
23 next meeting.

24 All in favor will signify by saying aye.

25 Those opposed?

1 COMMITTEE ON RULES - PUBLIC MEETING

2 The ayes have it. The motion is  
3 carried.

4 Bill No. 990844, I believe we were  
5 waiting for amendment for that.

6 COUNCILMAN NUTTER: Yes. Madam Chair  
7 amendments have been circulated and I can now report  
8 to the Committee that at 6:35 this evening I talked  
9 with Otis Haigler from the Department of Licenses  
10 and Inspection. We have agreement on amendments to  
11 Bill No. 990844, and Mr. Haigler authorized me to  
12 say that with those amendments he and the Department  
13 supports 990844.

14 COUNCIL PRESIDENT VERNA: Everyone has a  
15 copy of the amendments?

16 COUNCILMAN NUTTER: I'd like to read  
17 those amendments into the record, Madam Chair.

18 COUNCIL PRESIDENT VERNA: Please.

19 COUNCILMAN NUTTER: In section 14-1703,  
20 Section 6 (c), at the point where the bill reads  
21 "If it so determines" -- add a comma, and if the  
22 application is not one that the Department may grant  
23 as of right -- continue the sentence, "then the  
24 Department shall" -- strike, deny the application,  
25 and stamp the application; insert new material,

1 COMMITTEE ON RULES - PUBLIC MEETING

2 issue a refusal or referral and shall note thereon:

3 The sentence continues, "Denied - One Year Rule."

4 In Section (d), start of a sentence,  
5 "The" -- strike, denial of an application pursuant  
6 to the; insert, issuance of a refusal or referral  
7 denoted, "Denied -- the sentence then continues. To  
8 the bottom of that same section where the sentence  
9 picks up, "Then the Board shall" -- strike, remand  
10 the application to the Department for further  
11 proceedings; insert, consider the appeal on the  
12 merits in accordance with its usual procedures,  
13 including the holding of an additional hearing in  
14 accordance with Section 14-805, for which reposting  
15 shall be required in accordance with Section  
16 14-1805(11) and the applicable Board regulations,  
17 but for which no additional fee shall be imposed.

18 Letter (e), the sentence reads, "The  
19 failure of the Department to deny an application on  
20 the basis of the One Year Rule may be raised by any"  
21 -- insert, aggrieved -- the sentence continues.

22 New section, insert, Chapter 14-1800,  
23 Zoning Board of Adjustment. Section 14-1805,  
24 Hearings. (12) Hearings on appeals relating to the  
25 One Year Rule set forth in Section 14-1703(6) shall

1 COMMITTEE ON RULES - PUBLIC MEETING

2 be conducted in accordance with the procedures set  
3 forth therein.

4 Those are all the amendments, Madam  
5 Chair, to Bill 990844. As I mentioned earlier,  
6 there is an agreement with the Department of  
7 Licenses and Inspections and they support the bill  
8 as proposed to be amended, and I would move the  
9 adoption of those amendments.

10 (Duly seconded.)

11 COUNCIL PRESIDENT VERNA: It has been  
12 moved and seconded that the amendments be adopted.

13 All in favor will signify by saying aye.

14 Those opposed?

15 The ayes have it. The motion is  
16 carried.

17 The Chair recognizes Councilman Nutter.

18 COUNCILMAN NUTTER: Madam Chair, I move  
19 that Bill No. 990844, as amended, be reported out of  
20 committee with a favorable recommendation and a  
21 further recommendations that the Rules of Council be  
22 suspended so as to permit first reading at our next  
23 session.

24 COUNCIL PRESIDENT VERNA: It has been  
25 moved and seconded that Bill No. 990844 be reported

1 COMMITTEE ON RULES - PUBLIC MEETING

2 out of Committee with a favorable recommendation, as  
3 amended, also a recommendation that Rules of Council  
4 be suspended so as to permit first reading at next  
5 meeting.

6 All in favor will signify by saying aye.

7 Those opposed?

8 The ayes have it. The motion is  
9 carried.

10 The record will reflect that Bill No.  
11 990846 has been withdrawn at the request of the  
12 sponsor.

13 The Chair recognizes Councilman Kenney  
14 regarding 990847.

15 COUNCILMAN KENNEY: Madam Chair, I move  
16 that Bill No. 990847 be reported out of this  
17 Committee favorably, and a request made for rules  
18 suspension to allow for first reading at our next  
19 Council session.

20 (Duly seconded.)

21 COUNCIL PRESIDENT VERNA: It has been  
22 moved and seconded that Bill No. 990847 be reported  
23 out of Committee with a favorable recommendation,  
24 also a recommendation that the Rules of Council be  
25 suspended so as to permit first reading at our next

1 COMMITTEE ON RULES - PUBLIC MEETING

2 meeting.

3 All in favor will signify by saying aye.

4 Those opposed?

5 The ayes have it. The motion is

6 carried.

7 The Chair recognizes Councilman Kenney

8 regarding Bill No. 990848.

9 COUNCILMAN KENNEY: Madam Chair, I move

10 that the amendments offered to Bill NO. 990848 be

11 approved.

12 (Duly seconded.)

13 COUNCIL PRESIDENT VERNA: It has been

14 moved and seconded that the amendments be adopted.

15 All in favor will signify by saying aye.

16 Those opposed?

17 The ayes have it. The motion is

18 carried.

19 The Chair recognizes Councilman Kenney.

20 COUNCILMAN KENNEY: Madam Chair, I move

21 that Bill No. 990848, as amended, be reported out of

22 this Committee favorably, and a request made for

23 Rules suspension to allow for first reading at our

24 next Council session.

25 (Duly seconded.)

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COMMITTEE ON RULES - PUBLIC MEETING

COUNCIL PRESIDENT VERNA: It has been moved and seconded that Bill No. 990848 be reported out of Committee with a favorable recommendation, as amended, also a recommendation that the Rules of Council be suspended so as to permit first reading at our next meeting.

All in favor will signify by saying aye.

Those opposed?

The ayes have it. The motion is carried.

The record will also reflect that Bill 990849 has been withdrawn at the request of the sponsor.

This concludes the public meeting of the Rules Committee. Thank you all for your patience.

(Council adjourned at 7:15 p.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing proceedings of the Council of the City of Philadelphia of December 8, 1999, were reported fully and accurately by me, and that this is a correct transcript of the same.

RE: COMMITTEE ON RULES

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Josephine Cardillo, RPR  
and Notary Public

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Lisa C. Bradley, RPR  
and Notary Public