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# REPORT OF THE NEW YORK CITY COMPTROLLER ON THE SALE OF TWO DEED RESTRICTIONS GOVERNING PROPERTY LOCATED AT 45 RIVINGTON STREET

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## EXECUTIVE SUMMARY

On November 10, 2015, Joel Landau, a principal of the Allure Group, paid the City of New York \$16.15 million to remove two deed restrictions that limited the use of Rivington House, a nursing home located on Manhattan's Lower East Side, to operation as a Not-For-Profit health care facility.<sup>1</sup> With those restrictions lifted, Mr. Landau and his business partner were able to sell the property to a luxury condominium developer for \$116 million.<sup>2</sup> The net result was that after owning Rivington House for barely one year, Mr. Landau and his partner walked away with a \$72 million profit, while healthcare workers lost their jobs at Rivington House, residents lost their homes, the neighborhood lost a vital community asset, and the City lost the power to ensure that the property was used for a public purpose “in perpetuity.”

This report sets out the findings of an investigation by the Office of the New York City Comptroller into the City’s removal of the Rivington House deed restrictions.<sup>3</sup> It reveals how Rivington House was allowed to slip away not so much because of poor City processes, but because of poor execution of those processes in a manner that undermined both public input and the interests of the City. The report reveals how senior City officials required agency commissioners to prepare weekly reports but then chose not to read them, how decisions were made but never communicated to subordinates, and how a lack of vigilance allowed a single individual to gain control of a valued community resource. Ultimately, these breakdowns created a vacuum that Mr. Landau was able to exploit through calculated lobbying that allowed him to secure the removal of the Rivington House deed restrictions at the same time as he was working to “flip” the property for millions of dollars in profit.

All of this happened notwithstanding the involvement of dozens of Administration officials, including three Deputy Mayors; the Directors of the Mayor’s Offices of Intergovernmental Affairs and Contract Services; three City Commissioners; and numerous members of their staffs. Throughout this period, Mr. Landau met with City officials at least six times and communicated with City employees through at least twenty-five emails or phone calls. City officials received information about Rivington House on another twenty-one occasions, held at least forty-eight meetings, and exchanged hundreds of emails and phone calls. Despite all of these efforts, the City failed to preserve Rivington House for the public, something it had the legal authority to do. Among other things, this investigation revealed:

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<sup>1</sup> As of March 24, 2016, the website of The Allure Group listed Joel Landau, Marvin Rubin, Solomon Rubin, and Melissa Guglielmo as the members of Allure’s “Ownership Group.” Landau and Marvin Rubin each own fifty percent of New Rivington Properties LLC, the entity that purchased Rivington House from Village Care. See Verified Petition, NYS Supreme Court, New York County, In the Matter of the Petition of Rivington House- The Nicholas A. Rango Health Care Facility, December 11, 2014, page 4. Deed Modification between the City of New York and New Rivington Properties, LLC, November 10, 2015.

<sup>2</sup> Deed Recorded February 11, 2016 for transaction between New Rivington Properties, LLC and Rivington Street Investors LLC.

<sup>3</sup> The City Charter authorizes the Comptroller “to audit and investigate all matters relating to or affecting the finances of the city.” NY City Charter § 93(b). Further, the Comptroller is charged with “advis[ing] the mayor and the council on the financial condition of the city or any phase thereof and mak[ing] such recommendations, comments and criticisms in regard to the operations, fiscal policies and financial transactions of the City as he or she may deem advisable in the public interest.” NY City Charter § 93(a). With this authority, the Comptroller performs a mandated oversight function and operates independently from the Mayor, the City Council and the Public Advocate.

## **1. City Hall Was Told as Early as January 2014 that DCAS Was Poised to Remove the Deed Restrictions on Rivington House, Yet After City Hall Reviewed Alternative Uses for the Property, City Hall Failed to Communicate a Clear Policy Direction to DCAS.**

- City Hall learned on January 16, 2014 from a lobbyist representing VillageCare that “DCAS has agreed to remove the deed restriction.”<sup>4</sup> By July 2014, DCAS had put VillageCare’s request on hold so that City Hall could explore alternative uses for Rivington House.<sup>5</sup> That exploration found the property could generate up to 276 units of supportive housing or 188 units of mixed-income housing.<sup>6</sup> However, ultimately, the First Deputy Mayor decided that his preferred use for the building was a healthcare facility.<sup>7</sup> After putting VillageCare’s request on hold, DCAS was not involved in these discussions; and there is no direct, specific evidence that City Hall provided clear direction to DCAS about City Hall’s policy preferences or the deed restrictions once its analysis ended.

## **2. The Absence of Clear Direction from City Hall Created a Leadership Vacuum that Joel Landau Exploited.**

- In the absence of clear policy direction from City Hall, Mr. Landau was able to strategically lobby local stakeholders by promising to build a healthcare facility when, in fact, he was already exploring other luxury uses.<sup>8</sup>
- As part of his lobbying effort, Mr. Landau tried to convince City Hall that the deed restrictions had to be removed in order for him to obtain financing to purchase the property.<sup>9</sup> He enlisted stakeholders to support his claims that the removal of the deed restrictions was necessary to preserve jobs.<sup>10</sup> However, at the time Landau was making these arguments, he had already obtained multiple offers to finance the purchase of the property and, as one of his lawyers wrote, “can come up with the purchase price in cash next week if push comes to shove.”<sup>11</sup>

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<sup>4</sup> The New York City Department of Citywide Administrative Services (DCAS) was the City agency responsible for the Rivington House deed restrictions and evaluating the requests for their removal. Email, January 16, 2014, NYSAG\_00465 – NYSAG\_00468.

<sup>5</sup> Email, July 30, 2014, HRA\_00000090 – HRA\_00000092.

<sup>6</sup> Email, October 3, 2014, NYC\_00014572 – NYC\_00014573.

<sup>7</sup> Shorris Int., 76: 12-25 and 77: 2-3, July 27, 2016.

<sup>8</sup> Text Message, August 22, 2014, RIVING\_051824 – RIVING\_051825. Email, September 18, 2014, Stetzer\_048. Email, December 30, 2014, RIVING\_023697 – RIVING\_023698.

<sup>9</sup> Email, December 18, 2014, NYC\_00003006 – NYC\_00003007.

<sup>10</sup> Email, December 23, 2014, RIVING\_034411.

<sup>11</sup> Email, January 11, 2015, RIVING\_037888 – RIVING\_037911. Email, December 24, 2014, RIVING\_034407 – RIVING\_034410.



### **3. The First Deputy Mayor Required Agency Heads to Submit Weekly Update Memos, Then Ignored Them.**

- The First Deputy Mayor received written memos from DCAS in May and July 2015 stating that DCAS was removing the deed restrictions, but he does not recall having read them.<sup>12</sup> He told the Office of the Comptroller that, while he still required City Commissioners to submit update memos on a weekly basis, he stopped consistently reading those memos about six months after giving that instruction.<sup>13</sup> Further, the First Deputy Mayor said that agency commissioners understood that they needed to communicate important matters by phone or email.<sup>14</sup> However, he also said that he did not view Rivington House to be an important matter<sup>15</sup> and never informed the DCAS Commissioner that it was.<sup>16</sup>

### **4. City Hall and Agency Staff Missed Numerous Opportunities to Maintain Rivington House as a Health Care Facility.**

- Two key reviews by the City — a public hearing on removing the deed restrictions and a review by the Mayor’s Office of Contract Services (MOCS) — failed to provide real transparency or oversight due to weak execution. In keeping with its routine procedures, MOCS’s public hearing announcing the sale was not well advertised and no effort was made to specifically notify the members of the public who had already expressed a strong interest in the property to DCAS. The MOCS review that resulted in a Mayoral authorization of the sale was merely a rubber stamp of the decisions already made by DCAS, despite nothing requiring the MOCS review be limited to procedure alone.
- The \$16.15 million DCAS demanded for the deed restrictions was based on an agency appraisal that significantly undervalued the property.<sup>17</sup> DCAS’s appraisal relied on out-of-date sales that averaged \$604 per square foot to estimate the value of Rivington House at \$64.6 million. By contrast, another appraisal conducted for a private lender at about the same time set the value at \$770 per square foot, which resulted in an appraised value of \$90 million.<sup>18</sup> Had DCAS more accurately valued the deed restrictions, it would have had a better sense of the value of its asset.

### **5. Even After Learning that the Deed Restrictions Had Been Lifted, City Hall Did Not Try to Stop the Pending Sale of Rivington House.**

- Starting on December 1, 2015, more than two months before the sale of the property, residents of the Lower East Side began contacting the Mayor’s Community Affairs Unit (CAU) about reports that Rivington House was going to be sold to a housing developer for

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<sup>12</sup> Email, May 6, 2015, NYC\_DOI\_00001727 – NYC\_DOI\_00001729. Email, July 8, 2015, NYC\_DOI\_00001730 – NYC\_DOI\_00001732. Shorris Int., 73: 23-25, 74: 2-25, 75: 2-25, and 76: 2-3, July 27, 2016.

<sup>13</sup> Shorris Int., 28: 9-14, 29: 23-25, and 30: 2-7, July 27, 2016.

<sup>14</sup> Shorris Int., 72: 23-25 and 73: 2-4, July 27, 2016.

<sup>15</sup> Shorris Int., 40: 24-25 and 41: 2-17, July 27, 2016.

<sup>16</sup> Shorris Int., 72: 23-25 and 73: 2-8, July 27, 2016.

<sup>17</sup> Restricted Appraisal Report, December 3, 2014, NYC\_00004113 – NYC\_00004127.

<sup>18</sup> Addendum to Appraisal Report, December 5, 2014, RIVING\_028041 – RIVING\_028057.

conversion to luxury condominiums.<sup>19</sup> The next day, the CAU staff member was told that the Rivington House deed restrictions had been lifted for \$16.15 million, and that a construction firm working with the buyer expected the property to be converted to market-rate housing.<sup>20</sup> Shortly thereafter, this information was shared with senior Administration officials throughout City Hall.

- From the moment City Hall was notified by the community on December 1, 2015, until the sale of Rivington House was finalized on February 11, 2016 — a period of 72 days — no one from City Hall told the Mayor the deed restriction had been lifted.<sup>21</sup>
- No evidence was found that City Hall staff spoke with Mr. Landau about the sale until around February 24, 2016, at which point Mr. Landau stated that the property had already been sold.<sup>22</sup>

## **6. Joel Landau Planned For Months to Turn Rivington into Luxury Condos, but Maintained the Nursing Home Charade For a Year, Saving Him Millions in Taxes.**

- At the same time that Mr. Landau was negotiating with DCAS to lower the price of the deed restrictions, he was also marketing Rivington House to developers.<sup>23</sup> As a result, two weeks after he agreed to DCAS’s offer to remove the deed restrictions in exchange for payment of \$16.15 million, on May 11, 2015, without the City’s knowledge, Mr. Landau signed a contract to sell Rivington House to a private luxury housing developer for \$116 million.<sup>24</sup>
- Mr. Landau privately mused about the possibility of selling Rivington on the open market even before he owned it, writing to his business partner shortly before their purchase was finalized that “we shouldn’t invest in any computers...maybe we don’t need to open.”<sup>25</sup> Later, on March 25, 2015, referring to a press article reporting the potential \$80 million sale of a former nursing home in the East Village, Mr. Landau remarked to his business partner that “we can do better and quicker.”<sup>26</sup>
- After striking a deal to sell Rivington House in May 2015, Mr. Landau urged the buyers not to discuss the transaction in public so as not to tip off the stakeholders to his plans. One of Mr. Landau’s attorneys went so far as to advise that the buyers should “KEEP THEIR MOUTHS SHUT. The deal is all over the street from their investors and it could FFFF up the deed restriction being lifted and [sic] union if they know sales price.”<sup>27</sup>

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<sup>19</sup> Email, December 1, 2015, NYC\_00003667 – NYC\_00003670.

<sup>20</sup> Email, December 2, 2014, NYC\_00003667 – NYC\_00003670.

<sup>21</sup> Press Conference Tr., March 28, 2016.

<sup>22</sup> Email, February 24, 2016, NYC\_00003772 – NYC\_00003774.

<sup>23</sup> Email, April 7, 2015, Rottenberg 0000593 – Rottenberg 0000594.

<sup>24</sup> Purchase and Sale Agreement, May 11, 2015, RSI-COMP000305 – RSI-COMP000337.

<sup>25</sup> Email, February 4, 2015, RIVING\_039798 – RIVING\_039799.

<sup>26</sup> Email, March 25, 2015, RIVING\_042729.

<sup>27</sup> Email, May 9, 2015, SLATE001131 – SLATE001134.

- One reason Mr. Landau chose to delay the sale until February 11, 2016, was for tax purposes. To be eligible to pay the lesser, long-term capital gains rate of 20%, as opposed to the ordinary income rate of 39.6%, Mr. Landau had to own the property for at least a year. On the day of the closing, he had owned the property for one year and two days, a fact which saved him an estimated \$17 million in taxes.

The Rivington House matter exposed a number of flaws in the City's operations. That said, assuring that future deed restrictions are handled in the best interests of the City does not require wholesale changes to existing protocols. Rather, what is required is more robust execution of existing processes, especially those designed to provide meaningful Mayoral oversight and public input. Going forward, the City should make the following adjustments to the lifting of deed restrictions:

**Strengthen Mayoral Oversight:** MOCS should take a more active approach to deed modification requests, as the agency is currently empowered to do, by reviewing facts, questioning assumptions, analyzing all appraisals, and finally seeking explicit sign-off from the First Deputy Mayor before approving applications.

**Ensure Robust Public Input:** DCAS needs to take steps to assure that public hearings are well advertised and that important community stakeholders are notified. At a minimum, this should include expanded public notice, with properties listed by their names and addresses and not just by block and lot numbers, as well as explicit outreach to Community Boards, local elected officials, and other stakeholders with an interest in specific properties.

**Expand Definition of City's "Best Interest:"** City Hall must establish consistent standards for determining the "best interest" of the City for DCAS to follow when assessing deed restriction removals. These factors should include, at a minimum, a land use analysis, an assessment of the modification on the local community, an analysis of whether or not a future use of the property would support City policy goals, financial considerations, and input from the community.

## TIMELINE

Date	Event
12/3/1992	City sells Rivington House to VillageCare with deed restrictions limiting use to a Not-For-Profit health care facility.
10/11/2012	VillageCare requests that DCAS remove deed restrictions without charge so that Rivington House can be sold on the open market and the proceeds used for VillageCare's other programs.
3/13/2013	DCAS appraises Rivington House without deed restrictions at \$35.3M. Price to remove deed restrictions is set at \$8.825M.
12/31/2013	DCAS will not waive fee for deed-restriction-removal and VillageCare will not pay. Rivington House deed restrictions remain in place.
1/16/2014	VillageCare first contacts the new Administration, requests removal of Rivington House deed restrictions without charge.
7/25/2014	DCAS informs VillageCare that restrictions will not be removed while the City considers options/other uses for the property.
July 2014	City Hall begins to evaluate potential options for Rivington House that maintain its use as a community resource.
10/9/2014	Contract of Sale for Rivington House to New Rivington Properties, LLC, owned by Joel Landau, Marvin Rubin. Membership Change Agreement will enable Messrs. Landau and Rubin to operate Rivington House as a Not-For-Profit Residential Health Care Facility in conformance with the deed restrictions.
10/17/2014	City Hall stops evaluating potential community based options for the use of Rivington House.
10/22/2014	Landau and surrogates begin to lobby DCAS seeking removal of deed restrictions, asserts the Rivington House deed restrictions are blocking the pending sale of the property to a for-profit operator, putting 250 health care jobs at immediate risk.
11/17/2014	Landau meets with DCAS personnel; DCAS orders appraisal.
12/3/2014	DCAS appraises Rivington House at \$64.6M and prices deed restrictions at \$16.15M.
12/5/2014	Appraiser for potential Landau lender appraises Rivington House at \$90M.
12/30/2014	Landau discusses option of turning Rivington House into a hotel with a developer.
1/13/2015	City Hall contacts DCAS for help with Satisfaction of Mortgage to clear old City lien at VillageCare's request.
2/9/2015	VillageCare's sale of Rivington House to Landau for \$28M is finalized.
2/24/2015	Landau informs DCAS that he is the owner of the property and wants to remove the Not-For-Profit deed restriction.
3/11/2015	Landau meets with DCAS, states that he may turn Rivington House into luxury condos if \$16.15M price is not reduced.
4/14/2015	Date of "Expression of Interest" letter from the Slate Property Group to purchase Rivington House from Landau and partner.



<b>Date</b>	<b>Event</b>
4/27/2015	DCAS responds to Landau's request for removal of both deed restrictions offering to sell them both for \$16.15M.
5/1/2015	Landau agrees to the \$16.15M price.
5/6/2015	DCAS sends a memo to the First Deputy Mayor stating that the Rivington House deed restrictions are being removed.
5/11/2015	Landau agrees to sell Rivington House for \$116M to Rivington Street Investors, LLC, an entity formed by the Slate Property Group, Adam America Real Estate, and Vanke Holdings USA, LLC.
5/14/2015	Members of Rivington Street Investors are told not to discuss their purchase of the property so as not to tip-off City while deed restrictions are being removed.
6/24/2015	MOCS holds public hearing on the impending removal of the deed restrictions.
6/30/2015	MOCS signs the Mayoral Authorization Document, granting Mayor's authorization for removal.
7/8/2015	DCAS sends a memo to the First Deputy Mayor stating that the Rivington House deed restrictions are about to be removed.
11/10/2015	Landau pays the City \$16.15M and restrictions are removed.
11/18/2015	DCAS sends memo to the First Deputy Mayor stating that the Rivington House deed restrictions have been removed.
12/1/2015	City Hall staff are contacted by community residents upset that the deed restrictions have been removed and property is being sold for condo development.
12/11/2015	Last patient is discharged from Rivington House.
2/11/2016	Landau's sale of Rivington House closes for \$116M.
2/24/2016	City Hall speaks with Landau and is informed that he has sold the property.

## BACKGROUND

In 1992, a Not-For-Profit organization now known as VillageCare purchased the property located at 45 Rivington Street, on the Lower East Side of Manhattan, for \$1,550,000 from the City of New York.<sup>28</sup> This sturdy 19<sup>th</sup> century Romanesque Revival building once housed a school that educated George Gershwin, Jacob Javits, Edward G. Robinson, and Paul Muni, among other luminaries.<sup>29</sup> Under VillageCare’s stewardship, the six-story structure was converted into a 219-bed skilled nursing facility known as Rivington House, which opened in 1995 and for the next twenty years was devoted to the care and treatment of people with HIV/AIDS.<sup>30</sup>

When the City sold 45 Rivington Street in 1992, it inserted language in the deed that limited the future use and development of the property “in perpetuity” to a Not-For-Profit “Residential Health Care Facility.”<sup>31</sup> While this provision of the deed is expressed as a single restriction, DCAS determined that its two elements — “Not-For-Profit” and “Residential Health Care Facility” — were severable such that it would be possible to remove only one component of the restriction while leaving the other in place.<sup>32</sup> Although that language initially ensured that Rivington House would provide urgently needed AIDS treatment services, it was broad enough to allow the building to be used for other kinds of health care programs.<sup>33</sup>

By October 2013, VillageCare had decided to close Rivington House because it believed that the need for its particular kind of HIV/AIDS services had diminished.<sup>34</sup> About a year before reaching that decision, VillageCare opened a dialogue with DCAS in which VillageCare asked DCAS to lift the deed restrictions to enable it to sell the Rivington House building on the open market and use the proceeds of that sale to support its other nonprofit programs.<sup>35</sup>

DCAS is a City agency that, among other things manages and sells City-owned property.<sup>36</sup> DCAS is headed by a Commissioner who is appointed by the Mayor and is one of a number of Commissioners who report directly to the First Deputy Mayor. At all times relevant to this report, DCAS had in place a “detailed process” that existed “for more than 20 years” to consider property

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<sup>28</sup> Indenture dated December 3, 1992 between the City of New York and Rivington House Health Care Facility. In 1996 Rivington House Health Care Facility changed its name to “Rivington House- The Nicholas A. Rango Health Care Facility”; <http://www.villagecare.org/about/>.

<sup>29</sup> Mendelsohn, Joyce, *The Lower East Side Remembered and Revisited: A History and Guide to a Legendary New York Neighborhood*. New York: Columbia Univ. Press, 2009, at 176.

<sup>30</sup> Verified Petition, NYS Supreme Court, New York County, In the Matter of the Petition of Rivington House- The Nicholas A. Rango Health Care Facility, December 11, 2014, page 5. Letter, July 25, 2014, VLC00007762 – VLC00007891.

<sup>31</sup> The deed restriction provided that “[u]se and development of the subject property is limited in perpetuity to a Not-For-Profit ‘Residential Health Care Facility’, as such use is defined in the New York State Public Health Law or successor statutes (‘Facility’), and uses ancillary thereto.” Indenture dated December 3, 1992 between the City of New York and Rivington House Health Care Facility. These two components of the restrictive covenant are accordingly hereafter referred to in this report as “the deed restrictions.”

<sup>32</sup> Email, April 29, 2013, NYC\_00004349 – NYC\_00004350.

<sup>33</sup> Board of Estimate Approval for Sale of Property located at Block 420 Lot 47 in Manhattan, April 13, 1989.

<sup>34</sup> Memo, March 26, 2014, VLC00000906 – VLC00000911.

<sup>35</sup> Email, November 6, 2012, NYC\_00001815 – NYC\_00001817.

<sup>36</sup> N. Y. City Charter §384.

owners' requests to remove deed restrictions from properties that had once been owned by the City.<sup>37</sup> Key steps in the process are:

1. A preliminary determination that the property owner's request is "appropriate" and "in the City's best interest."<sup>38</sup> DCAS witnesses stated that the agency would generally decline to remove a deed restriction that had been in place for less than ten years, or where the property could not be developed under the zoning code.<sup>39</sup>
2. A written "land use justification" that memorializes DCAS's finding that the deed restriction was either "no longer in the City's best interest or [that] the intent of the restriction has substantially changed."<sup>40</sup> DCAS officials explained that this determination largely centered on whether the prospective use of the property would be compatible with the surrounding area based on zoning regulation and an assessment of whether or not the deed restriction was still needed to serve the reason that it was originally imposed.<sup>41</sup>
3. An appraisal of the property to determine the highest price the property could be sold for on the open market without its deed restriction.<sup>42</sup> DCAS required the property owner to pay the City 25% of that appraised value as "consideration" for the removal of the deed restriction.<sup>43</sup>
4. External review of DCAS's determination through a public hearing and Mayoral approval memorialized in a "Mayoral Authorization Document," signed on behalf of the Mayor by the Mayor's Office of Contract Services (MOCS).<sup>44</sup>

When Mayor de Blasio took office in January 2014, VillageCare's request to remove the Rivington House deed restrictions remained pending within DCAS and was brought to the attention of City Hall officials and the new DCAS Commissioner by VillageCare's registered lobbyist James Capalino.<sup>45</sup> The findings section of this report provides an account of the key events that led to the removal of the Rivington House deed restrictions and sale of the property for development of luxury condominiums.

The Office of the Comptroller formally undertook this investigation on March 7, 2015, with a letter to Commissioner Lisette Camilo of the New York City Department of Citywide Administrative Services (DCAS), requesting certain documents related to the sale of 45 Rivington Street and information related to the agency's policies and procedures for the removal of deed restrictions. This action followed numerous complaints from members of Community Board 3 in Manhattan

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<sup>37</sup> Letter to Comptroller, March 23, 2016. Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>38</sup> Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>39</sup> Fong Int., 8: 4-23, July 12, 2016.

<sup>40</sup> Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>41</sup> Fong Int., 10: 9-16, July 12, 2016. Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>42</sup> Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>43</sup> DCAS assumes that a property sold at auction with restriction included in the deed will sell for less money than an unrestricted property. Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>44</sup> Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>45</sup> Email, January 16, 2014, NYSAG\_00465 – NYSAG\_00468.

and others, who were concerned by reports that a valued neighborhood healthcare facility had been sold to a developer with plans to convert the building into luxury condominiums.

Over the course of its investigation, the Comptroller's Office reviewed more than 80,000 documents, including communications among the Rivington House sellers and buyers and City officials, and interviewed Administration officials who were engaged over a two-year period with issues related to this deal.

## FINDINGS

### 1. City Hall Was Told as Early as January 2014 that DCAS Was Prepared to Remove the Deed Restrictions on Rivington House, Yet City Hall Failed to Communicate a Clear Policy Direction to DCAS.

Just two weeks into the term of the current administration, City Hall was told that DCAS had decided to remove the Rivington House deed restrictions. Lobbyist James Capalino, representing VillageCare, specifically informed the Deputy Mayor for Health and Human Services in writing that “DCAS has agreed to remove the deed restriction.”<sup>46</sup> Similarly, on May 5, 2014 VillageCare’s Chief Executive Officer, Emma DeVito, told the First Deputy Mayor’s Chief of Staff that VillageCare had “decided to sell this facility” and that “if we move forward with the change in use” DCAS will “remove both of the deed restrictions in consideration for payment of an estimated \$8.25M, or remove one of the restrictions in consideration for payment of an estimated \$4.25M.”<sup>47</sup>

Notably, City Hall was learning about this critical agency decision for the first time not from the agency itself, but from an interested party with a clear financial interest in the outcome of any final decision. Nevertheless, the evidence reflects that City Hall did not take steps to find out how and why DCAS had determined that it was prepared to remove the Rivington House deed restrictions.

In response to this initial contact, City Hall told DCAS to put VillageCare’s request on hold so the appropriate City policy experts could explore the possibility of transforming Rivington House from a healthcare facility that was about to close into a viable site to serve another purpose with a public benefit.<sup>48</sup> The City’s review of possible future uses for the Rivington House property was described in memos prepared at various points between July and September 2014.<sup>49</sup> One such memo framed the issue City Hall faced as: “Decide if the City wants to reclaim the property for supportive housing purposes, which would have adverse economic impact on VillageCare and potentially on 1199 workers. Alternatively, give VillageCare the ok to sell the property subject to the payments required to lift the deed restrictions.”<sup>50</sup> Another memo prepared by City Hall identified a for-profit nursing home as the option that would yield the most benefits for Rivington House stakeholders, including the health care workers and their pension fund.<sup>51</sup> In a subsequent City memo, City officials had conducted an analysis finding that the property could generate between 166 and 276 units of supportive housing and between 80 – 188 units of mixed-income housing.<sup>52</sup>

Ultimately, despite these analyses, First Deputy Mayor Anthony Shorris told the Comptroller’s Office that he made a decision that City Hall’s preferred outcome was for Rivington House to

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<sup>46</sup> Email, January 16, 2014, NYSAG\_00465 – NYSAG\_00468.

<sup>47</sup> Email, May 5, 2014, VLC00000135.

<sup>48</sup> Email, July 30, 2014, HRA00000090 – HRA00000092.

<sup>49</sup> Email, July 29, 2014, HRA00000148 – HRA00000150. Email, September 3, 2014, NYC\_00003825 – NYC\_00003826. Email, September 11, 2014, NYC\_00002929 – NYC\_00002930. Email, September 24, 2014, NYC\_00002801 – NYC\_00002802.

<sup>50</sup> Email, September 3, 2014, NYC\_00003825 – NYC\_00003826.

<sup>51</sup> Email, September 11, 2014, NYC\_00002929 – NYC\_00002930.

<sup>52</sup> Email, October 3, 2014, NYC\_00014572 – NYC\_00014573.



remain as a health care facility, stating “the decision was that our preference was a for-profit, preferably a Not-For-Profit, but allow a for-profit nursing home.”<sup>53</sup>

Critically, however, based on the information provided to the Office of the Comptroller in connection with this investigation, there is no direct, specific evidence that this policy preference to maintain Rivington House as a healthcare facility was ever communicated to DCAS.

DCAS staff members were not included in City Hall’s substantive review of potential uses for the Rivington House site. According to the First Deputy Mayor, those discussions involved “policy issues regarding health care, the community, maybe the jobs. . . . So we were trying to figure out a policy goal. DCAS would be the implementing entity.”<sup>54</sup> Instead, during this time, City hall only asked DCAS two isolated questions about the DCAS deed restriction removal processes.<sup>55</sup> In making these inquiries, City Hall did not communicate its preferences for the future use of the property or specifically with regard to removal of the existing deed restrictions, and no one at DCAS inquired as to what those preferences might be.

The staff at DCAS responsible for evaluating VillageCare’s deed restriction modification request were unaware that City Hall had been leading a review of alternative options for the property. Specifically, in an interview with the Office of the Comptroller, DCAS Assistant Commissioner for Planning, the staff member who oversees the unit responsible for the deed restriction removal process, said that, as of September 2014 he (1) “had no idea” that “anyone in the City government of the City of New York had raised a concern that, in sum and substance, the deed restriction should not be removed,” and (2) “was not aware” that “there had already been discussions involving other city agencies and people in City Hall about other potential uses for the property.”<sup>56</sup> The Assistant Commissioner stated that he did not learn of these facts until sometime in 2016, well after the deed restrictions had been removed.<sup>57</sup>

Despite the Assistant Commissioner’s statement, City Hall officials believed that DCAS had been informed that a policy decision to keep Rivington House a healthcare facility had been made. Asked how DCAS was informed of City Hall’s policy decision, First Deputy Mayor Shorris was unsure. “I’ve asked myself that question. I do not remember the exact mechanism,” he said. “I just don’t.”<sup>58</sup> Consequently, when asked narrow questions about the Rivington House deed restrictions by City Hall, DCAS staff actually commenced preliminary work on removal of the deed restrictions in response to the apparent City Hall interest in them.<sup>59</sup>

City Hall and DCAS did not communicate again about Rivington House until January 2015, when City Hall once again failed to clearly relay any policy decision to DCAS about the future of Rivington House. Specifically, in January 2015, seeking to ensure the sale of the property would

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<sup>53</sup> Shorris Int., 76: 12-25 and 77: 2-3, July 27, 2016.

<sup>54</sup> Shorris Int., 77: 4-23, July 27, 2016.

<sup>55</sup> Email, September 2, 2014, NYC\_00000473 – NYC\_00000474. Email, October 6, 2014, NYC\_00007770 – NYC\_00007771.

<sup>56</sup> Fong Int., 50: 10-25 and 51: 2-7, July 12, 2016.

<sup>57</sup> Fong Int., 51: 8-10, July 12, 2016.

<sup>58</sup> Shorris Int., 77: 24-25 and 78: 2-6, July 27, 2016.

<sup>59</sup> Email, September 4, 2014, NYC\_00010048 – NYC\_00010051.

be completed, City Hall contacted DCAS staff to expedite the completion of a document called a “Satisfaction of Mortgage” that would clear an old enforcement lien on the property.<sup>60</sup> However, despite actively working with DCAS to keep the property a healthcare facility, and in full knowledge that Mr. Landau was pressing DCAS to remove the deed restriction, City Hall never told DCAS not to remove the deed restrictions.

## **2. The Absence of Clear Direction from City Hall Created a Vacuum that Joel Landau Exploited.**

Joel Landau of the Allure Group, an operator of for-profit nursing homes in New York City, formally expressed an interest in buying Rivington House from VillageCare in September 2014, signing a contract to do so early the next month.<sup>61</sup> Thereafter, Mr. Landau strategically lobbied stakeholders, including both City Hall and DCAS, so that he could acquire the building and secure DCAS’s agreement to remove the deed restrictions. However, because City Hall did not provide clear policy direction to DCAS, when Mr. Landau began to lobby DCAS to remove both of the deed restrictions, the agency was unaware of City Hall’s position on the property’s future use, did not consult with them about Mr. Landau’s request, and thus eventually granted his request.

This investigation revealed that the scope of Mr. Landau’s lobbying efforts was immense. The Rivington House deed restriction was removed despite the involvement of dozens of Administration officials, including three Deputy Mayors; the Directors of the Mayor’s Offices of Intergovernmental Affairs and Contract Services; three City Commissioners; and numerous members of their staffs. A significant portion of that activity was spurred by lobbying efforts undertaken by and on behalf of Mr. Landau, who met with City officials at least six times and communicated with City employees through at least twenty-five emails or phone calls. City officials met with or received information about Rivington House on at least another thirty occasions, held about a dozen City staff inter-agency meetings, wrote over seventy memos, and exchanged hundreds of emails and phone calls.

### *Landau Launches Lobbying Effort*

Mr. Landau represented to key stakeholders that his proposal to purchase Rivington House was necessary to save the healthcare facility and 200+ healthcare jobs, but that the deed restrictions were preventing him from doing so. At various times, Kevin Finnegan of the union representing the Rivington House employees, Emma DeVito, CEO of VillageCare, and members of Community Board 3 articulated positions with the City that were either intended to support Mr. Landau’s efforts or that he used to support those efforts.<sup>62</sup> Mr. Landau also reached out to others seeking their advocacy on his behalf and provided them with drafts of emails and/or letters to send to government officials to help facilitate the sale. While the evidence obtained does not reflect that all the requested emails and letters were sent, Mr. Landau sought assistance from a variety of people including, Carlo A. Scissura and Avi Leshes, respectively the President and Director of

<sup>60</sup> Email, January 13, 2015, NYC\_00002827 – NYC\_00002828.

<sup>61</sup> Letter and Term Sheet, September 15, 2014, VLC00001152 – VLC00001155. Proposal to Acquire Rivington House, September 8, 2014, VLC00001157 – VLC00001162. Contract of Sale, October 9, 2014. Membership Change Agreement, October 9, 2014.

<sup>62</sup> Email, December 8, 2014, Stetzer\_212. Email, January 7, 2015, NYC\_00003055 – NYC\_00003056. Email, NYC\_00008436 – NYC\_00008438.

Neighborhood Business Services at the Brooklyn Chamber of Commerce; Jeffery Sachs, principal of the Sachs Policy Group; Sid Davidoff, Chair of Davidoff, Hutcher & Citron LLPs Administrative Law and Government Relations Group; H. Carl McCall (Carl McCall), the Chairman of the State University of New York Board of Trustees and former Comptroller of the State of New York; Susan Stetzer, District Manager of Community Board 3; and Jeremy Reichberg, a Brooklyn-based businessman.<sup>63</sup>

As part of his effort to persuade VillageCare to sell him the property, Mr. Landau sought the support of several key groups with an interest in the property's fate, including the local Community Board (Community Board 3) and representatives of Rivington House employees, Local 1199 of the Service Employees International Union (SEIU). Mr. Landau represented to each group that he and his partners intended to operate the facility as a nursing home and specifically discussed how his purchase would address each stakeholders' needs and concerns. For example, Mr. Landau texted an official with the union that represented Rivington House employees, "I really believe my proposal is a win-win and will keep ALL jobs," referring to the more than 200 current and recent union members employed by Rivington House.<sup>64</sup> Similar communications were made to the local Community Board.<sup>65</sup>

In his formal offer to purchase Rivington House from VillageCare on September 15, 2014, Mr. Landau told VillageCare that his offer had "the support of 1199 and the State of New York Health Department" because it "keep[s] the existing 231 jobs[,] supports the local economy[,] and ensures there will not be pension withdrawal liabilities."<sup>66</sup> Based on this proposal, VillageCare was advised by its auditing and consulting firm that Mr. Landau offered the greatest "net value" of \$43 million, consisting of \$25 million for the property and an additional \$18 million in avoided pension withdrawal liability.<sup>67</sup> The contracts that Mr. Landau and VillageCare eventually signed ensured that the facility would continue to be operated as a Not-For-Profit, consistent with the deed restrictions.<sup>68</sup>

For that reason, a few days before the agreement for the sale was signed, City Hall was informed that VillageCare planned to sell Rivington House to a Not-For-Profit health care provider.<sup>69</sup> City Hall understood this to mean that because the purchaser of the property would operate Rivington House as a Not-For-Profit healthcare facility, just as VillageCare had done for more than a decade, the sale did not necessitate lifting of any deed restrictions.<sup>70</sup> As a result, City Hall concluded it no longer had any ability to influence the future use of the property and ended its review of options for Rivington House.<sup>71</sup>

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<sup>63</sup> Email, December 16, 2014, RIVING\_034485. Email, December 23, 2014, RIVING\_034411. Email, December 4, 2014, RIVING\_032738. Email, October 22, 2014, RIVING\_010049. Email, December 12, 2014, NYC\_00001167 – NYC\_00001168. Email, December 11, 2014, RIVING\_021006.

<sup>64</sup> Text Message, August 22, 2014, RIVING\_051824 – RIVING\_051825.

<sup>65</sup> Email, September 18, 2014, STETZER\_264 – STETZER\_265.

<sup>66</sup> Proposal to acquire Rivington House, September 8, 2014, VLC00001157 – VLC00001162.

<sup>67</sup> Board Minutes, October 3, 2014, VLC00003243 – VLC00003244. Memo, October 2, 2014, VLC 00001149 – VLC00001150.

<sup>68</sup> Contract of Sale, October 9, 2014. Membership Change Agreement, October 9, 2014.

<sup>69</sup> Email, October 6, 2014, NYC\_00007770 – NYC\_00007771.

<sup>70</sup> Email, October 17, 2014, NYC\_00002784 – NYC\_00002785.

<sup>71</sup> Email, October 17, 2014, NYC\_00002784 – NYC\_00002785.

### Landau Raises Dubious Financing Concerns and Other Issues

While City Hall concluded that there was no longer a need to remove the deed restrictions, Mr. Landau began an aggressive lobbying effort to get DCAS to do just that — lift the deed restrictions. For example, an individual advocating for Mr. Landau told DCAS that the plan to keep the nursing home operating and continuing to employ 250 workers was being blocked “because the nursing home is barred from selling the deed to a for profit entity.”<sup>72</sup> As part of these efforts, Mr. Landau provided DCAS with a resolution from the local Community Board and a letter from a group of elected officials supporting the continued use of the property as a nursing home.<sup>73</sup>

Mr. Landau also told City Hall that he would be unable to obtain financing to purchase the property because of the deed restrictions.<sup>74</sup> However, documents obtained in connection with this investigation show that Mr. Landau’s agreement to purchase Rivington House was not conditioned on him obtaining financing, and that in fact, he had financing offers as early as November 17, 2014.<sup>75</sup> Specifically, in an email that Mr. Landau sent to his partner Marvin Rubin on January 11, 2015, Mr. Landau described offers he had received from five different lenders to finance the purchase of Rivington House that were made between November 17, 2014 and January 7, 2015.<sup>76</sup> Moreover, Mr. Landau did not actually need financing to purchase Rivington House, because, as one his attorneys explained, “he can come up with the purchase price in cash next week if push comes to shove . . . .”<sup>77</sup>

One result of Mr. Landau’s ability to create uncertainty around his financing options was that, in mid-December 2014, VillageCare believed that its pending sale of Rivington House to Mr. Landau’s company was at risk of failing.<sup>78</sup> As a result, VillageCare approached DCAS to reassert its request that the deed restrictions be removed.<sup>79</sup> As DCAS had no guidance from City Hall to the contrary, DCAS staff responded to VillageCare’s request by taking additional steps that were part of the process to remove the deed restrictions.<sup>80</sup>

### City Hall Re-Engages

In December 2014, after also being contacted by Mr. Landau, a labor representative of Rivington House’s employees spoke with the Mayor’s Director of Intergovernmental Affairs to express the union’s concern that the City had reportedly decided to repurpose the building for housing rather than to let it remain a health care facility, which he maintained would result in 200 union

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<sup>72</sup> Email, October 22, 2014, NYC\_00001126 – NYC\_00001127.

<sup>73</sup> Email, October 31, 2014, RIVING\_010156 – RIVING\_010157. Email, October 29, 2014, RIVING\_010097 – RIVING\_010098.

<sup>74</sup> Email, December 11, 2014, NYC\_00004111 – NYC\_00004112. Email, December 18, 2014, NYC\_00003006 – NYC\_00003007.

<sup>75</sup> Email, January 11, 2015, RIVING\_037888 – RIVING\_037911.

<sup>76</sup> Email, January 11, 2015, RIVING\_037888 – RIVING\_037911.

<sup>77</sup> Email, December 24, 2014, RIVING\_034407 – RIVING\_034410.

<sup>78</sup> Email, December 23, 2015, VLC00004159 – VLC00004160.

<sup>79</sup> Integrated Property Information System, December 24, 2014, NYC\_00000323.

<sup>80</sup> Email, January 9, 2015, VLC00007188 – VLC00007203. Land Use Justification, January 2, 2015, NYC\_00011203 – NYC\_00011205.

employees losing their jobs.<sup>81</sup> While the concern that the property was going to be used for housing was quickly determined to be inaccurate, the call prompted City Hall to contact both VillageCare and Mr. Landau to determine what was holding up the sale.<sup>82</sup>

As a result of those communications, City Hall began to actively work to ensure that necessary steps were taken to respond to Mr. Landau's request and prevent him from "walking away."<sup>83</sup> City Hall did so in two ways. First, in the second week of January 2015, a City Hall staff member working for the First Deputy Mayor took actions to facilitate DCAS's completion of a document called a "Satisfaction of Mortgage," a necessary step for the sale to be complete.<sup>84</sup> Second, on January 13, 2015, that same City Hall staff member directed DCAS to deny a separate request by Mr. Landau for a "subordination agreement," a document that would assure prospective mortgage lenders that their secured interests in the property would take precedence over the City's.<sup>85</sup> Mr. Landau had requested that the City grant him such an agreement as an alternative to removing the deed restrictions but — believing that he could finance his purchase of Rivington House without such an agreement — City Hall did not grant this request.<sup>86</sup>

On Feb. 9, 2015, VillageCare's sale of Rivington House to Landau was completed for \$28 million, with the deed restrictions still in place.<sup>87</sup> When informed on February 10, 2015 that the sale of the property was approved, a member of First Deputy Mayor Shorris's staff wrote to her colleague that "We should ... congratulate ourselves for resolving this in 6 months what the previous admin[istration] refused to address for over a year!"<sup>88</sup> Thinking they had preserved a Not-For-Profit nursing home, City Hall staff did not inquire with DCAS about Rivington House in the following months.

### Landau Shifts Arguments

Shortly after the sale from VillageCare of the property was finalized, Mr. Landau, returned to DCAS with new arguments seeking the removal of the deed restrictions. Having just purchased the property, Mr. Landau could no longer claim that the deed restrictions were preventing him from obtaining financing or completing the purchase. Instead, he approached DCAS presenting two arguments. First, in late February 2015, he told DCAS that, as he was an operator of For-Profit nursing homes, he wanted to have the Not-For-Profit portion of the restriction removed.<sup>89</sup> However, a few weeks later in early March, he told DCAS officials that he wanted both restrictions removed as he "did not want to be in partnership with the city long term."<sup>90</sup> His changing requests did not trouble DCAS staff, who had no instruction from City Hall to ensure the use of the property

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<sup>81</sup> Email, December 17, 2014, NYC\_00003021 - NYC\_00003023. Text Message, December 17, 2014, RIVING\_051833.

<sup>82</sup> Email, December 18, 2014, NYC\_00003021 - NYC\_00003023.

<sup>83</sup> Email, January 6, 2015, NYC\_00003050 - NYC\_00003052.

<sup>84</sup> Email, January 13, 2015, NYC\_00002827 - NYC\_00002828.

<sup>85</sup> Email, January 13, 2015, NYC\_00002829 - NYC\_00002832.

<sup>86</sup> Email, January 9, 2015, NYC\_00003067 - NYC\_00003069.

<sup>87</sup> Deed, February 11, 2015.

<sup>88</sup> Email, February 10, 2015, NYC\_00001360. Email, February 11, 2015, NYC\_00001360.

<sup>89</sup> Integrated Property Information System, February 24, 2015, NYC\_00000322.

<sup>90</sup> *Vailas Int.*, 98: 6-8, June 20, 2016.



as a nursing home and, as a matter of policy, were primarily concerned with whether the proposed future uses of the property were consistent with the zoning code.<sup>91</sup>

In addition, Mr. Landau also raised objections to paying the required \$16.15 million to remove the deed restrictions, saying that the price was too high.<sup>92</sup> At a meeting with DCAS on March 11, 2015, according to one DCAS staff member, Mr. Landau told DCAS that, “he would not be able to operate a nursing home at the facility if he needed to invest another \$16 million in the property.”<sup>93</sup>

Notably, Landau also said at this meeting the high price “would force him to develop housing or to flip the property, all of which the community does not want” — an early indication of Rivington House’s ultimate fate.<sup>94</sup>

### DCAS Fails to Communicate

Although Mr. Landau’s statement that he was considering turning the property into luxury housing was a material departure from his prior statements, DCAS did not deem it to be important enough to notify City Hall or the local Community Board, which had previously expressed a strong preference that the site be maintained as a nursing home.<sup>95</sup> In short, DCAS’s assessment of Mr. Landau’s request to lift the deed restrictions was based largely on zoning, and whether the requested use was permitted.<sup>96</sup> Consequently, when on April 27, 2015, Mr. Landau met with DCAS to formally request “to remove both restrictions on the property,” DCAS told him soon thereafter that the agency could “proceed with the process to remove the restrictive covenant.”<sup>97</sup>

Upon delivering this message to Mr. Landau, and receiving his written agreement to pay the required sum, DCAS began actively working to remove the deed restrictions by organizing a public hearing and seeking approval from MOCS for final removal of the deed restrictions.<sup>98</sup>

Each one of these steps, as will be discussed, could have served as a check upon the process and caused City officials to re-evaluate the larger direction of the project. But because of poor communication — and the passive and unquestioning execution of established protocols designed to protect the public interest — Mr. Landau’s plan to lift all restrictions on Rivington House moved closer to reality.

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<sup>91</sup> Fong Int., 8: 15-25, 9:2, 13: 14-18, and 114: 20-24, July 12, 2016.

<sup>92</sup> Email, March 26, 2015, NYC\_00005565 – NYC\_00005566.

<sup>93</sup> Email, March 19, 2016, NYC\_00011633 – NYC\_00011639. Email, March 19, 2015, NYC\_00009512 – NYC\_00009513.

<sup>94</sup> Email, March 19, 2015, NYC\_00011633 – NYC\_00011639.

<sup>95</sup> Land Use Justification, January 2, 2015, NYC\_00011203 – NYC\_00011205.

<sup>96</sup> Fong Int., 114: 20-24, July 12, 2016.

<sup>97</sup> Meeting Sign-In Sheet, April 27, 2015, RIVING\_010154. Email, April 27, 2015, RIVING\_010141 – RIVING\_010155.

<sup>98</sup> Letter, May 1, 2015, NYC\_00001240. Email, June 16, 2015, NYC\_00005253. Memo, June 29, 2015, NYC\_00001850 – NYC\_00001853.

### **3. City Hall and Agency Staff Missed Numerous Opportunities to Maintain Rivington House as a Health Care Facility.**

In theory, DCAS’s decisions on requests to remove deed restrictions are subject to several external checks on the agency that should produce an outcome grounded on accurate financial and land-use information and that takes account of informed input from the community. Unfortunately, that is not what happened in the case of Rivington House. Instead, processes intended to foster effective communication between City Hall and agency staff, establish an accurate value of the property, elicit public opinion, and ensure meaningful oversight were executed in a weak manner or, worse, abandoned altogether.

Specific processes that — had they been more thoughtfully and/or carefully executed — might have prevented Rivington House from falling into the hands of private developers are described below.

#### *City Hall Chose to Ignore Memos from DCAS*

First Deputy Mayor Shorris told the Office of the Comptroller that, early in his tenure in 2014, he implemented a new protocol requiring that all agency heads under his direction submit weekly reports to him on agency activities.<sup>99</sup> This included then-DCAS Commissioner Stacey Cumberbatch, who was one of several Commissioners who reported directly to First Deputy Mayor Shorris.<sup>100</sup>

For a time, the First Deputy Mayor said, he tried to “look at every” update memo to stay abreast of ongoing issues in each agency, but that “within about six months” he stopped reading them consistently.<sup>101</sup> Mr. Shorris explained that the memos “became more of a mechanism for documenting something that already happened,” rather than alerting him to important matters.<sup>102</sup>

Yet, critically, First Deputy Mayor Shorris also told the Comptroller’s Office that he did not assign responsibility for reading the memos to anyone on his senior staff once he stopped reading them himself — nor could he recall anyone communicating to agency heads that the memos were no longer a useful way to transmit information to him.<sup>103</sup>

One result of this breakdown is that Mr. Shorris said he did not recall reading memos that Commissioner Cumberbatch sent to him that included information about Rivington House.<sup>104</sup> Had he or anyone else on his staff done so, they would have learned from the Commissioner that DCAS was working for months to lift the deed restrictions on Rivington House, and ultimately did just that. As the memos stated, in part:

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<sup>99</sup> Shorris Int., 28: 9-19, July 27, 2016.

<sup>100</sup> Shorris Int., 32: 22-25 and 33: 2-3, July 27, 2016.

<sup>101</sup> Shorris Int., 29: 23-25 and 30: 2-7, July 27, 2016.

<sup>102</sup> Shorris Int., 33: 22-25 and 34: 2-14, July 27, 2016.

<sup>103</sup> Shorris Int., 30: 12-25, 31: 2-11, 32: 19-21, 34: 15-25, and 35: 2-14, July 27, 2016.

<sup>104</sup> Shorris Int., 73: 23-25, 74: 2-25, 75: 2-25, and 76: 2-3, July 27, 2016.

- **On May 6, 2015:** “DCAS received a confirmation letter from Joel Landau, representing Rivington Properties LLC, to accept the City’s \$16,150,000 value to remove deed restrictions that limit uses to Not-For-Profit residential health care facilities at 45 Rivington Street in Manhattan...Landau seeks to remove the restrictions but intends to use the property as a for-profit nursing home, similar to other nursing homes he operates throughout the City.”<sup>105</sup>
- **On July 8, 2015:** “DCAS is proceeding to remove two use restrictions that were imposed when the Rivington House property was sold by the City in 1992; one restriction limits the use of the property for Not-For-Profits and the second restricts use for a residential health care facility....DCAS expects to have a formalized deed modification approved by the Law Department in July.”<sup>106</sup>
- **On November 18, 2015:** “DCAS and the Law Department completed the removal of two use restrictions that were imposed when the Rivington House property that was sold by the City in 1992...The Not-For-Profit and residential health care facility restrictions were removed for \$16,150,000. DCAS has worked on this deed modification process for over two years.”<sup>107</sup>

The First Deputy Mayor told the Office of the Comptroller that, while he still required City Commissioners to submit update memos on a weekly basis, he stopped consistently reading those memos about six months after giving that instruction.<sup>108</sup> He said that he expected Commissioners of agencies he supervised to inform him of issues of importance in person, by phone, or over email rather than written memoranda alone.<sup>109</sup> However, he also said that he did not view Rivington House to be an important matter and never informed the DCAS Commissioner that it was.<sup>110</sup>

He added that in comparison with a number of pressing and high-priority matters he was dealing with in 2014, Rivington was “not even close” to the top of that list.<sup>111</sup> When asked whether Rivington House ever became more a priority, the First Deputy Mayor said, “In 2016 it got to be quite a priority, when it became a public matter that something happened different than what we understood was going to happen. So that’s for sure.”<sup>112</sup>

#### *DCAS Appraisal of Rivington House Failed to Capture the True Value of the Property*

The process DCAS followed in removing the Rivington House deed restrictions required the agency to conduct an appraisal to determine the value of the property and, through that, of the deed restrictions.<sup>113</sup> Under DCAS policy, the agency first establishes the maximum value of the property

<sup>105</sup> Email, May 6, 2015, NYC\_DOI\_00001727 – NYC\_DOI\_00001729.

<sup>106</sup> Email, July 8, 2015, NYC\_DOI\_00001730 – NYC\_DOI\_00001732.

<sup>107</sup> Email, November 18, 2015, NYC\_00000411 - NYC\_00000413.

<sup>108</sup> Shorris Int., 28: 9-14, 29: 23-25, and 30: 2-7, July 27, 2016.

<sup>109</sup> Shorris Int., 37: 18-25, 38: 2-25, and 39: 2-4, July 27, 2016. Shorris Int., 72: 23-25 and 73: 2-4, July 27, 2016.

<sup>110</sup> Shorris Int., 40: 24-25 and 41: 2-17 and 72: 23-25 and 73: 2-8, July 27, 2016.

<sup>111</sup> Shorris Int., 40: 24-25 and 41: 2-17, July 27, 2016.

<sup>112</sup> Shorris Int., 72: 8-22, July 27, 2016.

<sup>113</sup> Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

through an appraisal as if there were no deed restrictions. Once the appraisal is completed, DCAS determines the value of the deed restriction as 25 percent of the total value of the property.<sup>114</sup>

DCAS employs certified appraisers to perform many of its appraisals but sometimes hires outside independent contractors to perform them. Each of these appraisers is required to adhere to professional standards in how they conduct their appraisals, whether they are employed directly by DCAS or are independent contractors.<sup>115</sup>

Following the process set out in DCAS's protocol, the \$16.15 million figure that Mr. Landau agreed to pay to DCAS to remove the deed restrictions was based on a December 3, 2014 DCAS appraisal that valued Rivington House, without its deed restrictions, at \$64.6 million.<sup>116</sup> In response to requests for information made by the Office of the Comptroller, Mr. Landau provided copies of two concurrent appraisals performed by a real estate services company known as CBRE, that were done on behalf of a potential lender to Mr. Landau at the same time that DCAS completed its appraisal. CBRE valued Rivington House at \$90 million with no deed restrictions — significantly higher than DCAS's valuation — and \$58 million with its existing restrictions in place.<sup>117</sup> These CBRE appraisals were not available to DCAS at the time it did its appraisal.

Based on an interview with DCAS's appraiser and an analysis of the DCAS and CBRE appraisals, the Office of the Comptroller found differences in the comparable sales each appraiser used. DCAS's six comparable sales averaged \$604 per square foot.<sup>118</sup> In contrast, CBRE's four comparable sales averaged \$770 per square foot, \$166 more per square foot on average than DCAS's appraisal.<sup>119</sup>

It appears that a key reason for the difference between the DCAS appraisal value and the CBRE appraisal value was that DCAS's analysis was based on comparable real estate sales prices that were generally older than those used by CBRE. Specifically, DCAS used comparable sales prices based on contracts that preceded the appraisal date by an average of twenty-four months, versus CBRE's comparable sales prices that preceded its appraisal by an average of only ten months. The fact that DCAS used older comparable sales than those of CBRE was important, because as DCAS itself recognized, real estate prices on the Lower East Side were rising rapidly during this time.<sup>120</sup>

When relying on older comparable sale prices, appraisers may adjust the price of a comparable sale for the passage of time when estimating the value of a property.<sup>121</sup> The DCAS appraiser who produced the \$64.6 million dollar appraisal of Rivington House told the Comptroller's Office that while she did not make an identifiable arithmetical adjustment to the individual comparable sale

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<sup>114</sup> Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>115</sup> DCAS Property Valuations Unit Operations Manual, February 25, 2016.

<sup>116</sup> Restricted Appraisal Report, December 3, 2014, NYC\_00004113 – NYC\_00004127.

<sup>117</sup> Appraisal Report, November 18, 2014, RIVING\_034235 - RIVING\_034355. Addendum to Appraisal Report, December 5, 2014, RIVING\_028041 – RIVING\_028057.

<sup>118</sup> Restricted Appraisal Report, December 3, 2014, NYC\_00004113 – NYC\_00004127. Addendum to Appraisal Report, December 5, 2014, RIVING\_028041 – RIVING\_028057.

<sup>119</sup> Addendum to Appraisal Report, December 5, 2014, RIVING\_028041 – RIVING\_028057.

<sup>120</sup> Email, April 29, 2013, NYC\_00004347.

<sup>121</sup> Appraisal Institute, *The Appraisal of Real Estate*, 14<sup>th</sup> ed. 434 (2013).

prices she relied on, she did take the age of those sales into account in her final valuation.<sup>122</sup> She further mentioned the age of the comparable sales in the text of her appraisal report.<sup>123</sup> However, unlike DCAS, CBRE did adjust its one relatively old comparable sale upward to account for the passage of time.<sup>124</sup>

DCAS could have generated a more accurate estimate of the value of the deed restrictions on Rivington House had the agency simply subtracted the value of the property as a Not-For-Profit health care facility from the value of the property unencumbered. CBRE appraised the property in both of these ways, finding the difference in the two to be \$32 million as opposed to the \$16 million the City’s appraisal found.<sup>125</sup> Had DCAS valued the deed restrictions in this way, it would have had a better sense of the value of the deed restrictions as a City asset, and would have been in a position to drive a better bargain with Mr. Landau.

### *Required Public Hearing Provided No Actual Input from the Community*

On June 24, 2015, DCAS held a hearing that, in theory, was supposed to enable public input on the proposed sale of the deed restrictions.<sup>126</sup> In fact, the gathering was a public hearing in name only — not a single member of the public other than Mr. Landau attended.<sup>127</sup>

This was the case because DCAS did no meaningful outreach to the public when providing notice of the hearing. A one-day notice of the hearing appeared in the City Record on May 11, 2015, describing Rivington House by its Borough-Block-Lot number only and not by its actual address or name, as is standard DCAS practice.<sup>128</sup> However, fully aware that the Community Board had passed a resolution supporting the use of the property as a nursing home, no effort was made by DCAS to specifically alert members of the Community Board or neighboring community to the hearing.<sup>129</sup> Accordingly, no one from the Community Board or the neighborhood attended and the hearing failed to fulfill its stated purpose of providing transparency and community input.

### *The Mayor’s Office of Contract Services Served as a Rubberstamp*

In addition to the public hearing, the DCAS protocol also requires approval from the Mayor — which was supposed to be provided by MOCS in the form of a signed “Mayoral Authorization Document.”<sup>130</sup> In the case of Rivington House, that document was signed on June 30, 2015 by Paul Prissel, the General Counsel of MOCS.<sup>131</sup> The document explicitly requires that MOCS affirm that the proposed transaction is “in the best interest of the city.” But, Mr. Prissel told the Office of the Comptroller that he interpreted that to mean that DCAS “is declaring that it’s in the

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<sup>122</sup> Vailas Int., 31: 19-25, 32: 2-18, and 46: 2-3, June 20, 2016.

<sup>123</sup> Vailas Int., 31: 2-25 and 32: 2-18, June 20, 2016.

<sup>124</sup> Addendum to Appraisal Report, December 5, 2014, RIVING\_028041 – RIVING\_028057.

<sup>125</sup> Appraisal Report, November 18, 2014, RIVING\_034235 - RIVING\_034355. Addendum to Appraisal Report, December 5, 2014, RIVING\_028041 – RIVING\_028057.

<sup>126</sup> Memo, June 29, 2015, NYC\_00001850 – NYC\_00001853.

<sup>127</sup> Email, June 24, 2015, NYC\_00005523 – NYC\_00005524.

<sup>128</sup> The City Record, May 11, 2015, Citywide Administrative Services Public Hearings, Page 1807.

<sup>129</sup> Email, October 31, 2014, NYC\_00012242 - NYC\_00012245.

<sup>130</sup> Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>131</sup> Mayoral Authorization Document, June 30, 2015, NYC\_00001949.



best interest.”<sup>132</sup> Asked if he or anyone else at DCAS did anything to inquire as to the accuracy of that statement, Prissel said, “I am not aware of any.”<sup>133</sup>

Similarly, during her interview with the Office of the Comptroller, DCAS Commissioner Camilo, who was the Director of MOCS at the time Mr. Prissel signed the authorization document, stated that MOCS did not have a process in place to make such an inquiry of DCAS’s judgment. “There were no procedures governing that aspect,” she said.<sup>134</sup> “MOCS’ role was purely procedure [sic] in nature, to ensure that the public notice was properly provided and that the public hearing took place.”<sup>135</sup>

While the DCAS protocol identifies MOCS as the part of City government that is to grant Mayoral authorization for the removal of a deed restriction, nothing in the protocol dictates or even suggests that the MOCS review was intended to be limited to a procedural review.<sup>136</sup>

#### **4. Even After Learning that the Deed Restrictions Had Been Lifted, City Hall Did Nothing to Stop the Pending Sale of Rivington House.**

At the beginning of December 2015, residents of the Lower East Side began contacting the Mayor’s Community Affairs Unit (CAU) expressing concern and disbelief about reports that Rivington House was going to be sold to a housing developer for conversion to luxury condominiums.<sup>137</sup> On December 1, 2015, a Lower East Side community member emailed a CAU staff member, stating “we hear some deal is being brokered, out of sight of the Community Board and of the neighborhood” resulting in “market rate housing over use by low income nursing care patients.”<sup>138</sup>

The next day, the CAU staff member received an article from a Lower East Side neighborhood website reporting that “the nursing home formerly known as Rivington House, . . . will shut down by the end of next week, soon after the last residents are transferred to other homes.”<sup>139</sup> The article also stated that the Rivington House deed restrictions had been lifted for \$16.15 million, and that a construction firm working with the Slate Property Group (Slate) expected the property to be

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<sup>132</sup> Prissel Int., 19: 9-13, April 20, 2016.

<sup>133</sup> Prissel Int., 18: 14-25 and 19: 2-22, April 20, 2016.

<sup>134</sup> Camilo Int., 26: 17-25 and 27: 2-4, April 21, 2016.

<sup>135</sup> Camilo Int., 26: 17-25 and 27: 2-4, April 21, 2016.

<sup>136</sup> See New York City Charter § 384(b); Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>137</sup> Email, December 1, 2015, NYC\_00003667 – NYC\_00003670.

<sup>138</sup> Email, December 1, 2015, NYC\_00003667 – NYC\_00003670.

<sup>139</sup> Email, December 2, 2014, NYC\_00003667 – NYC\_00003670. Rivington Street Nursing Center Closes Next Week; Relocation Anticipated,” The Lo-Down, December 2, 2015.

<http://www.thelodownny.com/leslog/2015/12/rivington-street-nursing-center-closes-next-week-relocation-anticipated.html#>.

converted to market-rate housing.<sup>140</sup> Following publication of that article, community members continued to express their concerns and displeasure to CAU.<sup>141</sup>

However, notwithstanding the community's efforts to bring the matter to City Hall's attention, the evidence produced to the Comptroller's Office reflects that City officials did not speak with Mr. Landau about Rivington House directly until February 24, 2016, eight days *after* his sale of Rivington House had closed.<sup>142</sup> Similarly, the Office of the Comptroller found no record of any attempt by the City to contact Slate or its partners in Rivington Street Investors. In addition, no documents provided to the Office of the Comptroller during this investigation indicate that staff informed the Mayor of the issue at any time between December 1, 2015 (when CAU was explicitly notified) and February 11, 2016 (when Mr. Landau sold Rivington) – a period of 72 days.<sup>143</sup>

Had any contact been made with either Mr. Landau or the buyer, City Hall staff members might have learned that the property was still in contract and that the closing had not yet occurred.<sup>144</sup> City Hall could have used this time to discuss the situation with the parties, seek a negotiated resolution that might have provided resources to the local community, and to assess other potential avenues of protecting the public's interest in the matter. However, no analysis of possible measures to salvage any portion of what the City had lost in the Rivington House transaction was initiated until February 9, 2016, two days before the sale closed.<sup>145</sup>

City Hall continued to face pressure from concerned Lower East Side community members in January 2016.<sup>146</sup> Specifically, two weeks before the closing of the sale, on January 27, 2016 Community Board 3 passed a resolution stating that it, “adamantly opposes conversion of Rivington House to free market house or private commercial use, as has been made possible by the lifting of the deed restriction.”<sup>147</sup>

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<sup>140</sup> Email, December 2, 2014, NYC\_00003667 – NYC\_00003670. Rivington Street Nursing Center Closes Next Week; Relocation Anticipated,” The Lo-Down, December 2, 2015.

<http://www.thelodownny.com/leslog/2015/12/rivington-street-nursing-center-closes-next-week-relocation-anticipated.html#>. Slate Property Group, Adam America Real Estate and Vanke Holdings USA Close on Acquisition of 145,000 SF Site For \$116 Million in Manhattan's Lower East Side, New York Citybizlist, March 1, 2016:

[http://newyork.citybizlist.com/article/337785/slate-property-group-adam-america-real-estate-and-vanke-holdings-usa-close-on-acquisition-of-145000-sf-site-for-116-million-in-manhattans-lower-east-side#sthash\\_rfNeJMbK\\_dpuf](http://newyork.citybizlist.com/article/337785/slate-property-group-adam-america-real-estate-and-vanke-holdings-usa-close-on-acquisition-of-145000-sf-site-for-116-million-in-manhattans-lower-east-side#sthash_rfNeJMbK_dpuf)

<sup>141</sup> Email, December 3, 2015, NYC\_00000051 – NYC\_00000052. Email, December 8, 2015, NYC\_00000009 – NYC\_00000010.

<sup>142</sup> Email, February 24, 2016, NYC\_00003772 – NYC\_00003774. Calendar Invitation, February 24, 2016, CAL\_00000141. Deed Recorded February 11, 2016.

<sup>143</sup> According to an article in the New York Times on March 30, 2016, “Karen Hinton, a spokeswoman for the mayor, said Mr. de Blasio had never seen the letter and only learned that his administration had lifted the restrictions from news reports in late March, after the property had been sold to a developer.” “Letter Warning Mayor Bill de Blasio of Rivington House Conversion Risks,” New York Times, March 30, 2016.

[http://www.nytimes.com/interactive/2016/03/30/nyregion/document-Letter-Warning-Mayor-Bill-de-Blasio-of-Rivington.html?\\_r=0](http://www.nytimes.com/interactive/2016/03/30/nyregion/document-Letter-Warning-Mayor-Bill-de-Blasio-of-Rivington.html?_r=0).

<sup>144</sup> First Amendment to Purchase and Sale Agreement, November 25, 2015, RSI-COMP000185 – RSI-COMP000187. Email, January 13, 2016, RIVING\_023568 – RIVING\_023571.

<sup>145</sup> Email, February 9, 2016, NYC\_00007781 – NYC\_00007783.

<sup>146</sup> Email, January 27, 2016, NYC\_00000001 – NYC\_00000002.

<sup>147</sup> Manhattan Community Board 3 Resolution, January 26, 2016.

On February 5, 2016, six days before Slate closed on its purchase of Rivington House, the District Manager of Community Board 3 told staff members working for the local City Councilmember and the Manhattan Borough President’s Office, “I’m concerned about timing – I am afraid the building will be sold and we will no longer be able to influence the use.”<sup>148</sup> This statement was forwarded to a City Hall staffer on February 8, 2016, three days *before* the closing, as part of an effort to schedule a call with the Mayor’s Office.<sup>149</sup> On February 9, 2016, City Hall and DCAS staff spoke on the phone to prepare for a meeting they would be having with concerned parties from the Lower East Side, including elected officials and the Community Board.<sup>150</sup>

Ultimately, Mr. Landau and Slate closed on the deal on February 11, 2016, with no word to or from City Hall.<sup>151</sup> It was not until around February 24, 2016 that the Chief of Staff to the Deputy Mayor for Housing and Economic Development spoke with Mr. Landau, at which point Mr. Landau stated that the property had already been sold.<sup>152</sup> Mr. Landau reiterated this fact on March 17, 2016, when two City Hall staff members met with Mr. Landau.<sup>153</sup> Finally taking some action, on April 5, 2016, the Department of Buildings imposed a stop work order on all construction at Rivington House.<sup>154</sup> The building remains under a stop work order to this date.

## **5. Joel Landau Plotted For Months to Turn Rivington House into Luxury Condos, but Maintained the Nursing Home Charade For a Year, Saving Him Millions in Taxes.**

Of all the revelations to emerge from this investigation, one that best illustrates the pervasive weaknesses in the City’s operations and execution is the discovery of the amount of time and attention Mr. Landau devoted to pursuing a sale of Rivington House for residential or commercial development — rather than operating the kind of healthcare facility he represented to the City, the community, and other stakeholders.<sup>155</sup> In fact, information provided to the Office of the

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<sup>148</sup> Email, February 5, 2016, NYC\_00003799 – NYC\_00003809.

<sup>149</sup> Email, February 8, 2016, NYC\_00003801.

<sup>150</sup> Calendar Invitation, February 9 2016, CAL\_00000695. Email, February 8, 2016, NYC\_00003905 – NYC\_00003906.

<sup>151</sup> Deed Recorded February 11, 2016 for transaction between New Rivington Properties, LLC and Rivington Street Investors LLC.

<sup>152</sup> Email, February 24, 2016, NYC\_00003772 – NYC\_00003774. Calendar Invitation, February 24, 2016, CAL\_00000141.

<sup>153</sup> Calendar Invitation, March 17, 2016, CAL\_00000143. DeLoach Int., 38: 8-25 and 39: 2-11, July 14, 2016.

<sup>154</sup> Email, March 1, 2016, NYC\_00004235 – NYC\_00004238. NYC Department of Buildings, Complaint #: 1420446, <http://a810-bisweb.nyc.gov/bisweb/OverviewForComplaintServlet?requestid=2&vcompdetlkey=0001968370>.

<sup>155</sup> Under New York’s General Obligations Law § 5-703(2), “A contract . . . for the sale, of any real property, or an interest therein, is void unless the contract or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the party to be charged, or by his lawful agent thereunto authorized by writing.” This law codifies the centuries-old Statute of Frauds, first enacted in England in 1677, declaring “certain contracts judicially unenforceable . . . if they are not committed to writing and signed by the party to be charged.” Bryan A. Garner, *Black’s Law Dictionary* 1422 (West Group 1999). *See also General Dynamics v. U.S.*, 563 U.S. 478, 488 (2011) (“The Statute of Frauds, which has been with us since the 17th century, reflects concerns about the reliability of oral evidence.”); *Sonnenschein v. Douglas Elliman-Gibbons & Ives*, 274 AD2d 244, 249 (1st Dept. 2000), *aff’d*, 96 NY2d 369 (2001) (“Real estate negotiations are often characterized by a series of tentative oral agreements between the parties. The parties are nonetheless free to decide against entering into the sale, until the final terms are reduced to writing. The very purpose of the Statute of Frauds, as applied to real estate sales, is to distinguish these provisional ‘agreements to agree’ from the final, binding contract.” Email, October 29, 2014, NYC\_00001124 –

Comptroller revealed that private development of the property was an option that Mr. Landau began exploring *even before he owned the property*. For example, on December 30, 2014, more than a month before he officially owned Rivington, Mr. Landau exchanged emails with a developer about the potential to turn the property into a hotel, stating “let’s do a hotel together at rivington. With whom should I follow up[?]”<sup>156</sup>

Later, just five days before they closed on the deal, Mr. Landau told his business partner, Mr. Rubin, via email on February 4, 2015: “We shouldn’t invest in any computers ... maybe we don’t need to open.”<sup>157</sup> Shortly thereafter, referring to a press report of a potential \$80 million sale of a former nursing home in the East Village, Mr. Landau remarked to the co-owner of Rivington House “we can do better and quicker.”<sup>158</sup>

With that goal in sight, at the same time that Mr. Landau was negotiating with DCAS to lower the \$16.15 price of removing the deed restrictions, he was also marketing Rivington House to developers.<sup>159</sup> Those efforts came to a positive outcome for Mr. Landau on May 11, 2015, when he signed a contract – without the City’s knowledge – to sell Rivington House to the Slate Property Group and its partners, under the name “Rivington Street Investors,” for development as luxury condominiums.<sup>160</sup> Under that agreement, Rivington Street Investors would pay \$116 million to purchase the building and land, conditioned on the property being vacant and the deed restrictions removed.<sup>161</sup>

During the next six months, while the removal of the deed restrictions were pending and thereafter, Mr. Landau did not tell the City that he had signed a contract to sell the property, and took pains to ensure that others did not as well. Around the time he signed the contract with Rivington Street Investors, for instance, Mr. Landau expressed concern to the purchasers that if the agreement became widely known, it would jeopardize his ability to remove the Rivington House deed restrictions. Specifically, on May 9, 2015, one of Mr. Landau’s attorneys told Rivington Street Investors to: “KEEP THEIR MOUTHS SHUT. The deal is all over the street from their investors and it could FFFF up the deed restriction being lifted amd [sic] union if they know sales price.”<sup>162</sup>

Similarly, on May 14, 2015 a member of Rivington Street Investors told his colleagues: “Guys, please make sure we do not discuss this deal with anyone on the outside right now. The seller is very concerned that the city and union will found out that he is in contract to sell at the price that we are buying it which will directly impact his ability to have the deed restriction removed. Once he has it removed we can do whatever we want.”<sup>163</sup>

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NYC\_00001125. Email, October 8, 2014, Stetzer\_185 – Stetzer\_186. Text Message, August 22, 2014, RIVING\_051824 – RIVING\_051825.

<sup>156</sup> Email, December 30, 2014, RIVING\_023697 – RIVING\_023698.

<sup>157</sup> Email, February 4, 2015, RIVING\_039798 – RIVING\_039799.

<sup>158</sup> Email, March 25, 2015, RIVING\_042729.

<sup>159</sup> Messrs. Landau and Rubin had engaged real estate broker Samuel Rottenberg to market Rivington House as early as April 7. Email, April 7, 2015, ROTTENBERG\_0000593 – ROTTENBERG\_0000594. Email, March 26, 2015, NYC\_00005565 – NYC\_00005566.

<sup>160</sup> Purchase and Sale Agreement, May 11, 2015. RSI-COMP000305 – RSI-COMP000337.

<sup>161</sup> Purchase and Sale Agreement, May 11, 2015. RSI-COMP000305 – RSI-COMP000337.

<sup>162</sup> Email, May 9, 2015, SLATE001131 – SLATE001134.

<sup>163</sup> Email, May 14, 2015, SLATE001191.

These warnings appear to have been effective because neither the City nor the local community became aware of the pending sale prior to the removal of the deed restrictions on November 10, 2015.

Removing the restrictions was only part of what Mr. Landau needed to do to meet the conditions of his agreement with Rivington Street Investors. He also had to deliver the building vacant of patients and staff.<sup>164</sup> But Mr. Landau had quietly taken care of that as well.

While Rivington House was permitted to admit up to 204 patients, under Mr. Landau's management, Rivington House's daily patient count never approached anything close to that number.<sup>165</sup> The decision to admit relatively few patients appears to have been deliberate, based on a July 16, 2015 statement by the Allure Group's Chief Operating Officer to the owners of the company, including Mr. Landau, that her instructions were "to keep it [patients at Rivington House] at 15-20."<sup>166</sup> Reflecting this comment, 25 patients were discharged from the facility between September 1, 2015, and December 11, 2015.<sup>167</sup> Rivington House had no patients as of December 11, 2015.<sup>168</sup>

Despite recognizing the risk that the City could cancel the pending sale of the deed restrictions if it learned of his agreement to sell Rivington House, Mr. Landau still delayed closing the transaction.<sup>169</sup> He had a strong financial reason for doing so; he was trying to remain the owner of the property for at least one year so that he could qualify for the long-term capital gains tax rate, a lower rate than would otherwise have been used.<sup>170</sup> Under the long-term capital gains rate, the \$88 million profit from the sale, when realized, would be taxed at a 20% tax rate, instead of the maximum ordinary income tax rate of 39.6%.<sup>171</sup> By putting off his sale of the property until February 11, 2016, he owned the property for one year and two days – just long enough to pay the lower, long-term capital gains rate on property owned for more than a year, saving an estimated \$17 million.<sup>172</sup>

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<sup>164</sup> Purchase and Sale Agreement, May 11, 2015. RSI-COMP000305 – RSI-COMP000337.

<sup>165</sup> Email, February 12, 2015, RIVING\_040741. Email, May 15, 2015, RIVING\_052927. Email, August 14, 2015, RIVING\_053154. Letter, March 3, 2015, RIVING\_006991 – RIVING\_006993.

<sup>166</sup> Email, July 16, 2015, RIVING\_023841.

<sup>167</sup> Email, January 19, 2016, RIVING\_009961 – RIVING\_09970. Email, February 4, 2016, RIVING\_020556 – RIVING\_020571.

<sup>168</sup> Email, January 19, 2016, RIVING\_009961 – RIVING\_09970.

<sup>169</sup> Email, July 28, 2015, NYC\_00003503 – NYC\_00003504.

<sup>170</sup> Email, October 30, 2015, RIVING\_036397 – RIVING\_036401.

<sup>171</sup> <https://www.irs.gov/taxtopics/tc409.html>. The \$88 million figure was reached by subtracting the \$116 million sale price from his \$28 million purchase price.

<sup>172</sup> The difference between 20% of \$88 million and 39.6% of \$88 million is approximately \$17 million.



## CONCLUSION

The Rivington House case exposed a number of flaws in the City’s operations. That said, assuring that future deed restrictions are handled in the best interests of the City does not require wholesale changes to existing processes. Rather, what is required is more active execution of existing processes, especially those designed to provide meaningful Mayoral oversight and robust public input. Going forward, the City should make the following adjustments to the process of lifting deed restrictions:

**Strengthen Mayoral Oversight:** All deed restrictions are currently supposed to be lifted only with approval by the Mayor, which takes the form of a “Mayoral Authorization Document” prepared by MOCS.<sup>173</sup> This document explicitly requires that MOCS affirm that the proposed transaction is “in the best interest of the city.”<sup>174</sup>

In the case of Rivington House, MOCS officials believed that this authorization was procedural only, rather than a substantive, independent review of DCAS’s determination.<sup>175</sup> In fact, nothing in the protocol dictates or even suggests that the MOCS review is supposed to be limited to a procedural review.

MOCS should take a more active approach to deed modification requests, as the agency is currently empowered to do, by reviewing facts, questioning assumptions, analyzing all appraisals, and finally seeking explicit sign-off from the First Deputy Mayor before approving applications.

**Ensure Robust Public Input:** As part of lifting any deed restriction, DCAS is currently required to hold a public hearing to solicit community input.<sup>176</sup> In the case of Rivington House, DCAS held a hearing on June 24, 2015 that was a public hearing in name only — not a single member of the public other than Mr. Landau attended.<sup>177</sup>

This failure occurred because DCAS conducted no meaningful outreach to the public. A one-day notice of the hearing appeared in the City Record on May 11, 2015, describing Rivington House by its Borough-Block-Lot number only and not by its actual address or name.<sup>178</sup> Furthermore, DCAS made no effort to specifically alert members of the Community Board or neighboring community to the hearing, despite being well aware of strong local interest in Rivington House. Accordingly, no one from the Community Board or the neighborhood attended and the hearing failed to fulfill its stated purpose of providing transparency and community input.<sup>179</sup>

In the future, DCAS needs to take steps to assure that public hearings are well advertised and that important community stakeholders are notified. At a minimum, this should include expanded public notice, with properties listed by their names and addresses and not just by block and lot

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<sup>173</sup> Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>174</sup> Mayoral Authorization Document, June 30, 2015, NYC\_00001949.

<sup>175</sup> Prissel Int., 18: 25 and 19: 2-22, April 20, 2016.

<sup>176</sup> Memo, April 5, 2010, NYC\_00009234 – NYC\_00009274.

<sup>177</sup> Email, June 24, 2015, NYC\_00005523 – NYC\_00005524.

<sup>178</sup> The City Record, May 11, 2015, Citywide Administrative Services Public Hearings, Page 1807.

<sup>179</sup> Email, June 24, 2015, NYC\_00005523 – NYC\_00005524.

numbers, as well as explicit outreach to Community Board leaders, local elected officials and other stakeholders with an interest in specific properties.

**Expand Definition of City’s “Best Interest:”** City Hall must establish consistent standards for determining the “best interest” of the City for DCAS to consider when assessing deed restriction removals. These factors should include, at a minimum, a land use analysis, an assessment of the modification on the local community, an analysis of whether or not a future use of the property would support City policy goals, financial considerations, and input from the community.

In the case of Rivington House, DCAS conducted a narrow review limited almost exclusively to whether the requested use of the property would conform to existing zoning restrictions once the deed restrictions were lifted.<sup>180</sup> The Comptroller’s office reviewed 33 other deed restriction modification requests made to the DCAS since 2011, and determined that this same criteria was used consistently in other requests approved by DCAS during this time.

DCAS does this analysis because City policymakers have not provided the agency with a clear set of factors to determine the best interest of the City. Therefore, City Hall must clearly articulate to DCAS how it should go about determining the best interest of the City. These factors should include, at a minimum, a land use analysis, an assessment of the modification on the local community, an analysis of whether or not a future use of the property would support City policy goals, financial considerations, and input from the community. When the content of a deed restriction could reasonably be expected to have a bearing on programs, services, or decisions of other City agencies, as was the case in Rivington House, the input of other City agencies and policymakers should also be obtained.

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<sup>180</sup> Fong Int., 113: 24-25 and 114: 2-23, July 12, 2016.





# New York City Comptroller Scott M. Stringer

