

STATE OF NEW JERSEY  
COMMISSION OF INVESTIGATION

PUBLIC HEARING

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IN THE MATTER OF:

NEW HOME CONSTRUCTION  
ISSUES FR#9-4

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State House Annex  
West State Street  
Trenton, New Jersey 08608  
Tuesday, November 18, 2003

B E F O R E:

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KATHRYN FLICKER, Commissioner  
JOSEPH R. MARINELLO, JR., Commissioner  
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1 (Exhibits 189, 93-A2, 93-C4, 93-D1  
2 and 93-D2 premarked for identification.)

3 CHAIRMAN SCHILLER: Good morning  
4 and welcome to the hearing for the State  
5 Commission of Investigation. Today the State  
6 Commission of Investigation opens hearings on  
7 abuses in new home construction and inspections.  
8 Today and tomorrow, and again early next year, as  
9 our work in the area continues, we will put a  
10 public face on one of the most troubling and  
11 problematic investigations we have ever pursued.  
12 It has often been said that the purchase of a home  
13 is the single largest and most important  
14 investment an individual or family will make in a  
15 lifetime. Indeed, as the cliché goes, it is an  
16 ultimate expression of the American dream.  
17 But more and more these days, that dream is being  
18 shaken and shattered by graft, by greed and  
19 incompetence and by the failure of government to  
20 fulfill its fundamental duty to protect the  
21 health, safety and property of its citizens.  
22 Imagine spending hundreds of thousands of dollars  
23 and walking into a nightmare punctuated by sagging  
24 walls and floors, cracked foundations, missing  
25 joists, bad wiring, collapsed ceilings, leaking

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1 pipes or mold so toxic it can make you sick. For  
2 a moment perhaps, you wonder why you are the  
3 unlucky one, until you find that many of your  
4 neighbors are in similar straits with their new  
5 home. Or maybe you put down a substantial deposit  
6 for your new home only to watch the builder go out  
7 of business taking your money with him.  
8 You assume that there is no way anyone could ever  
9 be left hanging like this, not in New Jersey, not  
10 in this day of sophisticated rules and regulations  
11 and government oversight. But that is a mistaken  
12 assumption. Soon it becomes apparent that the  
13 system for filing complaints, for pursuing  
14 warranties and for attempting to enlist the aid of  
15 municipal and state authorities to address latent  
16 defects after issuance of a certificate of  
17 occupancy seems designed only to make matters  
18 worse.

19 During the course of these  
20 proceedings, the Commission will present sworn  
21 testimony and documentary evidence to show that a  
22 genuine and dangerous consumer crisis is at hand  
23 and make no mistakes, I do mean dangerous.  
24 Builders large and small, their bottom lines  
25 increasingly defined by speed and volume rather

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1 than quality and craftsmanship, are churning out  
2 second rate structures assembled by unsupervised  
3 subcontractors using unskilled, untrained  
4 laborers.

5 Rampant code violations, some  
6 potentially life-threatening, go undetected  
7 because individuals charged with conducting  
8 inspections are unqualified or corrupt or sadly  
9 both or are simply overwhelmed by their work load.  
10 In extreme situations, forged and fraudulent  
11 certificates of occupancy have been generated to  
12 close a sale on unsuspecting buyers. In the worst  
13 situations, negligent inspectors and their  
14 municipal cronies take gifts of liquor, food,  
15 sports tickets, golf outings and construction  
16 materials from builders whose goal is to sustain  
17 favorable treatment. And what happens when  
18 someone does blow the whistle on problem builders  
19 or derelict inspectors, even the repeat offenders  
20 among them? Chances are, very little.

21 As we will demonstrate over the next  
22 few days, there is a startling lack of proper and  
23 appropriate oversight, enforcement and follow  
24 through on these matters at both the state and  
25 local levels. This is a phenomenon rooted not

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1           only in misplaced government priorities but also  
2           in influence pedaling, conflicts of interest and  
3           compromised ethics. It is also apparent that,  
4           given the campaign cash that is spread around  
5           regularly by elements of this industry, pay to  
6           play is alive and well and functioning at its most  
7           insidious place.

8                         In short, the system is broken and  
9           it needs to be fixed. Before the gavel falls on  
10          this process, including two additional days of  
11          hearings to be held in January, the Commission  
12          will begin to help make that fix happen with  
13          preliminary recommendations for strong, effective  
14          and long overdue regulatory and statutory reforms.  
15          We welcome the constructive input of new home  
16          developers and builders in the creation of a  
17          harmonious plan that treats all components of this  
18          industry and the consumers fairly and efficiently.  
19          But first we need to define the scope and nature  
20          of the problem.

21                        So Deputy Director Gaal, without  
22          further delay, please call the first witness.

23                        MS. GALL: Thank you. The first  
24          witness today is the Attorney General for the  
25          State of New Jersey, Peter Harvey.

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1                   CHAIRMAN SCHILLER: I would also  
2                   like to introduce the Director of Criminal  
3                   Justice, Vaughn McKoy, who will be sitting at  
4                   table with Attorney General Harvey.

5                   MS. GAAL: Thank you, General. I'm  
6                   going to turn the floor over to you.

7                   ATTORNEY GENERAL HARVEY: Thank you.  
8                   I greatly appreciate the opportunity to appear  
9                   before the State Commission of Investigation once  
10                  again to talk about an issue that is very serious  
11                  and timely and some might argue even overdue for  
12                  examination and the reason for that is that most  
13                  of us will take our hard-earned dollars and try to  
14                  buy a home in which we will raise our families or  
15                  perhaps a retirement place to live out the rest of  
16                  our days hopefully in tranquility.

17                  As you pointed out, Mr. Chairman,  
18                  your home is probably the single most important  
19                  investment that a person makes in one's life and  
20                  there is nothing more frightening than to acquire  
21                  a dwelling in which you intend to place your  
22                  family and that dwelling is laden with defects and  
23                  encumbered with all kinds of problems that cost  
24                  literally thousands and sometimes tens of  
25                  thousands of dollars to repair. So I want to

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1       thank the Commission for giving me this  
2       opportunity to make a few remarks concerning the  
3       systems in place in New Jersey that are designed  
4       to protect consumers who are building or  
5       purchasing a new home.

6                       I anxiously await the findings of  
7       the State Commission of Investigation and I look  
8       forward to reviewing your specific  
9       recommendations.

10                      As the Commissioner has pointed out,  
11       I am here with Director Warren McCoy of the  
12       Division of Criminal Justice who can address  
13       specific criminal issues that may arise as a  
14       result of this hearing, but let me first talk  
15       about the importance of this problem a little  
16       further.

17                      This is a remarkably complex problem  
18       and it directly impacts tens of thousands of New  
19       Jersey citizens, some of whom are here today.  
20       Economic development in our state that is borne of  
21       new home construction is a good thing. This is a  
22       state of eight and a half million people, we have  
23       a lot of homes and we have a lot of families who  
24       wish to live in New Jersey and they wish to live  
25       here for good reasons. New Jersey offers some of

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1 the greatest cultural institutions, some of the  
2 greatest educational institutions and some of the  
3 best quality of life one can find in America, so  
4 we encourage growth and building in New Jersey and  
5 certainly new homes help shape communities and  
6 ultimately shape perspectives about life.

7 Many municipalities across the state  
8 depend on their ability to develop new tax  
9 rateables, even as we undertake a comprehensive  
10 effort to control suburban sprawl. The potential  
11 for economic development and growth, in turn, will  
12 depend largely on consumer confidence. It goes  
13 without saying that the purchase of a new home as  
14 I pointed out earlier for most of us is the single  
15 biggest investment that we will ever make.  
16 Building or purchasing a new home is stressful in  
17 the best of circumstances. Few citizens feel  
18 comfortable or confident in being able to protect  
19 their own interests and so they depend upon the  
20 state and local government to make sure that they  
21 get what they pay for. In fact, our only  
22 guarantee, our only objective guarantee that we  
23 are getting what we paid for in the context of a  
24 new construction is state and local government.  
25 They come in and inspect the structure to make

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1       sure that it won't collapse around us when they  
2       move in and they come in with expertise that the  
3       common man and woman simply does not have to  
4       determine whether or not the plumbing is adequate,  
5       to determine whether or not the electrical systems  
6       are adequate, to determine whether or not there is  
7       mold behind the walls and other kinds of problems.

8                       While many people watch television  
9       programs such as This Old House and fancy  
10       themselves as weekend warriors, few of us are  
11       capable of being our own general contractors or of  
12       monitoring the activities of general contractors.  
13       Instead, we rely upon a system of checks and  
14       balances, including a system of government  
15       inspections that is designed to make certain that  
16       new homes are well built and up to code.  When  
17       buying an older home, many purchasers recognize  
18       the need to hire their own inspectors and often a  
19       mortgage company will insist on this neutral and  
20       detached examination of the older home to be  
21       purchased, but with respect to new homes, we rely  
22       principally upon local government inspectors.  
23       Needless to say, new home purchasers are concerned  
24       not only with quality but, of course, safety.  
25       When new homeowners tuck their children to bed at

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1 night, they should not have to worry about  
2 whether, for example, their electrical system is  
3 substandard and will catch fire in the middle of  
4 the night. They shouldn't have to worry whether  
5 or not water has leaked behind the walls that are  
6 freshly sheet rocked and will produce mold spores  
7 that will cause their family to get ill and  
8 sometimes for years without a family even knowing  
9 the cause of the illness. These kinds of dangers  
10 are tragedies waiting to happen.

11 Although I risk stating the obvious,  
12 we have to recognize that not all builders or  
13 subcontractors or code officers are incompetent or  
14 even corrupt. We need to do more than just merely  
15 collect anecdotal information or horror stories  
16 about shabbily constructed homes or so-called  
17 money pits. We have to dig deeper.

18 I urge the Commission, and I'm sure  
19 the Commission has already thought this through  
20 and intends to do this, to carefully examine the  
21 systems, the basic systems that are used in this  
22 state to hold professionals accountable and to  
23 also look at the systems that ensure that a home  
24 will, in fact, be well built. It is in the system  
25 analysis that I think we will find the best

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1 opportunity to correct not only flaws in  
2 workmanship but also to provide homeowners with an  
3 intelligent opportunity for remedying quickly  
4 those flaws so that they are not encumbered with  
5 complicated administrative and judicial  
6 proceedings.

7 Those of us who are lawyers  
8 understand better than most that in order to  
9 enforce your rights on even the smallest issue  
10 takes you years. You can file a complaint in  
11 Superior Court or you can file a complaint in an  
12 administrative court and can wait anywhere from 18  
13 months to four years for resolution and that's not  
14 counting appeals. That's just counting the trial  
15 portion of the case.

16 So we have to find systems so that  
17 people are not faced with a well-financed opponent  
18 who can simply drag it out and bludgeon a claimant  
19 into submitting to an unfair settlement just to  
20 have it over.

21 Let me outline what I think is the  
22 problem in a nutshell, at least in my view. There  
23 are three specific problem areas. First I think  
24 that the Commission should examine the problem of  
25 lax oversight by local building officials and

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1 inspectors, whether due to negligence or official  
2 misconduct.

3 Second, the Commission should  
4 examine inadequacies in the current remedies that  
5 are available to homeowners that are wronged. A  
6 homeowner in my view should not be put in a  
7 position of filing a claim against a million  
8 dollar builder and having to go through months and  
9 months and months of administrative process or  
10 legal proceedings or even years in order to have  
11 that claim vindicated. Not every claim that is  
12 filed against the builder is a valid one. We know  
13 that. But whatever the claim is, it should be  
14 processed in a most efficient way so that at least  
15 within a 12 month time frame, the claim is filed  
16 and resolved and a check is cut to remedy whatever  
17 the problem is or a determination is made that  
18 there is no problem.

19 Third, and finally, we believe  
20 you'll have to examine the problem of builders who  
21 default or simply walk away from construction  
22 sites leaving would be homeowners and entire  
23 neighborhoods in the lurch. I think you will  
24 find, for example, that your bankruptcy laws are  
25 too easily abused and exploited allowing a builder

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1 to hide behind corporate shells. A builder under  
2 default or under even indictment can simply  
3 reorganize and begin to build a new project under  
4 a new name. In fact, it was well-known in the  
5 organized crime field that the so-called bust out  
6 schemes are commonly used by mobsters to set up  
7 businesses and when the businesses could no longer  
8 pay their receivables, they would simply collapse,  
9 go into bankruptcy and the inventory would be  
10 shifted to a brand new company under a brand new  
11 name operating in the same manner. I don't mean  
12 to suggest that that happens in the building  
13 trade, but it emphasizes the kind of problem that  
14 a homeowner has when dealing with a company that  
15 goes out of business.

16 A builder in default or even under  
17 indictment, as I said, can reorganize and begin a  
18 new project under a new corporate name, so we have  
19 to have a system that allows us to pierce this  
20 veil of corporate mismanagement, one that allows  
21 us to monitor builders and to register and license  
22 them in a way that allows prospective home buyers  
23 to register complaints and figure out a builder's  
24 track record.

25 This Commission is about to tackle a

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1       remarkably complex problem and it's also a  
2       multi-faceted one that demands a comprehensive and  
3       multi-faceted suite of remedies or solutions. We  
4       need to deal, for example, with the wide spectrum  
5       of inappropriate behaviors ranging from  
6       indifference and laziness to incompetence and  
7       negligence, to outright graft, bribery, corruption  
8       and even extortion.

9                       Sometimes the criminal law must  
10       provide the answer and the Division of Criminal  
11       Justice headed by Director McCoy and each of the  
12       21 county prosecutors stand at the ready to  
13       investigate and vigorously prosecute those cases  
14       that involve purposeful deception or official  
15       corruption. In other cases, however, criminal  
16       prosecution is not necessarily appropriate as a  
17       remedy and there's no evidence perhaps to suggest  
18       criminal wrongdoing and so we need a full panoply  
19       of civil and administrative remedies, alternatives  
20       to deter abuses and provide a system of checks and  
21       balances.

22                      I strongly urge the Commission to  
23       make specific recommendations on how to improve or  
24       augment our current system. We need to examine,  
25       for example, how we can take full advantage of the

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1 Consumer Fraud Protection Act. Under the current  
2 regulatory scheme, the Consumer Fraud Protection  
3 Act only applies to contractors engaged in the  
4 remodeling of existing homes and does not apply to  
5 all new home construction. Perhaps it should.

6 I should point out at this point  
7 that the Consumer Fraud Protection Act is designed  
8 to address the problem of deception,  
9 misrepresentation, unconscionable commercial  
10 conduct and so-called knowing admissions. That  
11 Act or regulatory scheme is not designed to  
12 address faulty workmanship. Perhaps it should.  
13 One of the benefits of the Consumer Fraud Act is  
14 most of you -- perhaps all of you know on the  
15 Commission -- that a successful claimant not only  
16 will win his or her case but get triple damages as  
17 well as costs of hiring an attorney as well as  
18 costs of suit. That is a powerful weapon we have  
19 found in the Consumer Fraud Act and in the  
20 consumer affairs area to have people come to the  
21 table and work out their differences much sooner  
22 rather than later because when a company is facing  
23 triple damages and attorney's fees and costs, it  
24 is a disincentive to continue a losing battle  
25 simply to try to outlast the other party because

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1 as attorney's fees mount, the other party is  
2 ultimately going to have to pay them.

3 In our view, we need to give the  
4 Division of Consumer Affairs more tools including  
5 the authority to impose penalties. We also need  
6 to review our system for holding inspectors and  
7 local code officials accountable. We need to make  
8 certain that these inspectors are properly  
9 trained. As importantly, we need to enforce a  
10 comprehensive code of ethics that protects against  
11 conflicts of interests and ensures that inspectors  
12 and those who investigate home warranty claims are  
13 truly independent and free of taint, bias or  
14 inclusion. We also need to review and, as  
15 necessary, revise our laws and regulations to make  
16 certain that they are designed principally to  
17 protect consumers and not just to safeguard the  
18 economic interests of builders and contractors.

19 I am told, for example, that the  
20 rights of homeowners under our current home  
21 warranty program are not clearly defined or  
22 spelled out. In fact, I reviewed the legislation,  
23 the statute before coming over and it does provide  
24 a great deal of ambiguity as well as  
25 administrative process that is terribly complex

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1 for the average homeowners and I think we need to  
2 look at that new homeowner's warranty statute.  
3 Although, it creates a fund, for example, that is  
4 governed by the State Treasurer, there are  
5 separate administrative procedures that apply when  
6 making a claim against that fund that range from  
7 litigating a case before the Office of  
8 Administrative Law to a mediation and conciliation  
9 process conducted by the Department of Community  
10 Affairs.

11 I might add that the statute  
12 provides that where a homeowner makes a claim  
13 against a builder and it happens to be wrong, the  
14 homeowner pays the attorney's fees. It's written  
15 as the losing party pays the attorney's fees but  
16 that's a certain deterrent to any homeowners that  
17 is fighting a multi-million dollar builder without  
18 the ability to hire experts and other kinds of  
19 witnesses that you need to prove what could be a  
20 valid claim. We need to make certain that  
21 homeowners get the same type of protection that is  
22 afforded to large corporations and governmental  
23 units who insist that performance bonds be posted  
24 to insure the contractors perform their  
25 obligations fully and competently.

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1                   In conclusion, I want to thank the  
2                   Commission for giving me and, indeed, the Office  
3                   of Attorney General the opportunity to comment on  
4                   the importance and timeliness of this inquiry. I  
5                   think that among the tasks that the Commission  
6                   undertakes, this could very well be its most  
7                   important because it directly affects thousands of  
8                   persons in our state and what you recommend will  
9                   have an impact on the day-to-day quality of life  
10                  of every one of our citizens. Thank you.

11                  COMMISSIONER EDWARDS: Thank you  
12                  very much for that presentation. I understand as  
13                  well as or perhaps better than most the  
14                  complexities of the Attorney General's Office.  
15                  You have been, as we've gone this far in the  
16                  investigation, your office has been very  
17                  cooperative in supplying us with a significant  
18                  amount of our facts and our data. The public  
19                  should understand that the magnitude of how you  
20                  complain and the solution of this particular  
21                  problem are dramatic and we look forward to that  
22                  not only through the Division of Criminal Justice  
23                  and the Prosecutor's Offices but the Division of  
24                  Consumer Affairs which is under your jurisdiction.  
25                  You are also the civil lawyer for the DCA and all

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1 of the inspection processes that are run by the  
2 state and as we move forward to generate some  
3 remedies and solve these problems, I assume and  
4 I'm -- I know that, in fact, that you will be  
5 helping and participating with us to enlighten us  
6 perhaps on some of the more practical problems in  
7 finding those particular remedies.

8 There is a concept out there that is  
9 of particular concern to me and that is that the  
10 role of the inspector, whether he be a state  
11 inspector, whether he be a local inspector through  
12 the municipalities and recent decisions by the  
13 courts that have limited the reliance by consumers  
14 on that inspector's role and exactly what that  
15 inspector's role should be.

16 I have some feelings about the need  
17 to expand that and I wondered if you had any  
18 additional feelings about the role of the  
19 inspector and then where that particular role  
20 might go.

21 ATTORNEY GENERAL HARVEY: I believe  
22 that the inspector is, second to the builder, the  
23 most important player in new home construction.  
24 Homeowners are told repeatedly before they can  
25 move in, the house has to get a certificate of

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1 occupancy, the house has to be inspected. Most  
2 homeowners cannot afford to pay for the kind of  
3 inspection, the thorough inspection that a  
4 particular construction may require, so they must,  
5 by necessity, rely upon the honesty, the  
6 integrity, the forthrightness of inspectors that  
7 are hired by the municipality. It seems to me  
8 that there ought to be not simply criminal  
9 liability, but there ought to be some civil  
10 responsibility for home inspectors where they know  
11 or should know that a house has defects in it that  
12 were perceptible at the time of closing.

13 Now, I'm not talking about the kinds  
14 of defects that a home inspector wouldn't  
15 ordinarily see or couldn't, by virtue of the type  
16 of inspection being performed, be disclosed or  
17 revealed, but I do think that home inspectors are  
18 to be held to a little higher standard. I also  
19 think that the towns themselves, we might want to  
20 look into whether or not the towns should have  
21 some rights against the construction companies  
22 that build defective homes in their township.  
23 That may provide the town with an opportunity to  
24 bring an action because ultimately all of this  
25 construction, all of the clean-up work from a

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1       faulty construction puts that town in a difficult  
2       position. It puts the town -- unfortunately, it  
3       hurts the town's reputation in terms of persons  
4       wanting to move there and buy the homes there, it  
5       de-values the value of the home, of course, and  
6       the property which means there are less tax  
7       revenues for the town on that particular property.  
8       If you have a home that should have cost a half  
9       million dollars and the house, because of its  
10      defects, is now worth \$250,000, there is a certain  
11      level of assessment that the town was expecting  
12      that it's not going to get. So I think that we  
13      have to look at some civil remedies that attach to  
14      the home inspectors and those should be pursued  
15      certainly by the homeowner and perhaps certain  
16      other remedies ought to attach to the municipality  
17      against the builder.

18                    COMMISSIONER EDWARDS: Yes. Thank  
19      you.

20                    CHAIRMAN SCHILLER: Thank you very  
21      much, Attorney General. I think your triple  
22      threat approach may be very, very seriously  
23      considered for the civil and criminal remedy and  
24      bolstering the inspection is well taken and I'm  
25      sure many of the homeowners sitting out there can

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1 empathize with that and understand that perhaps  
2 you are offering a very good suggestion on  
3 bolstering what we already have. Thank you very  
4 much for taking the time out of your busy  
5 schedule.

6 ATTORNEY GENERAL HARVEY: Thank you  
7 for your time.

8 MS. GAAL: Next we have a panel of  
9 three witnesses, Amy Campbell, Peter Glassman and  
10 Debra Sowney.

11 Starting on my left, may we have  
12 your name, please.

13 MS. SOWNEY: Debra Sowney.

14 MS. GAAL: And what is your position  
15 with the Commission?

16 MS. SOWNEY: I'm an investigative  
17 analyst.

18 MS. GAAL: And how long have you  
19 worked with the SCI?

20 MS. SOWNEY: Nineteen and a half  
21 years.

22 MS. GAAL: Mr. Glassman, your name  
23 for the record and your position.

24 MR. GLASSMAN: Good morning. My  
25 name is Peter Glassman. I am a special agent with

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1 the State Commission of Investigation. I have  
2 been with them two and a half years.

3 MS. GAAL: Where did you work prior  
4 to joining the SCI?

5 MR. GLASSMAN: At the Hudson County  
6 Prosecutor's Office for approximately eleven  
7 years.

8 MS. GAAL: And, Ms. Campbell, your  
9 name and position.

10 MS. CAMPBELL: Good morning. My  
11 name is Amy Campbell and I am an investigative  
12 accountant with the SCI. I have been there three  
13 years. Prior to that, I worked for the New Jersey  
14 Division of Criminal Justice for 13 years.

15 MS. GAAL: And Investigative Analyst  
16 Sowney, how did the Commission first undertake its  
17 investigation of new home construction issues?

18 MS. SOWNEY: The investigation was  
19 initiated as a result of numerous citizen  
20 complaints.

21 MS. GAAL: And when did we start it?

22 MS. SOWNEY: July of 2002.

23 MS. GAAL: Now, the homeowners that  
24 we spoke to initially, were they all from just one  
25 development?

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1 MS. SOWNEY: No. They resided in  
2 several different developments in different  
3 municipalities.

4 MS. GAAL: And it involved different  
5 builders, am I right?

6 MS. SOWNEY: Yes.

7 MS. GAAL: Okay. How broad was this  
8 investigation overall?

9 MS. SOWNEY: It was wide-ranging.  
10 We looked at 58 different scenarios in 17  
11 different counties in New Jersey.

12 MS. GAAL: When you say 58, those  
13 would be ones where we found significant problems?

14 MS. SOWNEY: Yes.

15 MS. GAAL: How many different  
16 builders were involved by the end of the  
17 investigation?

18 MS. SOWNEY: Forty-one.

19 MS. GAAL: How many subpoenas did we  
20 issue?

21 MS. SOWNEY: 185.

22 MS. GAAL: How many of those  
23 subpoenas were for the production of records?

24 MS. SOWNEY: 119.

25 MS. GAAL: And how many subpoenas

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1 called for people to testify?

2 MS. SOWNEY: 66.

3 MS. GAAL: Okay. We also did a lot  
4 of interviewing in the field, did we not?

5 MS. SOWNEY: Yes, we did.

6 MS. GAAL: And how many witnesses  
7 were interviewed in the field?

8 MS. SOWNEY: 195.

9 MS. GAAL: Special Agent Glassman,  
10 did we also conduct a fairly extensive review of  
11 documents?

12 MR. GLASSMAN: Yes. In addition to  
13 reviewing the homeowner's files, expert reports  
14 and inspection records at the local construction  
15 offices, we examined licensing, code advisory  
16 board files, all available municipal files at  
17 DCA's Office of Regulatory Affairs as well as home  
18 warranty claims files.

19 MS. GAAL: Can you recall for us  
20 some of the places and offices we went to to look  
21 at records and to gather information?

22 MR. GLASSMAN: Yes. We went to  
23 County Prosecutors' offices, the Attorney  
24 General's office, we went to the DCA office, we  
25 contacted consumers and homeowners, we went to

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1 code official associations and we attended and  
2 gathered information at state and federal court  
3 proceedings.

4 MS. GAAL: Speaking, first of all,  
5 to inspection problems, what type of inspection  
6 problems did the investigation reveal?

7 MR. GLASSMAN: In the developments  
8 we examined, inspections either were not done at  
9 all or if they were done, they were done  
10 deficiently.

11 MS. GAAL: Were we able to find out  
12 why inspections were not performed?

13 MR. GLASSMAN: There were a variety  
14 of reasons. We've heard a lot of testimony that  
15 when developments are going up fast, it's just  
16 impossible for inspectors to keep up. Inspectors  
17 are also pressured by the builders to rush the  
18 construction inspection process because of  
19 monetary concerns on behalf of the builders. As  
20 you will hear later in the hearing, there are  
21 project managers that actually forged certificates  
22 of occupancy to accelerate the process.

23 MS. GAAL: Now, one of the issues  
24 you've just highlighted is essentially staffing  
25 issues in the local construction code offices, am

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1 I right?

2 MR. GLASSMAN: That's correct. One  
3 inspector indicated that to do a proper  
4 inspection, he could only do about five in one  
5 day. His municipality required him to do at least  
6 20. Combined with the fact that many of the  
7 municipalities use only part-time inspectors and  
8 because inspectors and code officials often work  
9 in several municipalities at once, depending on  
10 how many and the size of development they have  
11 going up, there could be staffing issues. We also  
12 discovered one municipal inspector who works in  
13 five towns and in some of the five towns he serves  
14 as the sub-code official for building, plumbing  
15 and fire.

16 MS. GAAL: Almost an impossible  
17 task?

18 MR. GLASSMAN: Yes.

19 MS. GAAL: What are some of the  
20 other reasons we found?

21 MR. GLASSMAN: We've seen some  
22 incompetence on the part of the inspectors,  
23 inspectors that have relationships with builders  
24 as well. We've had testimony in one instance that  
25 inspectors document the inspections but they don't

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1 actually perform them.

2 MS. GAAL: You mean they just drive  
3 around?

4 MR. GLASSMAN: That's correct.

5 MS. GAAL: Now, you mentioned  
6 earlier that there are time pressures placed on  
7 the inspectors because of the builders. Did our  
8 investigation reveal that builders' employees have  
9 gone to some extreme lengths to meet the demands  
10 placed on them?

11 MR. GLASSMAN: Yes. We've seen  
12 instances where employees of the builder/developer  
13 have gone to substantial lengths as forging  
14 official certificate of occupancy documents and  
15 submitting them to close on the sale of the home  
16 prematurely.

17 MS. GAAL: Did we find more than one  
18 scenario where COs had been forged?

19 MR. GLASSMAN: Yes, we did.

20 MS. GAAL: And can you describe a  
21 little bit about each of those?

22 MR. GLASSMAN: In both cases, it  
23 seemed that an original certificate of occupancy  
24 was issued and that a copy was made of it with the  
25 address of the home that they had planned on

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1 closing prematurely and the mortgage company  
2 accepted a copy of the CO which occurred in those  
3 cases.

4 MS. GAAL: Now, how many COs were  
5 forged in one of those developments?

6 MR. GLASSMAN: In one of the  
7 developments, there was approximately three and  
8 the other there were approximately 19.

9 MS. GAAL: Were we able to learn why  
10 the builders' employee forged the COs?

11 MR. GLASSMAN: To keep on schedule,  
12 on the builder's schedule to close on the homes.

13 MS. GAAL: Did we get some sense of  
14 some of the monetary pressures that the large  
15 builders have?

16 MR. GLASSMAN: Some of the large  
17 builders are probably traded on the stock market  
18 and their price earnings are affected as well as  
19 quota, end-of-the-year pressures to keep on  
20 schedule.

21 MS. GAAL: Investigative Analyst  
22 Sowney, what are some of the ramifications to the  
23 homeowners that we found that resulted from  
24 deficient or nonexistent inspections?

25 MS. SOWNEY: There is definitely a

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1 cost, financial impact and in the majority of the  
2 cases that we investigated, the homeowner had to  
3 assume the cost of getting expert reports to prove  
4 the violations existed or they had to spend the  
5 money to hire attorneys to pursue remediation  
6 through the courts.

7 MS. GAAL: Did we find or are you  
8 saying that the burden appears to be on the  
9 homeowner?

10 MS. SOWNEY: Yes. They don't seem  
11 to be taken seriously until they provide an expert  
12 report and sometimes not even then.

13 MS. GAAL: Is it sort of the  
14 situation where the squeaky wheel is getting oil?

15 MS. SOWNEY: Not so much the squeaky  
16 wheel, but I think the homeowners that organized  
17 seemed to have more success in getting their  
18 problems addressed.

19 MS. GAAL: So are you saying that if  
20 the homeowners aren't organized or don't have  
21 adequate financial resources, they may not have as  
22 much likelihood of success?

23 MS. SOWNEY: Yes.

24 MS. GAAL: Ms. Sowney, in terms of  
25 the cost and financial impact, have we also noted

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1           that there are some significant issues and  
2           problems with respect to gated communities and  
3           those would be communities where the homeowners'  
4           associations have to ultimately assume  
5           responsibility for the upkeep and maintenance of  
6           what have traditionally been municipal functions,  
7           such as sidewalks, roadways, curbs, drainage  
8           systems?

9                           MS. SOWNEY:  The homeowner's  
10           association is responsible to take over from the  
11           developer the areas that you just mentioned.  
12           You're going to hear from several developments  
13           during the course of our hearing that are faced  
14           with potentially millions of dollars in repairs  
15           because the things weren't constructed properly  
16           and the systems are now failing.

17                           MS. GAAL:  Investigative Accountant  
18           Campbell, the roads, the sewers, the sidewalks,  
19           the drain systems, are those areas inspected by  
20           the municipal engineer?

21                           MS. CAMPBELL:  Yes, they are.

22                           MS. GAAL:  In the area of  
23           engineering specifically, is there much in New  
24           Jersey by way of regulatory oversight of  
25           engineers?

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1 MS. CAMPBELL: From what we have  
2 found, absent the filing of a complaint with the  
3 State Board of Professional Engineers and  
4 Architects, there is no ongoing regulatory  
5 oversight of Professional Engineers.

6 MS. GAAL: Does the New Jersey State  
7 Board of Professional Engineers and Architects  
8 have a continuing professional education  
9 requirement in order to re-license an engineer?

10 MS. CAMPBELL: Per discussions with  
11 Dr. James Hsu, the Executive Director of the Joint  
12 Board of Architects and Engineers, there is no  
13 current CPE requirement for Professional  
14 Engineers.

15 MS. GAAL: Special Agent Glassman,  
16 we've heard reference today to recent court  
17 decisions. In your opinion, what effects will  
18 recent Appellate Division court decisions have  
19 regarding the notices of violations on homeowners?

20 MR. GLASSMAN: Under the Uniform  
21 Construction Code for the past 20 years, a builder  
22 has been or was liable for code violations after a  
23 CO was issued. As it stands now with the current  
24 court ruling, once a certificate of occupancy is  
25 issued, the homeowner will incur additional

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1 expenses if the home has code-related defects  
2 because the builder cannot be held liable.

3 MS. GAAL: I'm going to ask you to  
4 take a look at what has been marked as Exhibit  
5 143. Do you have it before you?

6 MR. GLASSMAN: Yes.

7 MS. GAAL: And it's a letter dated  
8 September 22nd of this year, am I right?

9 MR. GLASSMAN: Yes.

10 MS. GAAL: And it's addressed to  
11 construction code officials?

12 MR. GLASSMAN: That's correct.

13 MR. GAAL: And who is it from?

14 MR. GLASSMAN: It's from William M.  
15 Connolly, Director, Division of Codes and  
16 Standards.

17 MS. GAAL: I just want to highlight  
18 really two sentences. Right in the middle of the  
19 first paragraph it makes reference to the recent  
20 court decision, does it not?

21 MR. GLASSMAN: That's correct.

22 MS. GAAL: And what is the gist of  
23 that sentence there that says In this decision?

24 MR. GLASSMAN: It basically says  
25 that the homeowner is now liable after the court

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1 decision for any code violations that are  
2 discovered after a CO has been issued and the  
3 builder is no longer liable or cannot be issued  
4 notices of violation for any code violations that  
5 are found after a CO is issued to the homeowner.

6 MS. GAAL: So once the CO is issued  
7 and title is transferred, it becomes the  
8 homeowner's responsibility?

9 MR. GLASSMAN: That's correct.

10 MS. GAAL: The third paragraph in  
11 that exhibit first sentence indicates, does it  
12 not, that notices of violations may still be  
13 issued but those notices are to be served upon the  
14 homeowner?

15 MR. GLASSMAN: That's correct.

16 MS. GAAL: So, in other words, we're  
17 saying here now that the construction official can  
18 now cite the homeowner for the violations even if  
19 they had previously existed?

20 MR. GLASSMAN: That's correct.

21 MS. GAAL: Have we seen some  
22 examples of that since this court decision came  
23 down?

24 MR. GLASSMAN: Yes, we have. We  
25 have spoken to a homeowner that was issued a

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1 notice of violation which carries a 50 dollar  
2 penalty per day until corrected for a code  
3 violation in her home that was brought to the  
4 attention of the local construction official years  
5 ago without being addressed by the construction  
6 official. Now, she has to incur more expenses for  
7 problems that the builder caused and the local  
8 official either missed or ignored.

9 MS. GAAL: Turning to some other  
10 problems we found, what are some of the others we  
11 found, Special Agent Glassman?

12 MR. GLASSMAN: We have seen many  
13 houses with mold problems and drainage problems.  
14 There are certainly structural concerns at a lot  
15 of the houses that are not life-threatening but  
16 still a problem. We saw an example of a seven  
17 year old that fell into a sinkhole and died at a  
18 large development. Having violations and poor  
19 workmanship can severely impact the home's value.  
20 For example, homeowners in one development that  
21 purchased a home for \$278,000 a year later was  
22 assessed at \$90,000 for the home and property.

23 We have heard a lot of testimony and  
24 horror stories of people who have invested their  
25 life savings in a new home and have spent years

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1 fighting the system without any success. It's  
2 been very stressful and emotionally devastating to  
3 these homeowners.

4 MS. GAAL: Did we find generally  
5 that home purchasers and new home buyers had gone  
6 into the purchase with a confidence that there was  
7 a New Jersey system of inspections in place to  
8 protect them?

9 MS. SOWNEY: Yes. We've talked to a  
10 lot of homeowners and they've all said that when  
11 they received their certificate of occupancy, they  
12 assumed that their house was free of defects and  
13 obviously are distraught to find out that that is  
14 not the case and I think generally they assume  
15 that they are going to get what's called for in  
16 the plans if the inspector is checking against  
17 those plans.

18 MS. GAAL: So they assumed that  
19 their home was built in a workmanship-like manner?

20 MS. SOWNEY: Yes.

21 MS. GAAL: Did we find generally  
22 that new homeowners, unlike purchasers of resales,  
23 don't often hire their own engineers during the  
24 process?

25 MS. SOWNEY: I think that the

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1 Attorney General touched on that in his remarks.  
2 I think people that are buying a new home do not  
3 feel it's necessary or maybe can't afford to  
4 hire -- to get the kind of inspection that you  
5 really should have to pick up these defects, but  
6 one individual actually that we spoke to told us  
7 he tried to bring an engineer on his final  
8 walk-through, but he was prohibited by the  
9 builder.

10 MS. GAAL: Were the problems that we  
11 found unique to New Jersey?

12 MS. SOWNEY: No. The issues are  
13 national in scope. In fact, there are several  
14 states that are examining the very same issues  
15 that we're looking at in our areas and there's  
16 been various web sites and citizens groups that  
17 have been set up across the country to help the  
18 homeowners to deal with these issues.

19 MS. GAAL: Now, the problem homes  
20 that we found, were they limited to any particular  
21 type of residential housing?

22 MS. SOWNEY: No. We found that all  
23 types of housing were affected. I mean we looked  
24 at an affordable housing complex. We looked at  
25 adult communities, typically 55 and over, and some

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1 developments we looked at homes that were in the  
2 three to four hundred thousand dollar range and  
3 sometimes even more.

4 MS. GAAL: How about the other side  
5 of that equation? Did we find that the problems  
6 were limited to any specific builder or type of  
7 builder?

8 MS. SOWNEY: No. I think it runs  
9 the gamut. We found problems with all types of  
10 builders, small and large.

11 MS. GAAL: Special Agent Glassman,  
12 turning to you, did the investigation reveal  
13 instances where builders have been allowed to  
14 continue building in the state despite repeated  
15 construction-related problems?

16 MR. GLASSMAN: Yes, there are  
17 developers who continue to build today despite the  
18 fact that they have been involved in the  
19 construction of a number of developments with  
20 code-related problems in the past. In fact, the  
21 deficiencies in the other developments have not  
22 yet been resolved and they are permitted to  
23 continue to build in the state.

24 MS. GAAL: Were those builders  
25 issued Notices of Violations fined or suspended?

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1 MR. GLASSMAN: Yes. Fines have been  
2 minimal or nonexistent especially in contrast to  
3 what it has cost the homeowners to get their  
4 problems remediated.

5 MS. GAAL: So there were fines but,  
6 relatively speaking, they were small?

7 MR. GLASSMAN: That's correct.

8 MS. GAAL: Did you find instances  
9 where the builders have purchased back the homes  
10 from the disgruntled homeowners?

11 MR. GLASSMAN: Yes, there have been  
12 several instances where the builder bought back  
13 the house with the problems. Part of the  
14 agreement was that a gag order was placed upon the  
15 homeowners so they couldn't discuss the problems  
16 of the home.

17 MS. GAAL: And did we find instances  
18 where these homes have been resold?

19 MR. GLASSMAN: Yes. In a few of the  
20 cases, we found that the deficiencies were not  
21 disclosed to the prospective purchaser.

22 MS. GAAL: Did you -- rather, did we  
23 look or attempt to look at reprimands against code  
24 officials and code inspectors?

25 MR. GLASSMAN: Yes, we did.

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1 MS. GAAL: And what did you find?

2 MR. GLASSMAN: We found several  
3 significant reprimands that were DCA imposed on  
4 some code officials.

5 MS. GAAL: Were they able to track  
6 them in a unified system?

7 MR. GLASSMAN: No. We were not  
8 aware or we did not find any tracking system that  
9 DCA provides to track these inspectors that have  
10 been sanctioned.

11 MS. GAAL: So an inspector who is  
12 sanctioned while working in one municipality could  
13 end up working somewhere else?

14 MR. GLASSMAN: That's correct.

15 MS. GAAL: And did we find that  
16 fairly common?

17 MR. GLASSMAN: Yes, we did.

18 MS. GAAL: Did you look at the  
19 question of criminal history on some of the people  
20 connected to the inspection process?

21 MR. GLASSMAN: Yes, we did.

22 MS. GAAL: And what did you find?

23 MR. GLASSMAN: We did find that some  
24 code officials did have criminal histories.

25 MS. GAAL: Were they disclosed?

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1 MR. GLASSMAN: No, they were not.

2 MS. GAAL: Undisclosed?

3 MR. GLASSMAN: Undisclosed. They  
4 should have been disclosed on their license, code  
5 license application and they were not.

6 MS. GAAL: Investigative Analyst  
7 Sowney, did we end up expanding our investigation  
8 beyond the question of construction inspections  
9 which was what we started out with?

10 MS. SOWNEY: Yes. We looked at new  
11 home warranty issues, builder default issues and  
12 gifts and gratuities provided to local inspectors  
13 or local construction offices by the builder.

14 MS. GAAL: I'm going to ask you to  
15 take a look at Exhibit 188. Is it also on the  
16 screen?

17 MS. SOWNEY: Yes.

18 MS. GAAL: Did you prepare it?

19 MS. SOWNEY: Yes, I did.

20 MS. GAAL: And what does it depict?

21 MS. SOWNEY: It's the projects that  
22 we examined by county. Each dot represents a  
23 different type of scenario that we investigated.  
24 It could be either a builder default issue, a  
25 warranty issue or an inspection issue.

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1 MS. GAAL: So we hit how many  
2 counties was it?

3 MS. SOWNEY: Fifty-eight.

4 MS. GAAL: Seventeen?

5 MS. SOWNEY: Seventeen counties.

6 MS. GAAL: And looking at it from  
7 Sussex down to Cape May?

8 MS. SOWNEY: Yes.

9 MS. GAAL: Can you give us just an  
10 estimate of the number of homeowners involved in  
11 toto with respect to these particular scenarios?

12 MS. SOWNEY: It would have to be in  
13 the thousands.

14 MS. GAAL: Okay. Now, you mentioned  
15 briefly builder defaults and I think the Attorney  
16 General mentioned it also today. Can you  
17 summarize what type of issues we found relative to  
18 the question of builder defaults?

19 MS. SOWNEY: We're going to discuss  
20 this in detail at tomorrow's hearing, but it  
21 appears that there are no protections in place for  
22 the homeowner if the builder they place their  
23 deposit or money with goes bankrupt or goes out of  
24 business or becomes insolvent. Even if they  
25 resort to litigation, the company often has no

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1 assets; yet the same individuals can form another  
2 company and continue building under a different  
3 name.

4 MS. GAAL: And we found instances of  
5 that?

6 MS. SOWNEY: Yes.

7 MS. GAAL: And did the Commission  
8 analyze the question of gifts or gratuities paid  
9 to or on behalf of local inspectors by builders?

10 MS. SOWNEY: Yes. We found many  
11 instances in which builders supplied municipal  
12 construction offices with various types of gifts,  
13 gratuities, funded parties, golf outings. This  
14 also will be detailed at tomorrow's hearings.

15 MS. GAAL: Investigative Accountant  
16 Campbell, did you look into issues related to the  
17 New Jersey New Home Warranty Program?

18 MS. CAMPBELL: Yes.

19 MS. GAAL: And did you find problems  
20 in that whole process?

21 MS. CAMPBELL: Yes. Although New  
22 Jersey may still be the only state with a  
23 statutory new home warranty program, it is in need  
24 of revision at various levels.

25 MS. GAAL: I'd like to begin first

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1 with an overview of the issues. Can you provide  
2 that for us?

3 MS. CAMPBELL: Yes. Well, at the  
4 beginning of the new home warranty process, the  
5 builder is responsible for providing the documents  
6 to the homeowner. Beyond the transfer of these  
7 documents, very little information or guidance is  
8 provided to the homeowner regarding warranty  
9 claims. Many times a homeowner is confused as to  
10 through whom to proceed and how to proceed.

11 MS. GAAL: Are there issues at the  
12 warranty level itself?

13 MS. CAMPBELL: Yes. Homes are  
14 constructed according to BOCA, the Uniform  
15 Construction Code or other standards that are in  
16 effect at the time the home is constructed. The  
17 New Home Warranty Program covers performance  
18 standards. The onus is on the homeowner to  
19 convert those construction code problems to  
20 warranty performance standards. Many homeowners  
21 have incurred substantial costs to hire  
22 professionals just to pursue a warranty claim.

23 MS. GAAL: Can you give us an  
24 overview of the issues, just a general overview of  
25 the issues at the arbitration process level?

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1 MS. CAMPBELL: Yes. If a homeowner  
2 cannot correct a defect at the builder level, they  
3 can file for arbitration through the new home  
4 warranty process. We learned that the arbitration  
5 process does not always provide a level playing  
6 field for the homeowner.

7 MS. GAAL: In general, then, have we  
8 learned that the average homeowner has difficulty  
9 with the process as it now exists?

10 MS. CAMPBELL: Yes. The New Home  
11 Warranty Program has been described to us by  
12 homeowners as almost impossible for the average  
13 homeowner to manage on his own.

14 MS. GAAL: And, Ms. Campbell, will  
15 the problems you discovered in relation to the New  
16 Home Warranty Program be detailed in a future  
17 hearing?

18 MS. CAMPBELL: Yes. This is an  
19 ongoing investigation and details regarding the  
20 warranty issues will be discussed at the next  
21 hearing as well as possible recommendations.

22 MS. GAAL: Those are all the  
23 questions I have.

24 COMMISSIONER MARINELLO: You touched  
25 on several issues. I have a question regarding

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1 this Exhibit 143 talking about that recent  
2 Appellate Court decision.

3 It would appear to me that in light  
4 of that decision the new home warranty issues  
5 would be that much more important given that now  
6 that may be one true area for the homeowners to  
7 look for a solution to the problem. Can you tell  
8 us how the homeowners are disadvantaged during the  
9 warranty process? You said it wasn't a level  
10 playing field. How so?

11 MS. CAMPBELL: In several areas,  
12 which we will get into in detail in the next  
13 hearing, however, there are many small issues that  
14 have tried -- that DCA has tried to address.  
15 However, the program itself needs to be overhauled  
16 at various levels to protect the consumer at that  
17 level. There are many details that I would rather  
18 get into in January.

19 COMMISSIONER MARINELLO: Ms. Sowney,  
20 you talked about the problems and the inspections.  
21 I've heard the term drive-by inspection before.  
22 Can you explain what that is?

23 MS. SOWNEY: Drive-by inspection is  
24 when an inspector actually -- they don't get out  
25 of their car to do the inspection. I think the

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1 term probably would be synonymous with an  
2 inspection not being conducted.

3 COMMISSIONER FLICKER: Investigator  
4 Glassman, could you explain to us what the  
5 Department of Community Affairs Peer Review  
6 Committee is?

7 MR. GLASSMAN: Yes, Commissioner.  
8 The DCA Peer Review Committee was established in  
9 accordance with the Uniform Construction Code.  
10 The committee members are municipal code officials  
11 who are appointed by a DCA Commissioner for a term  
12 of three years. Before a suspension or revocation  
13 of a code official's license, the Peer Review  
14 Committee is presented with testimony and evidence  
15 gathered by DCA. The committee makes  
16 recommendations to DCA for sanctions to be imposed  
17 on code officials, if any. Members of the Peer  
18 Review Committee we spoke to questioned the  
19 effectiveness of the Peer Review Committee.

20 COMMISSIONER FLICKER: How effective  
21 did we find that to be?

22 MR. GLASSMAN: According to the  
23 members of the Peer Review Committee, not very  
24 effective.

25 COMMISSIONER FLICKER: Let me ask

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1           you something else.  If I am a prospective home  
2           buyer, is there any comprehensive list anywhere  
3           that you found that would tell me the number of  
4           complaints filed against a developer or the number  
5           of complaints filed against any municipal official  
6           anywhere?

7                           MR. GLASSMAN:  Not we found or are  
8           aware of.

9                           COMMISSIONER FLICKER:  So that as  
10          a prospective consumer, I have no way to check  
11          in advance as to my builder's reputation in  
12          the community or in the state or even in the  
13          nation?

14                          MR. GLASSMAN:  There is a list on  
15          the DCA website of builders or contractors and  
16          they list the status, but the status is limited to  
17          revoked, suspended or active.  It does not give  
18          you any information other than that.

19                          COMMISSIONER FLICKER:  Is there  
20          anywhere I could look to see if there have been  
21          lawsuits that have been filed against these  
22          builders?

23                          MR. GLASSMAN:  Not that I am aware  
24          of.

25                          COMMISSIONER FLICKER:  Is that an

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1 area that we think should be addressed?

2 MR. GLASSMAN: Absolutely.

3 CHAIRMAN SCHILLER: I just have a  
4 comment, perhaps, that seems to be prevalent in  
5 what you have collectively testified to that  
6 basically the alleged protections and powers that  
7 we now have are inadequate to really rectify the  
8 problems that we have seen both in terms of  
9 construction and also post-construction defects.  
10 Would that be a fair assessment of the current  
11 situation?

12 MS. SOWNEY: That's correct.

13 CHAIRMAN SCHILLER: I have no other  
14 questions.

15 I want to thank the investigators  
16 for your hard work. As everybody knows, this has  
17 been going on for at least 18 months and a lot of  
18 time and effort has been put in to gather the  
19 information. We thank you for presenting it  
20 today.

21 MR. GLASSMAN: Thank you,  
22 Commissioner.

23 MS. GAAL: Next witnesses are  
24 Michael Pierce and Sander Kelman. Is Mr. Pierce  
25 here? I saw him earlier.

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1                   Would both of you gentlemen stand  
2                   and be sworn in by the court reporter?

3                   MICHAEL A. PIERCE and SANDER KELMAN,  
4                   sworn.

5                   MS. GAAL: Thank you. You may be  
6                   seated.

7                   Starting with Mr. Kelman, may we  
8                   have your name and address, please, for the  
9                   record.

10                  MR. KELMAN: Sander Kelman, 1500  
11                  Sawyer Avenue, Manasquan, Wall Township, New  
12                  Jersey.

13                  MS. GAAL: Do you live in a  
14                  particular development?

15                  MR. KELMAN: Yes. I live in the  
16                  Four Seasons at Wall Township community.

17                  MS. GAAL: When did you purchase  
18                  your home?

19                  MR. KELMAN: February of 1999.

20                  MS. GAAL: And what did you pay for  
21                  it?

22                  MR. KELMAN: Just under \$270,000.

23                  MS. GAAL: Who was the builder?

24                  MR. KELMAN: K. Hovnanian.

25                  MS. GAAL: Are you involved at all

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1 with any association of homeowners there?

2 MR. KELMAN: I am currently the  
3 chairman of the Concerned Homeowners of Four  
4 Seasons at Wall which is a voluntary organization  
5 independent of the homeowner's association and its  
6 Board of Trustees.

7 MS. GAAL: And now, Mr. Pierce, may  
8 we have your name, please, for the record?

9 MR. PIERCE: Michael Alan Pierce.

10 MS. GAAL: What is your occupation?

11 MR. PIERCE: I am a Professional  
12 Engineer and Registered Architect and a  
13 Professional Planner here in the State of New  
14 Jersey.

15 MS. GAAL: Do you hold licenses in  
16 those disciplines?

17 MR. PIERCE: Yes, I do.

18 MS. GAAL: Do you hold any other  
19 professional licenses?

20 MR. PIERCE: Not in the State of New  
21 Jersey.

22 MS. GAAL: In other states?

23 MR. PIERCE: I have a professional  
24 engineering license in Pennsylvania.

25 MS. GAAL: Are you self-employed?

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1 MR. PIERCE: Yes, I am.

2 MS. GAAL: And generally what is the  
3 nature of your business?

4 MR. PIERCE: I am a principal  
5 engineer for Pierce Engineering. We do civil,  
6 structural, geotechnical engineering in addition  
7 to architecture.

8 MS. GAAL: Have you been qualified  
9 to testify in court or other legal proceedings as  
10 an expert witness?

11 MR. PIERCE: Yes, I have.

12 MS. GAAL: And in what disciplines?

13 MR. PIERCE: In civil engineering,  
14 structural engineering, geotechnical engineering  
15 and architecture.

16 MS. GAAL: Now, back to Mr. Kelman.  
17 Is Four Seasons at Wall what can commonly be  
18 described as a gated community?

19 MR. KELMAN: Yes, it is.

20 MS. GAAL: And it's an  
21 age-restricted community?

22 MR. KELMAN: Yes. Generally,  
23 everybody there is 55 or over.

24 MS. GAAL: Okay. At some point are  
25 the homeowners of such a community required to

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1 take responsibility for certain aspects of the  
2 developments?

3 MR. KELMAN: Sure. Beyond  
4 responsibility for our individual homes and  
5 grounds, once what's called a transition takes  
6 place whereby the common properties are converted  
7 from the responsibility of the developer to the  
8 homeowner's association, all of those common  
9 responsibilities become the responsibility of the  
10 400 homeowners in the development.

11 MS. GAAL: Would those common  
12 properties include the roads, the storm sewers,  
13 the retention basins, the landscaping, the  
14 retaining walls, things like that?

15 MR. KELMAN: Exactly.

16 MS. GAAL: Has that transition been  
17 completed at Four Seasons at Wall?

18 MR. KELMAN: Not to my knowledge.

19 MS. GAAL: Okay. Are those or some  
20 of those areas that in the past would have  
21 typically come under the purview of a  
22 municipality?

23 MR. KELMAN: That's certainly my  
24 understanding.

25 MS. GAAL: Do you know when some of

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1 the homeowners first noticed what they thought  
2 were some problems at Four Seasons at Wall?

3 MR. KELMAN: Well, we were  
4 discouraged when wandering onto the property while  
5 they were in the process of construction but at  
6 the time of pre-closing walk-through and shortly  
7 thereafter, as we took possession, we began to  
8 become aware of problems with our own homes,  
9 bouncy floors, garages in which small cars can't  
10 fit, debris nailed in between wall board and stud  
11 frames with the wall board bulging out.

12 Early on, it's my understanding,  
13 since my wife and I were both working full time  
14 until recently, but it's my understanding that  
15 members of the Board of Trustees at the time  
16 recognizing that these common responsibilities  
17 would become legal and financial responsibilities  
18 to the homeowners, they began investigating all of  
19 the technical aspects of the development.

20 MS. GAAL: At some point fairly  
21 early on did someone notice some sink holes?

22 MR. KELMAN: Yes, they did.

23 MS. GAAL: And can you tell us a  
24 little bit about the sink holes?

25 MR. KELMAN: Well, some were in the

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1           roadways, some were besides the roadways.  
2           Generally they indicated that something was  
3           failing underneath and that the ground that had  
4           previously supported the surface of the ground was  
5           yielding into a previously open area.

6                         MS. GAAL: I'm going to ask you to  
7           take a look at a couple of exhibits. The first  
8           one is 93D1 and also 93D2. We'll take a look at  
9           93D1 first. And what's depicted in that exhibit?

10                        MR. KELMAN: They look to me to be  
11           sink holes.

12                        MS. GAAL: Okay. And do you  
13           recognize the gentleman that's standing in one of  
14           those sink holes?

15                        MR. KELMAN: I think he's sitting  
16           beside me.

17                        MS. GAAL: The caption reads A New  
18           Sink Hole on Sawyer. Is that one of the streets  
19           in Four Seasons at Wall?

20                        MR. KELMAN: Yes, it's the one I  
21           live on.

22                        MS. GAAL: Are you familiar at all  
23           with this sink hole personally?

24                        MR. KELMAN: Actually, I'm not.

25                        MS. GAAL: Did you have a sink hole

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1 near your home?

2 MR. KELMAN: Well, this is only four  
3 doors away. I believe there may have been a  
4 problem out in the back behind my house.

5 MS. GAAL: And what can you tell us  
6 about that one?

7 MR. KELMAN: Well --

8 MS. GAAL: Did you see it  
9 personally?

10 MR. KELMAN: I don't believe I did.  
11 I remember hearing Mr. Pierce refer to it and say  
12 that it was behind.

13 MS. GAAL: If you take a look at the  
14 second exhibit, 93D2 and, again, are we -- is that  
15 a depiction of more sink holes?

16 MR. KELMAN: Yes, they are.

17 MS. GAAL: And the caption reads  
18 Between 2528 and 2530 Morningstar, that's another  
19 street in the development?

20 MR. KELMAN: Yes, it is.

21 MS. GAAL: If you know, did you or  
22 the homeowners obtain the services of Mr. Pierce  
23 to investigate what was going on with respect to  
24 these sink holes?

25 MR. KELMAN: I was or -- have not

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1           been a member of the Board of Trustees, but it is  
2           certainly my understanding that it was to look  
3           into these and other problems.

4                       MS. GAAL: In other words, you  
5           learned that?

6                       MR. KELMAN: Yes.

7                       MS. GAAL: Mr. Pierce, just to  
8           reiterate this, were you engaged by the Four  
9           Seasons at Wall Homeowner's Association to conduct  
10          engineering evaluations to identify any  
11          construction deficiencies in the development?

12                      MR. PIERCE: Yes, I was, in the year  
13          2000.

14                      MS. GAAL: And, generally speaking,  
15          was your investigation hampered at all by records,  
16          lack of records, anything along that line?

17                      MR. PIERCE: Yes, it was. I had a  
18          number of areas that I was investigating. I did a  
19          small investigation into the common complaints  
20          with the homes which involved the roof trusses.  
21          When I tried to find the proper documentation for  
22          the roof trusses in the Building Department, I was  
23          unable to find the proper drawings. I also  
24          requested information from the township for some  
25          of the engineering infrastructure, various items

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1 that had to do with the storm water system, things  
2 of that nature and I did not find adequate  
3 information.

4 MS. GAAL: Where did you go to try  
5 to find that information?

6 MR. PIERCE: To the township  
7 municipal building.

8 MS. GAAL: In your experience, did  
9 you find it odd that no one had available the  
10 detailed construction drawings for a development  
11 that was so newly constructed?

12 MR. PIERCE: Yes, I found it to be  
13 very unusual.

14 MS. GAAL: Taking a look at -- I  
15 don't know if the photos are still up, but 93D1,  
16 can you explain what you found when you initially  
17 looked at the storm drain problem?

18 MR. PIERCE: I started actually the  
19 first -- the first sink hole I looked at involved  
20 a 48-inch storm water line. This 48-inch line had  
21 fractured and caused the sink hole directly above  
22 it. It was a very large sink hole, approximately  
23 18 to 24 inches deep and about at least five to  
24 six square feet. After that point, I investigated  
25 that particular defect and prepared a report for

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1 the Homeowner's Association. A number of sink  
2 holes appeared after that which I investigated and  
3 from those investigations I started to -- I made  
4 the recommendation that we perform a video  
5 inspection for the storm water system.

6 MS. GAAL: Before you did the video  
7 inspection, did you go into one of the sink holes  
8 like the first one you just mentioned?

9 MR. PIERCE: Well, I actually went  
10 into the storm water conduit which was a 48-inch  
11 high density polyethylene line and I did find the  
12 fracture and also after that inspection, I went to  
13 another line in the community and crawled about  
14 300 feet through the line, identified numerous  
15 defects within that line and it was at that point  
16 that I recommended to the Homeowner's Association  
17 that they engage a video inspection company to do  
18 a proper video inspection for the -- actually, we  
19 started out with a smaller section of the system  
20 and as we found defects, we continued to expand  
21 the scope of the video inspection program.

22 MS. GAAL: Initially, were you able  
23 to see any of those defects fairly readily?

24 MR. PIERCE: Yes, yes, and many of  
25 the defects were located very close to the ends of

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1 the lines so they would have been readily visible  
2 to an inspector if the inspector happened to look  
3 down the line either from a manhole or a storm  
4 water inlet.

5 MS. GAAL: And how are such  
6 inspections ordinarily conducted?

7 MR. PIERCE: Generally, the system  
8 would be subjected to inspection during the  
9 construction process. But upon completion of the  
10 project, an inspector would generally look down,  
11 you would have an inspector located at each end of  
12 a particular line, they would shine spotlights  
13 down the line and there would be a visual  
14 inspection. You could check to see that the line  
15 was clear and that it was properly aligned and  
16 that would typically be the standard inspection.  
17 Certain plastic lines they would have additional  
18 tests to check for deflection. It would actually  
19 involve pulling a mandril through the line.

20 MS. GAAL: With respect to the  
21 inspections where the inspector would just look  
22 down the line, how would an inspector get into the  
23 line, manholes or other openings?

24 MR. PIERCE: Well, depending upon  
25 where the line is, there may be a storm water

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1 inlet or a manhole which would provide access to a  
2 point where the line has a -- it's usually they're  
3 placed every so often for maintenance and also at  
4 places where the lines will take a turn in  
5 direction and the manhole is accessed obviously  
6 from the top, either a manhole lid or actually a  
7 storm water inlet grate. The inspector or worker  
8 would remove the grate and there are supposed to  
9 be manhole runs which would facilitate entering  
10 the structure.

11 MS. GAAL: Now, were you able to see  
12 problems -- I just want to clarify this -- you  
13 were able to see problems without actually going  
14 into the system?

15 MR. PIERCE: That is correct. Many  
16 of the defects, particularly with the inlets or  
17 the catch basins, you can actually see from the  
18 outside of the structure.

19 MS. GAAL: Ultimately, how much of  
20 that system was videotaped?

21 MR. PIERCE: The majority of the  
22 system was videotaped by our contractor.

23 MS. GAAL: And can you tell us  
24 approximately how many linear feet are involved?

25 MR. PIERCE: It's approximately

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1 25,000 linear feet of storm water lines. Of that,  
2 approximately 15,000 feet is a high-density  
3 polyethylene plastic line.

4 MS. GAAL: We're going to show you a  
5 small excerpt but before we do that, I'd like to  
6 have you describe for us what you found in that  
7 drain system.

8 MR. PIERCE: We found a number of  
9 defects. The defects were -- some of the defects  
10 were similar to both the reinforced concrete pipes  
11 that were used as well as the high-density  
12 polyethylene. That would be the plastic pipe. We  
13 found improper joining practices, we found both in  
14 the lines -- both types of pipes had significant  
15 levels of debris located within the line, not just  
16 silt and soil but we found large blocks of  
17 construction debris, bricks, manhole blocks. The  
18 other types of defects, we saw poor construction  
19 for the actual inlets themselves. We saw open  
20 joints on the lines, fractured pipes, cracked  
21 pipes, the plastic pipe, the high-density  
22 polyethylene pipe, we found excessive deflection  
23 and in some areas we had found the pipe had  
24 actually been collapsed.

25 MS. GAAL: Now, I'm going to -- we

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1 have a small excerpt of that video. It's a  
2 composite and I think the best way to approach it  
3 is we'll play each little piece of it and I'll  
4 just ask you to tell us what we've just seen.

5 MR. PIERCE: This is a 24-by-36 inch  
6 horizontal elliptical concrete pipe. As the  
7 camera moves into it, you'll notice that there is  
8 a plume of soil and water coming through the first  
9 joint. This indicates that this joint was  
10 improperly sealed. Significance of this defect is  
11 that soil is coming in from the soil that's above  
12 the pipe or alongside the pipe and it could allow  
13 for a sink hole to form. In this particular line,  
14 there are numerous utilities located over -- in  
15 addition to a roadway, there are a number of  
16 utilities located over this pipe so as the soil  
17 moves into the pipe, it can cause subsidence and  
18 settlement.

19 This is actually a 15-inch  
20 high-density polyethylene line that is located at  
21 the rear of Mr. Kelman's home. As the camera  
22 moves in, as you can see, we're very close to the  
23 end where the storm drain was. You can see this  
24 projection at the top wall of the pipe. It looks  
25 like a tonsil. This is actually a collapsed

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1 section of pipe. We were unable to get the camera  
2 beyond this point so in order to do a proper  
3 inspection for the line, we had to pull the camera  
4 out, remove it to the other inlet structure and  
5 then go in the opposite direction back to this  
6 defect.

7 MS. GAAL: Did you stop -- I wanted  
8 to just stop it on that tonsil as you described  
9 it. It's okay.

10 MR. PIERCE: Now, we're only, as you  
11 can see the -- there is a counter on the screen.  
12 That is the approximate location of the camera  
13 within the line which is indicating I believe  
14 somewhere around 14 feet. This type of defect  
15 would have been readily visible from the storm  
16 water inlet if an inspector had properly lamped  
17 the line which would have been the procedure, the  
18 term for the procedure that I described before,  
19 shining a spotlight down the line.

20 MS. GAAL: Just so we're clear, in  
21 other words, an inspector did not need to do a  
22 videotape of the entire system to see something  
23 like this?

24 MR. PIERCE: That is correct.

25 MS. GAAL: Just going, shine a lamp?

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1 MR. PIERCE: Correct.

2 MS. GAAL: Okay. Would you  
3 continue?

4 MR. PIERCE: As I mentioned before,  
5 the camera was unable to pass this defect. We  
6 did -- we were able to nose the actual end of the  
7 camera beyond the defect and you can see where the  
8 pipe was actually fractured and the soil was  
9 exposed. This is a double wall pipe. Both walls  
10 of the pipe were fractured. The camera is now  
11 showing the fractured section of pipe and that  
12 small cut would have been the outer wall of the  
13 pipe and you can actually see the soil through  
14 that slit.

15 MS. GAAL: I see movement. Is that  
16 air?

17 MR. PIERCE: There is surprisingly  
18 not air movement in that line once you open those  
19 grates up.

20 MS. GAAL: What is this?

21 MR. PIERCE: This is another  
22 fracture on a -- I believe this is an 18-inch  
23 high-density polyethylene line. This is probably  
24 either at a fracture -- I didn't see this section.  
25 This is an abridged tape from our video inspection

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1 tape, so I didn't see the section leading up, but  
2 what's significant with this picture is you can  
3 see the camera is located at six feet and you can  
4 obviously see a problem at this connection and you  
5 can see what appears to be debris coming in from  
6 the outside of the pipe. At a distance of six  
7 feet and this, I believe, is an 18-inch diameter  
8 plastic line, if an inspector had lamped this  
9 line, I believe this defect would have been  
10 readily visible.

11 We also found significant amounts of  
12 debris in these lines which also would have been  
13 readily visible to the inspector and that was part  
14 of the construction specifications that all  
15 construction debris would be flushed through the  
16 lines upon completion of the system. We found  
17 that not to be true.

18 This is a portion of a fractured  
19 concrete pipe, reinforced concrete pipe, it's a  
20 15-inch diameter and in this particular case, the  
21 contractor had a fractured section of pipe and he  
22 used Styrofoam to fill in the fractured portion of  
23 the concrete.

24 Those wires there are the actual  
25 wire reinforcement for the concrete pipe. They

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1 obviously are going to be subject to corrosion and  
2 failure because there is no concrete protection.

3 MS. GAAL: I assume Styrofoam is not  
4 a preferred method of filling cracks?

5 MR. PIERCE: It is not.

6 That happens to be at a connection,  
7 a section connection. The concrete pipe is  
8 delivered in eight foot lengths and this happens  
9 to be at a bell spigot end of the pipe.

10 This is an excessively wide joint in  
11 a high-density polyethylene line and you could see  
12 from the counter at the bottom of the screen 7.6  
13 feet. Again, this is only seven feet in from a  
14 man way. This appears to be a very wide joint and  
15 we also found in the system that there were a  
16 number of joints that were manufactured on site.  
17 Generally, this plastic pipe is supplied with a  
18 manufactured end similar to a bell and spigot end.  
19 We found on this project that in certain cases the  
20 storm water lines were made up of short pieces and  
21 they just butted the pieces together in the field.  
22 We found that many of these joints were leaking  
23 and infiltrating soil.

24 MS. GAAL: In some of the scenes we  
25 see ponding in the lines. Can you tell us

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1 something about that?

2 MR. PIERCE: If the lines are not --  
3 the lines are supposed to be properly aligned at a  
4 uniform grade. If the alignment is not correct,  
5 if the pitch of the line is not uniform, you can  
6 actually allow water to back up within the line.  
7 Within -- this is a photograph of a high-density  
8 polyethylene line and you can see the significant  
9 debris in that line. The camera is at 18 feet  
10 from the line but this particular line, the debris  
11 went all the way to the man way so it would have  
12 been readily visible by an inspector with a hand  
13 lamp, a flashlight. This is also an 18-inch  
14 high-density polyethylene line and in this  
15 particular case, we found a high-pressure gas  
16 service lateral going to a residence. It had been  
17 cut through the top of the pipe. That's what is  
18 crossing from approximately 1:00 to 11:00 in the  
19 pipe. This is a high-pressure natural gas line.

20 What is significant about this  
21 defect is when a contractor were to check the line  
22 out to clean the debris, the device that he uses  
23 to run through the pipe could have fractured this  
24 gas line which would have filled the storm water  
25 line with natural gas, high-pressure natural gas

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1 and we could have had a catastrophe. Fortunately,  
2 we did the video inspection, we identified this  
3 defect, notified the gas company and they made a  
4 repair of the -- they moved the gas line and  
5 replaced this section of pipe.

6 MS. GAAL: Are we finished? Okay.  
7 One question about manholes. There are manholes  
8 throughout the system?

9 MR. PIERCE: Either manholes or  
10 access ways either in the form of a manhole with a  
11 lid or a storm water inlet where there is a grate  
12 for the storm water to flow through the system.

13 MS. GAAL: What did you notice about  
14 some of the rungs at the manholes?

15 MR. PIERCE: Well, the manhole rungs  
16 were missing in many of the structures. The  
17 significance with that, if you have to climb down  
18 into the manhole, say, for maintenance, you have  
19 no way to safely get to the bottom of the manhole.

20 MS. GAAL: What does that one single  
21 factor tell you or suggest concerning whether or  
22 not inspections were done?

23 MR. PIERCE: The lack of manhole  
24 rungs tells me that proper inspections were not  
25 done on this storm water system.

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1 MS. GAAL: Because if someone had  
2 gone down there, they would have seen there were  
3 no rungs?

4 MR. PIERCE: Exactly. All the  
5 inspector would have had to do was either look  
6 through the storm water grate or if it happened to  
7 be a manhole lid, lift the manhole lid and it  
8 would have been very apparent without even  
9 climbing into the structure that manhole rungs  
10 were not installed.

11 MS. GAAL: Are they required?

12 MR. PIERCE: They are shown on the  
13 design documents and they are standard industry  
14 practice.

15 MS. GAAL: Mr. Kelman, is the storm  
16 drain system one of the aspects of the development  
17 that the homeowners are required to ultimately  
18 take control over?

19 MR. KELMAN: Absolutely.

20 MS. GAAL: And has the Homeowner's  
21 Association received an estimate on the cost of  
22 repairing this system?

23 MR. KELMAN: To my knowledge, we  
24 have not yet. It is still under review by  
25 consultants, not only viewing on footage but also

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1 the contingent operations that need to be dealt  
2 with with nearby utilities in order to repair.

3 MS. GAAL: Do you have any idea what  
4 the magnitude of the price might be?

5 MR. KELMAN: No.

6 MS. GAAL: Do you know, Mr. Kelman,  
7 did you notice any deficiencies related to the  
8 installation of roof trusses in the homes?

9 MR. KELMAN: Yes. Early on these  
10 were investigated and it was found that there were  
11 missing members, missing braces, some, as I  
12 understand, were not properly secured to the  
13 vertical framing.

14 MS. GAAL: Do you know how many of  
15 the homes were affected?

16 MR. KELMAN: Virtually all of the  
17 homes have had modifications made to the roof  
18 trusses involving both the developer and the  
19 township.

20 MS. GAAL: Was yours affected?

21 MR. KELMAN: Modifications were made  
22 to my trusses, yes.

23 MS. GAAL: Do you know if all of the  
24 homes had been issued COs?

25 MR. KELMAN: Certainly.

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1 MS. GAAL: Okay. And to date, have  
2 the truss deficiencies been corrected, if you  
3 know?

4 MR. KELMAN: As I stated,  
5 modifications have been made to virtually all of  
6 the homes. I think there may still be some in  
7 which they were not made. Reputable professionals  
8 have certified that appropriate modifications were  
9 made, but I must say I'm not really in a position  
10 to say they've been corrected.

11 MS. GAAL: Mr. Pierce, with respect  
12 to the storm drain system, do you have any opinion  
13 or have you gotten the opinion of any other  
14 experts as to its overall condition at this point?

15 MR. PIERCE: I'm working with  
16 another firm that is specializing in the  
17 investigation for the storm water system. We are  
18 in the process of evaluating each and every line  
19 in the system and we are deciding what the best  
20 approach would be to repair the lines. In some  
21 cases, the lines will have to be removed and  
22 replaced. In other cases, we may be able to  
23 perform the repairs within the line.

24 MS. GAAL: Assuming something had to  
25 be removed and replaced, what are the problems

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1 with doing that today?

2 MR. PIERCE: The problem now is that  
3 there are other aspects of construction installed  
4 above the line. In many cases you're going to  
5 have curbing, sidewalks, asphalt pavement for the  
6 roadways, utilities, sanitary lines. This  
7 community has underground electric service. It  
8 has gas service, telephone service, cable TV. You  
9 have to deal with all these utilities that are now  
10 in many cases crossing above the top of the line.

11 MS. GAAL: I don't know. Have you  
12 seen any estimates of the costs of repairs at this  
13 point?

14 MR. PIERCE: It's going to be  
15 excessive. Actually, it will probably cost more  
16 than the original cost of construction to put the  
17 storm water system in because of all these other  
18 complications.

19 MS. GAAL: And by excessive, are we  
20 talking millions?

21 MR. PIERCE: Yes.

22 MS. GAAL: Did you also inspect the  
23 Belgian block curbing throughout the development?

24 MR. PIERCE: Yes, I did.

25 MS. GAAL: In your opinion, does it

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1 meet the Uniform Construction Code guidelines?

2 MR. PIERCE: Well, the block curbing  
3 is really controlled by the design specifications  
4 by the design engineer as well as the Township of  
5 Wall has an engineering standard for Belgian block  
6 curbing. In my opinion, the Belgian block curbing  
7 does not comply with either the design plans or  
8 the Wall Township standards.

9 MS. GAAL: Generally speaking, what  
10 kind of deficiencies did you see there?

11 MR. PIERCE: We saw a number of  
12 deficiencies. The most prominent deficiency is  
13 excessive joint width. The Belgian blocks have a  
14 mortar filling between the blocks. We found  
15 excessive joint width. It's supposed to be  
16 generally no more than three-quarters of an inch  
17 and in many cases we actually have some joints  
18 that are approaching six inches. The problem with  
19 the wide joints is a maintenance issue. The  
20 mortar will have a greater tendency to squall.

21 MS. GAAL: Which means what?

22 MR. PIERCE: Which means fall out  
23 from between the blocks.

24 MS. GAAL: Did you also inspect the  
25 concrete sidewalks and aprons throughout the

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1 development?

2 MR. PIERCE: I did.

3 MS. GAAL: And what deficiencies did  
4 you find there?

5 MR. PIERCE: I found a number of  
6 deficiencies. The sidewalk, aside from poor  
7 workmanship, I found problems with the contraction  
8 joints which would help -- it would basically  
9 allow the sidewalk to be a serviceable walk. If  
10 there is ever -- if a crack ever forms in the  
11 sidewalk, it would be concealed by this  
12 contraction joint. We found that they were  
13 deficient and essentially when the walk split, it  
14 did not follow the weakened plane of the  
15 contraction joint. We also found that the aprons,  
16 the sidewalk aprons are -- it's a thickened  
17 concrete sidewalk that's also reinforced with  
18 welded wire fabric and this would be in the areas  
19 where the driveways cross the sidewalk. We found  
20 in essentially all of these reinforced concrete  
21 aprons that they were deficient when compared to  
22 either the design plans or the Township standards.

23 MS. GAAL: Mr. Kelman, did you as a  
24 homeowner or did the other homeowners have  
25 problems with their sidewalks and driveway aprons?

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1 MR. KELMAN: Yes. They tended to  
2 sink, crack depending on whether it was near the  
3 sidewalk or near the garage. My understanding is  
4 that the foundation beneath the surface was not  
5 what was called for in the plans and that they  
6 simply couldn't withstand the passage of vehicles  
7 over it.

8 MS. GAAL: They couldn't withstand  
9 the cars coming into the driveways? You're  
10 nodding. You have to answer.

11 MR. KELMAN: Yes. I'm sorry.

12 MS. GAAL: Mr. Kelman, did you  
13 notice anything unusual or deficiencies in the  
14 roadway pavement within the development?

15 MR. KELMAN: Well, I did not notice  
16 other than eruptions which have been noted, but my  
17 understanding is that the materials placed beneath  
18 the asphalt were substandard and in some cases  
19 materials that were not felt to be appropriate.

20 MS. GAAL: Now, when you say  
21 eruptions, can you tell us what you're talking  
22 about?

23 MR. KELMAN: Yes. There are many,  
24 and I mean probably throughout the development  
25 hundreds of literally eruptions in the pavement

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1 where you can see it looks like a cherry bomb went  
2 off underneath the asphalt. There's an eruption.

3 MS. GAAL: Like a little volcano  
4 type --

5 MR. KELMAN: Well, yeah. I mean  
6 it's not a cone like a volcano, but you can see  
7 the same kind of pressure that would create a  
8 volcano.

9 MS. GAAL: And these are in the  
10 streets?

11 MR. KELMAN: Yes.

12 MS. GAAL: And you say there are at  
13 least literally hundreds?

14 MR. KELMAN: I would say so. I  
15 defer to Mr. Pierce, but I believe so.

16 MS. GAAL: And are they still  
17 erupting, so to speak. Are they still appearing,  
18 if you know?

19 MR. KELMAN: I don't really know.  
20 These also occur in the private driveways.

21 MS. GAAL: Okay. Mr. Pierce, I'd  
22 like you to take a look at 93A2, put that up on  
23 the screen. Do you see that?

24 MR. PIERCE: Yes.

25 MS. GAAL: And what is depicted

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1           there?

2                           MR. PIERCE:  That is an exploratory  
3           opening that we made in the roadway system.  We  
4           were investigating these eruptions and we did a  
5           program two years ago, my firm did 15 road  
6           openings at these locations of eruptions.  We  
7           wanted to investigate, number one, the asphalt  
8           thickness that was provided, the asphalt concrete  
9           thickness.  We also wanted to investigate the  
10          source of what we believed to be the cause of the  
11          eruptions.  We've identified the cause of the  
12          eruptions to be a problem with the granular base  
13          that's just below the asphalt concrete.  This is a  
14          photograph showing one of these test openings.

15                         MS. GAAL:  If we take a look at just  
16          the lower photograph, am I right that the square  
17          that was removed from the right-hand side of the  
18          asphalt was turned over in the left side picture?

19                         MR. PIERCE:  That's correct.

20                         MS. GAAL:  And in the right picture  
21          there are three arrows pointing to what looks like  
22          a little sort of mound in the middle?

23                         MR. PIERCE:  Correct.  It's a bulge  
24          in the granular base material.  We found that  
25          there was a material that was expanding in the

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1 granular base and that was causing the pressure  
2 which would actually lift four inches of asphalt  
3 so that the defect was visibly apparent on the  
4 surface.

5 MS. GAAL: I just want to make sure  
6 we understand, you're saying that there's  
7 something that goes on underneath that asphalt and  
8 lifts four inches of asphalt?

9 MR. PIERCE: That is correct.

10 MS. GAAL: Mr. Kelman said that  
11 there were perhaps hundreds of these eruptions  
12 throughout the development. Would you agree with  
13 that number?

14 MR. PIERCE: Yes, yes. In fact,  
15 they're more in the thousands.

16 MS. GAAL: Thousands?

17 MR. PIERCE: Yes.

18 MS. GAAL: Do you know if these  
19 eruptions are still occurring?

20 MR. PIERCE: Yes, they are.

21 MS. GAAL: Are they all still there,  
22 so to speak? Has there been any corrective action  
23 taken?

24 MR. PIERCE: No. Other than the  
25 ones we opened up for investigation, we patched

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1 with new asphalt.

2 MS. GAAL: Now, you said some tests  
3 were run on the sub-base?

4 MR. PIERCE: Yes, that's correct.

5 MS. GAAL: And can you tell us in  
6 summary what the findings revealed?

7 MR. PIERCE: Well, we were supposed  
8 to have under the design plans and the industry  
9 standard a granular base material which would be  
10 known as a dense graded aggregate. There is a New  
11 Jersey DOT standard for this material. It's  
12 generally a crushed stone, natural product with  
13 various sizes of particles. The Department of  
14 Transportation has allowed the substitution of a  
15 recycled concrete aggregate in its place.  
16 However, this material must meet certain  
17 composition requirements and certain gradation  
18 requirements.

19 On this particular project, we found  
20 that all the granular base appears to be a  
21 recycled material. It was not -- it did not meet  
22 the DOT standards for the recycled concrete  
23 aggregate that would be applied to a dense graded  
24 aggregate. I did a number of tests and I also had  
25 another engineering firm conduct similar tests.

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1 All of the samples we analyzed failed the New  
2 Jersey DOT standards for this dense graded  
3 aggregate.

4 MS. GAAL: Do you know if the  
5 municipality did any tests?

6 MR. PIERCE: When we first  
7 started -- when Pierce Engineering started their  
8 investigation, we invited representatives from the  
9 developer as well as the township to observe our  
10 testing. We opened it and we did take some  
11 samples out and we allowed the township to take  
12 samples for testing.

13 MS. GAAL: And do you know what  
14 their results were?

15 MR. PIERCE: They gave us sample  
16 test reports that were not done properly. They  
17 did not properly analyze for the right standards.

18 MS. GAAL: Now, with respect to the  
19 eruption that we've been talking about, these  
20 little eruptions, can you explain that to us  
21 without getting too technical as to what you think  
22 is going on there?

23 MR. PIERCE: Well, this recycled  
24 concrete aggregate is supposed to be 90 percent by  
25 weight Portland cement derived. We found that

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1           it's -- that's one of the problems is that it's  
2           not just Portland cement concrete. We found other  
3           materials and we found that what was causing these  
4           eruptions appeared to be a reactive material.  
5           We've had a number of commercial labs analyze it  
6           and we've also taken it to two universities,  
7           Rutgers University and Lehigh University, the  
8           Department of Material Science. They have been  
9           doing tests -- actually, they're still working on  
10          tests now. They have identified it as a product  
11          similar to an industrial waste product.

12                         MS. GAAL: Not something that would  
13          naturally occur in the ground?

14                         MR. PIERCE: That's correct, it's  
15          not natural and appears to be man-made and we are  
16          classifying it as an industrial waste product.

17                         MS. GAAL: Mr. Kelman, are you  
18          familiar with any electrical problems in the  
19          development?

20                         MR. KELMAN: Yes, there were a  
21          number of problems uncovered early on. First,  
22          there was general concern about the use of  
23          aluminum wiring throughout the homes, but, in  
24          particular, there was no antioxidant material  
25          applied to the aluminum wiring which is really my

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1 understanding is required if you're going to use  
2 that.

3 Second, there were problems observed  
4 in the electrical panels. The service boxes in  
5 each of the homes and the grounding rods in some  
6 cases were missing, in some cases were short, in  
7 some cases were unconnected.

8 MS. GAAL: Now, prior to all these  
9 discoveries, had the homes been inspected? Had  
10 they received electrical inspections?

11 MR. KELMAN: Yes, they had.

12 MS. GAAL: And were COs issued?

13 MR. KELMAN: Yes.

14 MS. GAAL: And these discoveries  
15 occurred after the COs were issued?

16 MR. KELMAN: That's correct.

17 MS. GAAL: Mr. Kelman, have some  
18 homeowners at Four Seasons at Wall experienced  
19 snow in their homes?

20 MR. KELMAN: Yes. Last February,  
21 there was a fairly significant snowstorm. People  
22 began reporting that they had snow in their attic.  
23 An announcement was made if you had snow in the  
24 attic, please report it to the manager for the  
25 Homeowner's Association. Eighty people reported

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1           having had snow infiltrate the attic space of  
2           their homes. That varied from a dusting to one  
3           homeowner who removed 36 buckets of snow.

4                       MS. GAAL: Was any solution proposed  
5           by the builder?

6                       MR. KELMAN: After receiving some  
7           inquiries by homeowners, the builder sent a two  
8           page letter to all of the homeowners -- each of  
9           the homeowners in which the warranty official  
10          indicated that there were no problems with design,  
11          there were no problems with installation; this  
12          was, and I'm quoting, an act of nature. He  
13          recommended that if people still had concerns,  
14          they might consider laying plastic sheeting over  
15          the insulation in the attic space to provide some  
16          protection in the future.

17                      MS. GAAL: Mr. Pierce, did you  
18          recently notify the homeowners of a public health  
19          hazard that existed as a result of a fracture in  
20          the sanitary sewer line at Four Seasons at Wall?

21                      MR. PIERCE: Yes, I did.

22                      MS. GAAL: And how was it  
23          discovered?

24                      MR. PIERCE: Over the winter or  
25          early spring we noticed the growth of algae at one

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1 of the storm water outlet lines. We took -- this  
2 line had been prone to infiltration. It happens  
3 to be a line -- actually, the line that we showed  
4 before, the horizontal elliptical line is  
5 connecting two storm water basins in the community  
6 and we noticed that there was always a heavy  
7 discharge of infiltration water. This would be  
8 water that's coming in through the joints of the  
9 concrete pipe. We noticed a growth of algae on  
10 the discharge of this line so that told us that  
11 there was something feeding the algae growth and  
12 in the wintertime the ambient air temperatures are  
13 fairly low so you don't expect to see green algae  
14 growth coming out of the storm water line. We  
15 took a sample of the water or I should say we had  
16 a certified New Jersey state testing laboratory  
17 take a sample. They analyzed it and they found  
18 fecal coliform in the sample. Upon receiving that  
19 report, we scheduled the video inspection company  
20 and we ran a video inspection of the sanitary line  
21 and we found a fracture in the line very close to  
22 one of the manholes -- in fact, within four feet  
23 of a manhole.

24 MS. GAAL: Was it something that  
25 would have been evident had someone looked in the

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1 manhole?

2 MR. PIERCE: Absolutely. We also  
3 were able to receive under the Freedom of  
4 Information Act a test report for this line which  
5 indicated that apparently the line was supposedly  
6 inspected and approved.

7 MS. GAAL: Mr. Kelman, have you  
8 noticed any areas around the development where  
9 oily slicks have appeared?

10 MR. KELMAN: Yes, on the sidewalks,  
11 outside my home.

12 MS. GAAL: Okay. I'd like exhibit  
13 93C4 put up. Do you see that exhibit?

14 MR. KELMAN: Yes, I do.

15 MS. GAAL: Is this typical of what  
16 these oily slicks look like?

17 MR. KELMAN: Well, I can imagine  
18 that what was being photographed here is the same  
19 as what I see on the sidewalk, but I can't really  
20 confirm for you that it is the same thing. I'm  
21 not being picky.

22 MS. GAAL: No, no. What do you see  
23 on the sidewalk by your home?

24 MR. KELMAN: Well, water draining  
25 across the sidewalk from the lawn virtually every

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1 day even if there's been no rainfall. I mean we  
2 do have sprinklers, but the water is generally  
3 very -- well, appears to have petroleum compounds  
4 in it, the usual kind of rainbow effect. Looks  
5 actually more viscous than water. That's what I  
6 see.

7 MS. GAAL: I just want to make sure  
8 I hear you correctly. It's there every day even  
9 if it isn't raining, or commonly found?

10 MR. KELMAN: Commonly found. I  
11 won't say every day, but certainly it doesn't  
12 depend on rain. The sprinkler and another issue  
13 which you may or may not get into, the drainage is  
14 a serious problem, so there is water running  
15 across whether there's rain or not.

16 MS. GAAL: Mr. Pierce, looking at  
17 that exhibit, can you identify what that is?

18 MR. PIERCE: Yes. This is an  
19 example of this sheen that we've noticed  
20 throughout the community. I've identified at  
21 least eight areas where this -- we've had this  
22 occurrence. It's typically related to the soil  
23 moisture level. Obviously, with higher rainfall  
24 and/or an increased irrigation, we will find this  
25 occurring throughout the community and at various

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1 locations.

2 MS. GAAL: Did you attempt to find  
3 out what it is?

4 MR. PIERCE: We did. We hired an  
5 environmental engineering firm. They took samples  
6 from the surface in these areas where we noticed  
7 this problem. They had it tested at a state lab  
8 and we identified a number of organic  
9 contaminants.

10 MS. GAAL: Can you give us a little  
11 more information about what they are?

12 MR. PIERCE: Well, they specifically  
13 identified a number of contaminants that are  
14 petroleum-related. Some of the specific compounds  
15 I believe were naphthalene, toluene, acetone, some  
16 very long compound names. They also identified  
17 the contaminants that the lab came back, they  
18 couldn't specifically identify the exact compound,  
19 but they classified it as an organic contaminant  
20 and these levels exceeded the state water quality  
21 criteria. We also identified MTPE which is an  
22 additive that's placed in gasoline, methyl  
23 tertiary butyl ethyl I believe is the compound.  
24 We identified that in a ground water sample that  
25 was taken from a well. We had them do a set, a

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1 small well point to extract the water sample from  
2 the ground water and they identified this compound  
3 in that sample.

4 MS. GAAL: Is this information  
5 something that has only recently been learned?

6 MR. PIERCE: It's an ongoing  
7 investigation. They've just completed their  
8 preliminary report. There had been an  
9 environmental cleanup on this site and at this  
10 point we are going to the Department of  
11 Environmental Protection and it's an ongoing  
12 investigation.

13 MS. GAAL: Okay. We've talked about  
14 a number of matters here today, Mr. Pierce. Did  
15 you find additional construction deficiencies  
16 throughout the development that we haven't focused  
17 on here today?

18 MR. PIERCE: There are deficiencies  
19 with the landscaping. The trees that were  
20 supplied, the landscaping plan that was prepared  
21 for the community was not followed by the  
22 developer. There were changes in -- aside from  
23 tree locations, the size of the trees installed,  
24 the species of the trees installed did not meet  
25 the original plan. We found problems with the

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1 actual installation practices, the trees were not  
2 installed according to the landscape architect's  
3 recommendations. We also have been finding  
4 problems with the turf. We found that the soil,  
5 the topsoil was not installed in accordance with  
6 the design plans.

7 MS. GAAL: Mr. Kelman, when we first  
8 started your testimony, you made reference to  
9 people having problems with garages. Do you  
10 personally have a problem with your garage?

11 MR. KELMAN: Yes, the problem being  
12 that a relatively small car will not fit in it.  
13 My car is a Honda Accord which is certainly not a  
14 long boat. My wife has a Honda Civic Hybrid which  
15 is an even smaller car which also does not fit.

16 Briefly, the model home I have --  
17 there are five models in Four Seasons. The model  
18 I have is the Danbury. I have a basement.  
19 Basements are relatively infrequent at the Four  
20 Seasons at Wall. The depth of the garage in a  
21 Danbury without a basement is 19 feet from the  
22 inside of the door to the far wall. In my garage,  
23 it is 18 feet and there is a three tread stairway  
24 protruding three feet out into the garage toward  
25 the door. Therefore, when I attempt to park a 15

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1 foot car which is not a long car in there, the  
2 bumper rests over the second step of the stairway.

3 MS. GAAL: They say a picture is  
4 worth a thousand words. Could we have 221? Can  
5 you see that?

6 MR. KELMAN: Yes, I do.

7 MS. GAAL: And what is it?

8 MR. KELMAN: This is my car, the  
9 Honda Accord I mentioned. You can see that the  
10 bumper is up over the second stair tread and that  
11 basically there's no access to the interior of the  
12 house once you've driven the car in and parked.  
13 Therefore, it is unusable as a garage.

14 MS. GAAL: Mr. Pierce, based on your  
15 professional opinion and your assessment of this  
16 particular development and based on all of your  
17 background and experience, do you feel adequate  
18 inspections were done during the construction of  
19 Four Seasons at Wall?

20 MR. PIERCE: No, adequate  
21 inspections were not done in the development.

22 MS. GAAL: Would that apply to both  
23 construction code and code inspection, also?

24 MR. PIERCE: That is correct.

25 MS. GAAL: And do either of you have

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1 any estimate of cost to correct deficiencies that  
2 you can give us today other than what we've  
3 already said?

4 MR. PIERCE: We're in the process of  
5 evaluating these costs right now. We have a  
6 number of experts that are specializing in the  
7 various areas. We have a pipeline expert, we have  
8 an expert working on the roadways. We don't have  
9 our numbers completed yet.

10 MS. GAAL: Okay. Can either of you  
11 give me any estimate of how much money the  
12 Homeowner's Association has expended to date to  
13 study and identify these deficiencies?

14 MR. KELMAN: My understanding is  
15 that through the end of September of this year,  
16 130,000 was spent, but as Mr. Pierce has been  
17 indicating, we are still getting reports that  
18 involve some tens of thousands of dollars.

19 MS. GAAL: That's all I have, Mr.  
20 Chairman.

21 CHAIRMAN SCHILLER: We're running  
22 very late. We didn't want to interrupt that saga  
23 because it's more than interesting.

24 I'd like to know, Mr. Pierce, has  
25 any of this material been shown to the local

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1 building inspectors?

2 MR. PIERCE: When I first started  
3 discovering the deficiencies and the defects on  
4 the site, I brought it to the attention of the  
5 Wall Township officials.

6 CHAIRMAN SCHILLER: And when was  
7 that?

8 MR. PIERCE: In the end of the year  
9 2000, beginning of 2001.

10 CHAIRMAN SCHILLER: And have you  
11 brought it to the attention of the Hovnanian  
12 people, too?

13 MR. PIERCE: Yes.

14 CHAIRMAN SCHILLER: And have they  
15 had the advantage of seeing the videotapes of the  
16 storm sewer system?

17 MR. PIERCE: Yes, they have.

18 CHAIRMAN SCHILLER: And when were  
19 they shown that?

20 MR. PIERCE: At least a year and a  
21 half ago.

22 CHAIRMAN SCHILLER: And what has  
23 been done, to your knowledge, by either one of  
24 these two parties?

25 MR. PIERCE: The developer made a

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1           few repairs at certain locations in the system  
2           where there were collapses or major defects, where  
3           there was a visible sink hole and an immediate  
4           danger to the community.

5                         CHAIRMAN SCHILLER:  But as to the  
6           rest of these if we want to call them not too  
7           hidden defects, was there any addressing of the  
8           costs involved with repairing the storm sewers?

9                         MR. PIERCE:  We're evaluating that  
10          at this point.

11                        CHAIRMAN SCHILLER:  I'm not talking  
12          about your evaluation.  I'm talking about their  
13          response.

14                        MR. PIERCE:  They have not responded  
15          to our concerns and the Homeowner's Association  
16          was forced by the developer to file suit against  
17          the developer.

18                        CHAIRMAN SCHILLER:  So technically  
19          it's in suit right now?

20                        MR. PIERCE:  Correct.

21                        CHAIRMAN SCHILLER:  What about the  
22          building inspectors and the inspection system in  
23          the town?

24                        MR. PIERCE:  We've certainly tried  
25          to get information that we needed to do our job.

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1 We were not successful in all cases. They have --  
2 supposedly, the developer has been making  
3 corrections to -- or repairs to the trusses and I  
4 believe the local construction officials are  
5 supposed to be monitoring that.

6 CHAIRMAN SCHILLER: Did you get any  
7 response from the local officials when they saw  
8 this as to an explanation of why they didn't see  
9 it beforehand?

10 MR. PIERCE: I haven't had too much  
11 cooperation from the Wall Township officials.  
12 When I tried to find the documentation in the  
13 Building Department, a lot of it was not in place  
14 and with the Municipal Engineer, I tried to find a  
15 number of documents which I felt were needed to  
16 build this community such as specifications for  
17 the high-density polyethylene pipe. The  
18 high-density polyethylene pipe was listed on the  
19 design plans as an acceptable material, but yet  
20 there were no specifications filed for the  
21 contractor to follow when they installed that  
22 pipe.

23 I asked the -- when I was inspecting  
24 it, I wanted to see what the instructions were to  
25 the contractor and I inquired of the Municipal

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1 Engineer to see the specs for the HDPE pipe and to  
2 date, we have not received any and the  
3 specifications that I have a copy of for the  
4 development do not include any reference to  
5 high-density polyethylene pipe.

6 We also asked for information for  
7 retaining walls. There are a number of masonry  
8 retaining walls on the project. In order for us  
9 to do a proper inspection, we would like to see  
10 the design calculations and the plans for the  
11 walls. We made a request of Wall Township for a  
12 copy of these plans and, to date, we have not  
13 received anything.

14 CHAIRMAN SCHILLER: Would you say  
15 that is because they don't have them or is it  
16 because they just refuse to cooperate?

17 MR. PIERCE: I don't know. All I  
18 know is we were not able to obtain these necessary  
19 documents. I certainly hope that these walls were  
20 constructed in accordance with an engineer set of  
21 plans.

22 COMMISSIONER MARINELLO: Mr. Pierce,  
23 did you inspect the trusses yourself?

24 MR. PIERCE: I inspected -- the  
25 Homeowner's Association had me inspect -- asked me

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1 to inspect a number of homes because they felt  
2 there was a common problem with the trusses. I  
3 inspected roughly 10 percent of the community  
4 which was around 40 homes. There are 400 homes in  
5 the community. I found significant structural  
6 defects in all 40 homes.

7 Another problem I had, I could not  
8 find the proper truss plans for all the homes down  
9 at the Building Department.

10 COMMISSIONER MARINELLO: What are  
11 the short-term or long-term implications of faulty  
12 truss work in the home?

13 MR. PIERCE: Well, obviously, it's a  
14 safety issue.

15 COMMISSIONER MARINELLO: Did you  
16 inspect any of the homes after the remedial work  
17 was done on the trusses?

18 MR. PIERCE: No, I have not. My  
19 firm is working for the Homeowner's Association  
20 and we've been concentrating on the common  
21 elements, the roadways, the storm drain system,  
22 items such -- items that are under the control or  
23 will be under the control of the Homeowner's  
24 Association.

25 COMMISSIONER FLICKER: Mr. Kelman,

-PUBLIC HEARING-

1 have any of the homes been resold?

2 MR. KELMAN: Yes.

3 COMMISSIONER FLICKER: And are the  
4 new purchasers made aware of any of these problems  
5 or the pending lawsuit?

6 MR. KELMAN: Very good question. I  
7 have not sold my house. I have not bought one. I  
8 don't -- I honestly do not know what is disclosed  
9 and what is not.

10 COMMISSIONER FLICKER: Thank you.

11 CHAIRMAN SCHILLER: Gentlemen, I'd  
12 like to thank you very much for coming in and  
13 obviously we could go on for the next hour asking  
14 more questions and getting the same kind of  
15 feeling of evasive non-cooperation on both the  
16 builder and also on the local township level in  
17 this particular situation but I think it's -- if  
18 we can take a five minute break, I know the  
19 stenographer probably would like to have a break  
20 and a few of us older folks need a break now, so  
21 take a very brief five minute break.

22 (Recess taken at 11:41 a.m.)

23 (Resumed at 11:49 a.m.)

24 CHAIRMAN SCHILLER: Ladies and  
25 gentlemen, please take your seats. We're running

-PUBLIC HEARING-

1 a little late so we're going to push the schedule  
2 back a little bit, but we'll try to move along as  
3 quickly as we can and I'll ask Ms. Gaal to call  
4 the next witness.

5 MS. GAAL: The next witness is  
6 Gregory Kirk who is already seated and with his  
7 attorney. Counsel, first of all, will you enter  
8 your appearance?

9 MR. SHAMY: Good morning, Mr.  
10 Chairman, Commissioners and counsel. I am Jason  
11 Shamy from the law office of Shamy, Shipers and  
12 Lonski for Mr. Kirk.

13 MS. GAAL: Mr. Kirk, would you  
14 please stand and be sworn in by the reporter.

15 GREGORY H. KIRK, sworn.

16 BY MS. GAAL:

17 Q. May we have your name and address,  
18 please, for the record?

19 A. Gregory Kirk, 1866 Carroll Court,  
20 Wall, New Jersey.

21 Q. And by whom are you employed, sir?

22 A. The Township of Wall.

23 Q. What is your position there?

24 A. I'm a Construction Official and a  
25 Plumbing Sub-Code.

## -PUBLIC HEARING-

1 Q. And how long have you been employed  
2 by Wall?

3 A. I believe it's 1996.

4 Q. And is that a full-time position?

5 A. Yes, it is.

6 Q. And what licenses do you hold?

7 A. I carry the Construction Official,  
8 Plumbing Sub-Code Official, Building Sub-Code  
9 Official, Fire Sub-Code Official and Mechanical.

10 Q. Do you work in any other  
11 municipalities currently?

12 A. Yes, I do.

13 Q. Where?

14 A. The Borough of Belmar, Borough of  
15 Spring Lake, Borough of Manasquan and the Borough  
16 of South Belmar.

17 Q. And what positions do you generally  
18 hold in those municipalities?

19 A. Belmar, I am plumbing and fire;  
20 South Belmar, I'm fire; Manasquan and Spring Lake,  
21 I'm plumbing.

22 Q. Now, as the Construction Official,  
23 what are your duties? In other words, are you  
24 generally the administrator of the office?

25 A. Right. I'm more or less the

-PUBLIC HEARING-

1 administrator of the Construction Department.

2 Q. Ordinarily do you go out and  
3 personally do inspections?

4 A. No, I don't.

5 Q. Are you familiar with the Four  
6 Seasons at Wall development?

7 A. Yes, I am.

8 Q. And I think you were sitting here a  
9 few moments ago during the testimony that preceded  
10 yours?

11 A. That's right.

12 Q. And during the construction of that  
13 development, were there any significant problems  
14 that came to your attention?

15 A. The biggest problem I think in the  
16 construction of the Four Seasons was the rush, the  
17 constant too many houses going up at once is what  
18 the problem was.

19 Q. And who was rushing? Who was  
20 rushing whom I guess I should say?

21 A. It was actually the community  
22 developer was rushing his contractors, his  
23 subcontractors. He was also rushing the Building  
24 Department begging for inspection, begging for  
25 COs, pretty much just a rush.

-PUBLIC HEARING-

1 Q. Now, the term you used community  
2 developer, to whom are you referring?

3 A. On every project, the developer,  
4 this one being K. Hovnanian, would assign a  
5 community developer to the project.

6 Q. Would that be someone that might be  
7 called a project manager or a superintendent on  
8 another builder's project?

9 A. Yes, I would believe so.

10 Q. During the actual construction, were  
11 deficiencies found on inspections?

12 A. Many deficiencies during  
13 construction were found, yes.

14 Q. Many? Was it a frequent occurrence?

15 A. Yes. It was sheathing problems,  
16 roof trusses, of course, there were plumbing  
17 problems that were turned down inspections that  
18 had to be repaired and then we'd go back and  
19 reinspect them.

20 Q. Were there situations where your  
21 people went back and re-inspected and the problems  
22 were still not fixed?

23 A. That I'm not aware of.

24 Q. Okay. So there were a number of  
25 deficiencies found during the process?

-PUBLIC HEARING-

1 A. Yes.

2 Q. Do you have any opinion based on  
3 your experiences whether it seemed there were more  
4 deficiencies found during the process than would  
5 be typical or is it pretty much along the line of  
6 what you usually see?

7 A. No. I would say it was more on a --  
8 on a 400 house development, you're going to find  
9 many more deficiencies.

10 Q. Okay. Now, after the COs were  
11 issued, were significant problems found in any  
12 areas?

13 A. Yes, there were.

14 Q. In what areas were the problems  
15 found?

16 A. Mainly the trusses.

17 Q. Okay. So this would be after the  
18 COs were issued?

19 A. Yes.

20 Q. Can you tell us what the problems  
21 were with the trusses as you understand them?

22 A. Well, from what I understand of  
23 them, 95 percent of the trusses were minor repairs  
24 meaning the braces might have been missing or  
25 clips being missing or nails or something like

-PUBLIC HEARING-

1 that. The other 20 percent probably the trusses  
2 themselves might have been cracked, might have  
3 been broken during installation.

4 Q. Did you ever observe anything about  
5 the installation process that could have  
6 contributed to the cracked or broken trusses?

7 A. Well, the developer, when he set the  
8 trusses, he used a forklift rather than a crane to  
9 put the trusses up there.

10 Q. And is one of those the appropriate  
11 method of doing it?

12 A. Not on your normal construction, no.

13 Q. What do you mean by that?

14 A. The normal construction, if you're  
15 doing trusses, they would hire a crane to come in.  
16 The forklift is probably already on site, so it's  
17 easier to get a forklift on a single story house  
18 to lift the trusses.

19 Q. And using a forklift, could that  
20 have cracked or broken the trusses?

21 A. Certainly.

22 Q. When you mentioned the rush, can you  
23 elaborate on that a little bit for us; explain  
24 what was going on?

25 A. During construction, my best

-PUBLIC HEARING-

1 estimate would be that plumbing, there may have  
2 been eight inspections out there in one day, there  
3 may have been 10 to 12 building inspections out  
4 there in one day, there may have been 10 to 12  
5 fire inspections and electrical inspections.

6 Q. And is that just an overwhelming  
7 number?

8 A. Yes.

9 Q. Now, when our staff reviewed the  
10 files at your office, we didn't find documentation  
11 of rejections of the inspections in the files.  
12 Can you explain that for us? In other words --

13 A. When you went through the files, you  
14 found no rejections?

15 Q. We didn't find notations of  
16 rejections during the inspections. Is it --

17 A. I can't explain that other than  
18 maybe they gave the contractor a verbal right then  
19 and there.

20 Q. Okay. Is it possible they did it  
21 verbally in the field?

22 A. Yes.

23 Q. Is that the preferred method of  
24 handling rejections?

25 A. No, it's not.

-PUBLIC HEARING-

1 Q. In other words, it should be noted  
2 on the cards?

3 A. It should be noted on the cards.

4 Q. Because obviously it would make it  
5 difficult to track the history of a rejection if  
6 there is no notation?

7 A. Yes.

8 Q. I'm just going to represent to you  
9 that by and large we did not find many rejections  
10 of inspections in the records.

11 A. I'm sorry to hear that.

12 Q. Were you aware of that before today?

13 A. No, I was not.

14 Q. Now, with respect to this particular  
15 project, did you notice any problems or did you  
16 have any concerns concerning the subcontractors  
17 that worked on the job?

18 A. The subcontractors would constantly  
19 change. The plumbing contractor would change  
20 daily. The main contractor would be on the job  
21 site, but the different subs that worked for him  
22 would be different. K. Hovnanian would hire  
23 several framing contractors. There were constant  
24 changes.

25 Q. How about the community managers or

-PUBLIC HEARING-

1 the community project managers you mentioned? Was  
2 there any turnover?

3 A. Yes, that was another problem.

4 Q. Go ahead.

5 A. There were several community  
6 developers on this one project. One would last  
7 for two months, the next would last for six  
8 months, the next would last for maybe a month.  
9 Yes, it was constantly changing.

10 Q. And was that significant in your  
11 opinion?

12 A. Yes, because every community  
13 developer does things differently.

14 Q. What about the push on the job? Did  
15 you notice any unusual push or rush on this job?

16 A. The unusual push I would strictly  
17 say for the certificates of occupancy, yes.

18 Q. The push was on for the COs?

19 A. Yes.

20 Q. And do you have any opinion or any  
21 knowledge as to why that was?

22 A. I believe, and this is only a guess,  
23 that if you bring a house in or a project in  
24 early, there is a bonus in it for someone.

25 Q. Were the closing dates picked before

-PUBLIC HEARING-

1 the COs were issued?

2 A. That I don't know.

3 Q. Okay. In your area as the  
4 Construction Code Official, did you have any  
5 involvement with the common areas such as the  
6 drain system, the roadways, the aprons, things  
7 like that?

8 A. No.

9 Q. Okay. The problems that you've  
10 seen, particularly with the trusses, did that come  
11 to light only after the homeowners initiated  
12 action?

13 A. Yes, it did.

14 Q. Did the homeowners hire their own  
15 engineer?

16 A. That I can't answer, but when it  
17 came to light to us, we requested the K. Hovnanian  
18 engineer go out and do the inspections.

19 Q. So when it came to your attention,  
20 did you acknowledge that there might be a problem?

21 A. Absolutely.

22 Q. Did you go out yourself and look at  
23 any?

24 A. I did not, no.

25 Q. Did you readily recognize that there

-PUBLIC HEARING-

1 appeared to be a problem?

2 A. Yes.

3 Q. And you requested the builder to  
4 hire their own expert or to provide some  
5 expertise?

6 A. We requested that he hire an outside  
7 engineering firm to perform inspections on homes.

8 Q. Now, during the course of this  
9 construction, did DCA have any people out there  
10 looking at any of these houses just by  
11 coincidence?

12 A. Yes, they did.

13 Q. And tell us how that came about.  
14 Was it just routine monitoring?

15 A. The DCA performed monitoring of  
16 construction code offices to see how they run  
17 their department, to see how inspections go.

18 Q. And were there people out there when  
19 these trusses were put up?

20 A. I can't answer that. I don't know  
21 what stage they were in.

22 Q. But they looked at the framing and  
23 did framing overviews of them?

24 A. Yes.

25 Q. Did they notice any problems that

-PUBLIC HEARING-

1 you know of?

2 A. No, they did not.

3 Q. So the COs were issued by the  
4 Township, am I right?

5 A. Yes.

6 Q. And the DCA happened to have the  
7 same people out there during the time and they  
8 didn't notice any of these problems?

9 A. It was only one day, but yes, they  
10 were out there.

11 Q. Do you have any idea or opinion as  
12 to how the truss problems were missed by your  
13 inspector?

14 A. I have an opinion.

15 Q. What is your opinion?

16 A. My opinion is my building inspector  
17 unfortunately needs a replacement hip. I'm  
18 guessing he never bothered to climb the ladder to  
19 really look closely at the trusses.

20 Q. Is there any issue in your mind as  
21 to the training and education of the inspector or  
22 the other inspectors you have? Do you think they  
23 have adequate training?

24 A. Oh, I definitely think they're all  
25 well trained.

-PUBLIC HEARING-

1 Q. So you don't think that was the  
2 problem?

3 A. No, I don't.

4 Q. You mentioned earlier there being  
5 eight or 10 inspections called for in a day?

6 A. In one project, yes.

7 Q. Do you have any information for us  
8 as to how many ordinarily should be called for or  
9 how many an inspector can on average do so we can  
10 get some sense of how overburdened they were?

11 A. Well, actually, there was an  
12 insurance evaluation done for every municipality  
13 in the State of New Jersey and they came up with  
14 the idea that no more than 12, that 11 to 12  
15 inspections per day.

16 Q. And did you have to send people out  
17 to do more than that?

18 A. Yes, I did.

19 Q. Do you have any problem getting  
20 funding to hire inspectors if you need them?

21 A. Well, Wall Township is on a  
22 dedicated budget, so yes, there would be a problem  
23 if I needed help.

24 Q. What is the other alternative method  
25 of funding a construction code office?

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1 A. They're dedicated by rider.

2 Q. Have you spoken with other code  
3 officials to determine or learn whether they have  
4 any staffing problems such as you've just  
5 mentioned?

6 A. I think there's staffing problems  
7 throughout the State.

8 Q. Is the by-rider funding the most  
9 common or the least common method?

10 A. I would think it's the least common  
11 used.

12 Q. So most of the offices are funded by  
13 what, a dedicated budget?

14 A. Yes.

15 Q. How much additional work did your  
16 office have to do as a result of the various  
17 deficiencies that were found at this one project  
18 alone?

19 A. Could you explain your question?

20 Q. How much additional work did your  
21 people have to do because of the problems that  
22 were found at Four Seasons at Wall? In other  
23 words, did you have to do additional inspections,  
24 did they have to get out there a lot more?

25 A. Absolutely.

-PUBLIC HEARING-

1 Q. Can you give us any idea of what the  
2 burden was to reinspect and to deal with the  
3 remedial work?

4 A. Well, the burden being that it  
5 should have been done the first time. It wasn't  
6 done the first time. Therefore, it would have to  
7 be the second time or maybe even the third time.

8 Q. Now, did you get any additional  
9 money from anybody to do that additional work?

10 A. No, we did not.

11 Q. How about in terms of permit fees  
12 from the builder?

13 A. We waived all fees on any call backs  
14 to Four Seasons.

15 Q. And why did you do that?

16 A. Honestly?

17 Q. Sure.

18 A. We figured it was our fault, we  
19 might as well do what we can for them.

20 Q. So you waived the permit fees on the  
21 call backs?

22 A. Yes, we did.

23 Q. Were permits issued, if you know,  
24 for all the remedial work?

25 A. No. Some of the -- with the truss

-PUBLIC HEARING-

1 situation, it depended on what the problem was  
2 with the truss. If the engineering firm came back  
3 and said it was a minor problem, we did not issue  
4 permits for that. If the engineering firm came  
5 back and said it was definitely a truss problem,  
6 permits were issued.

7 Q. Was the builder issued any notices  
8 of violations on the job?

9 A. Not that I'm aware of.

10 Q. Was the builder fined?

11 A. I don't believe so.

12 Q. Do you know if the builder filed any  
13 certifications that the homes were constructed to  
14 code after the remedial work was done?

15 A. Every house has a certificate  
16 request indicating that the home is constructed  
17 according to accepted standards.

18 Q. Did DCA cite the builder if you  
19 know?

20 A. I really don't know.

21 Q. How about anyone in your office, was  
22 anyone in your office ever cited by DCA for any of  
23 the problems?

24 A. I know the DCA did an investigation  
25 on the trusses after they were aware of the

-PUBLIC HEARING-

1 problem. I'm not sure whether they wrote a letter  
2 of reprimands or not.

3 Q. Okay. Just so we're clear, were any  
4 additional fees at all paid by the builder in any  
5 way, shape or form to compensate your office for  
6 the additional work that was necessary?

7 A. Not that I can remember.

8 MS. GAAL: That is all I have for  
9 the witness.

10 COMMISSIONER MARINELLO: Mr. Kirk,  
11 you were here earlier when Mr. Pierce testified  
12 about some of the problems he's had in receiving  
13 adequate records on this project. What  
14 explanation, if any, do you have for the lack of  
15 records kept either by your office or otherwise by  
16 the Township and the lack of cooperation he  
17 appears to have received in getting those records?

18 MR. KIRK: I disagree totally with  
19 Mr. Pierce.

20 COMMISSIONER MARINELLO: So the  
21 records for each individual home and for the  
22 different projects that he testified to are  
23 available in the office?

24 MR. KIRK: Mr. Pierce had direct  
25 access to the complete construction drawings. Mr.

-PUBLIC HEARING-

1 Pierce was correct when he said he had a problem  
2 with the truss drawings. We had a problem with  
3 the truss drawings. We gave Mr. Pierce the one  
4 set of truss drawings that we thought were to  
5 complete the project. K. Hovnanian had switched  
6 truss designers or contractors in the middle so  
7 there was another book out there and finally we  
8 had found the book. We gave it to Mr. Pierce.

9 COMMISSIONER MARINELLO: Now, you  
10 hypothesized earlier that you think the reason why  
11 the truss problems were not caught by your  
12 sub-code official was largely because the person  
13 had a bad hip, is that correct?

14 MR. KIRK: He's in right now for a  
15 hip replacement.

16 COMMISSIONER MARINELLO: And when  
17 did the truss inspections take place on these  
18 homes?

19 MR. KIRK: Probably around 1996,  
20 '95.

21 COMMISSIONER MARINELLO: And have  
22 you had the same sub-code official from 1996 until  
23 today?

24 MR. KIRK: Yes, I have.

25 COMMISSIONER MARINELLO: So it's

-PUBLIC HEARING-

1 safe to say that it's possible that other homes  
2 from 1996 until now had the same truss problem  
3 inspections with the same inspector?

4 MR. KIRK: I can only hope not.

5 COMMISSIONER MARINELLO: Did he ever  
6 bring to your attention a problem that he had in  
7 inspecting these trusses because of his  
8 disability?

9 MR. KIRK: No, he didn't.

10 COMMISSIONER MARINELLO: What  
11 efforts have you made to determine whether or not  
12 he really has a physical problem getting up on  
13 these ladders and so forth to look at the trusses?

14 MR. KIRK: I just simply observed  
15 him doing an inspection and determined that it was  
16 time to go get his hip replaced.

17 COMMISSIONER MARINELLO: For what  
18 particular problems did you require K. Hovnanian  
19 to hire an outside engineering firm?

20 MR. KIRK: Just the complaints that  
21 we were getting from the people at Four Seasons  
22 and finding them to be legitimate complaints.

23 COMMISSIONER MARINELLO: And what  
24 follow-up was done by your office to determine  
25 whether or not the outside engineering firm was

-PUBLIC HEARING-

1           adequately finding the problem and recommending  
2           solutions?

3                           MR. KIRK: We had constant  
4           communication with the engineering firm. I  
5           believe it was Dixon Engineering. They performed  
6           the inspections, they gave us drawings and letters  
7           as to how the repairs would be taken care of and  
8           they've also submitted certification that the  
9           trusses were correct.

10                           COMMISSIONER MARINELLO: So is it  
11           your opinion as we sit here today that the truss  
12           problems at this particular development have all  
13           been resolved?

14                           MR. KIRK: To my knowledge, I'm  
15           going to say 95 to 98 percent of them are.

16                           COMMISSIONER MARINELLO: You talked  
17           about the pressure that your office was under from  
18           the builder regarding inspections and, thereafter,  
19           COs. How did that pressure manifest itself? How  
20           did they apply the pressure to your office?

21                           MR. KIRK: We had a policy that we  
22           would like at least five to 10 days between final  
23           inspections being performed and the issuance of a  
24           CO. K. Hovnanian's people would try and request a  
25           final inspection on a Friday and request the CO on

-PUBLIC HEARING-

1 Monday.

2 COMMISSIONER MARINELLO: So it would  
3 be verbal pressure, they'd be calling your office  
4 and --

5 MR. KIRK: Yes.

6 COMMISSIONER MARINELLO: -- and  
7 essentially begging you to produce the CO as  
8 quickly as possible?

9 MR. KIRK: Yes.

10 COMMISSIONER MARINELLO: That's it.

11 COMMISSIONER FLICKER: Mr. Kirk,  
12 would it be your office that issued violations if,  
13 indeed, violations were issued?

14 MR. KIRK: For the construction of a  
15 house?

16 COMMISSIONER FLICKER: Yes.

17 MR. KIRK: Yes, it would be.

18 COMMISSIONER FLICKER: And would it  
19 be your office that fined the builder if, indeed,  
20 fines were to be assessed?

21 MR. KIRK: Yes.

22 COMMISSIONER FLICKER: After what  
23 you saw this morning and the details of the  
24 pictures we saw, the video we saw, the  
25 descriptions we heard, can you explain to us why

-PUBLIC HEARING-

1           there were no violations and no fines issued to K.  
2           Hovnanian?

3                           MR. KIRK:  You're mixing  
4           inspections.  My department is strictly -- my  
5           department ends five to six foot outside the  
6           building.  The pictures you saw today had nothing  
7           to do with my department.

8                           COMMISSIONER FLICKER:  Whose  
9           department is responsible for what we saw today?

10                           MR. KIRK:  I would say it would be  
11           either K. Hovnanian's engineering firm or the firm  
12           that the Township has hired.

13                           COMMISSIONER FLICKER:  So there is  
14           no Municipal Department that is responsible for  
15           what we saw today?

16                           MR. KIRK:  The Land Use Department  
17           only follows what the Township Engineer  
18           recommends.

19                           COMMISSIONER FLICKER:  So you would  
20           only be responsible for the trusses essentially  
21           from what we heard today?

22                           MR. KIRK:  For the construction of  
23           the home.

24                           COMMISSIONER FLICKER:  And none of  
25           the municipal inspectors have the responsibility

-PUBLIC HEARING-

1 of inspecting the sewer lines, the electrical, the  
2 underlying electrical lines, things like that?

3 MR. KIRK: Utility lines from the  
4 curb to the house we inspect.

5 COMMISSIONER FLICKER: Thank you.

6 CHAIRMAN SCHILLER: Mr. Kirk, have  
7 you ever sat down with your employees and asked  
8 them why these inspections weren't done, any one  
9 of them?

10 MR. KIRK: Oh, yes.

11 CHAIRMAN SCHILLER: And what was the  
12 result of that?

13 MR. KIRK: There would be some  
14 yelling and screaming on my part, the employees  
15 would accept my criticism and they seemed to do a  
16 better job. Unfortunately, it was after the fact.

17 CHAIRMAN SCHILLER: And what was the  
18 purpose of Department of Community Affairs coming  
19 in for that one day you said they were there for  
20 the inspections?

21 MR. KIRK: That's just a typical  
22 monitoring team. They did it for every  
23 municipality in the State.

24 CHAIRMAN SCHILLER: They were not  
25 there in response to any citizen complaints?

-PUBLIC HEARING-

1 MR. KIRK: No.

2 CHAIRMAN SCHILLER: This was just a  
3 routine matter?

4 MR. KIRK: Yes.

5 CHAIRMAN SCHILLER: The question I  
6 find troubling is that none of these inspections  
7 were written down where there were complaints or  
8 failures of the builder to build to code. Is that  
9 still the routine in your office, not to write  
10 this down?

11 MR. KIRK: No, it was not.

12 CHAIRMAN SCHILLER: So that was  
13 changed as a result of that?

14 MR. KIRK: I was not aware it needed  
15 changing. I was not aware any violations or  
16 turned down inspections were not written on the  
17 cards.

18 CHAIRMAN SCHILLER: Is it the common  
19 practice with the building inspectors,  
20 construction officials to utilize more than one  
21 Township?

22 MR. KIRK: Yes, it is.

23 CHAIRMAN SCHILLER: And did you get  
24 paid from each one of those Townships?

25 MR. KIRK: Yes.

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1 CHAIRMAN SCHILLER: And is Wall  
2 Township considered your full-time job?

3 MR. KIRK: Yes, it is.

4 CHAIRMAN SCHILLER: And it's 9:00 to  
5 5:00?

6 MR. KIRK: It's 8:00 to 4:00.

7 CHAIRMAN SCHILLER: How do you find  
8 the time to supply the services to these other  
9 towns?

10 MR. KIRK: One hour a day is fine.  
11 I do Belmar and Spring Lake on Monday, Wednesday  
12 and Friday and I do Manasquan on Tuesday and  
13 Thursday.

14 CHAIRMAN SCHILLER: So your lunch  
15 hour is enough to supply to other towns as a code  
16 official?

17 MR. KIRK: These are very small  
18 towns with very little construction.

19 COMMISSIONER EDWARDS: Mr. Kirk, you  
20 indicated before in your answers to Commissioner  
21 Flicker that your responsibility ends about six  
22 feet from the house plus utility hook-ups I guess  
23 at the curb?

24 MR. KIRK: Yes.

25 COMMISSIONER EDWARDS: And it's a

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1 compartmentalized concept. This is a development  
2 that now has responsibilities for meeting codes,  
3 not just your codes but codes that go beyond the  
4 Uniform Construction Code and get into sanitary  
5 sewers, sidewalks, roads, things of that nature.  
6 Does Wall Township coordinate these at all in  
7 this type of development and do they have a  
8 procedure -- and I'm gathering they don't from  
9 what you said, but I'm trying to find out to what  
10 extent they do have it -- how do they coordinate  
11 those things in terms of the Township?

12 MR. KIRK: Our Township has a  
13 retainer with an engineering firm. That firm will  
14 perform those inspections.

15 COMMISSIONER EDWARDS: Do you work  
16 with that firm before sign-offs are done or COs?  
17 Is there any coordination between the two of you  
18 in that process?

19 MR. KIRK: The actual coordination  
20 is between the Land Use Department and the  
21 Township Engineer.

22 COMMISSIONER EDWARDS: Not involving  
23 you. You work as an agent with the Land Use  
24 Department then on the individual homes and COs  
25 for each individual home?

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1 MR. KIRK: Yes.

2 COMMISSIONER EDWARDS: Do you think  
3 that's a good system?

4 MR. KIRK: I think it's an excellent  
5 system.

6 COMMISSIONER EDWARDS: You do? It  
7 obviously worked very well here.

8 MR. KIRK: No, no. We get --

9 COMMISSIONER EDWARDS: Without being  
10 sarcastic, and I shouldn't be because it's a very  
11 serious issue, we're looking for answers as to how  
12 we can do this better. You have -- I read your  
13 background. You have over 25, 30 years experience  
14 in the construction inspection business going all  
15 the way back to DCA and as a result of that,  
16 you've seen the good, the bad and the ugly and  
17 you've seen the system get better over the years,  
18 you've seen improvements being made to the  
19 inspection system. We obviously have a problem  
20 that exists with reference to the coordination of  
21 an inspection department that has responsibilities  
22 for this particular project. We are trying to  
23 come up with some recommendations on how to make  
24 it better and with your level of experience and  
25 the problems that have developed on this

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1 particular project, is there a way that you might  
2 recommend that the system might work better, the  
3 entire system might work better, particularly with  
4 your background and experience? I'm asking a  
5 question that you haven't thought about perhaps or  
6 maybe you have and I'd like to get whatever answer  
7 you have now and I'd also like to get your opinion  
8 for later, after you've thought about it for a  
9 little while.

10 MR. KIRK: I think the only way to  
11 actually better the system and to get coordination  
12 between the Building Department, Land Use  
13 Department and engineer would to be hire your own  
14 engineer. I think a Township the size of Wall  
15 Township would have to hire their own engineer to  
16 perform the inspections.

17 COMMISSIONER EDWARDS: So you do  
18 think there should be a more coordinated effort in  
19 a development such as this?

20 MR. KIRK: Yes, sir.

21 COMMISSIONER EDWARDS: Okay. Thank  
22 you.

23 COMMISSIONER FLICKER: Mr. Kirk,  
24 would it be your department that would check  
25 garages?

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1 MR. KIRK: Yes, it would.

2 COMMISSIONER FLICKER: And one of  
3 your inspectors passed the garages that wouldn't  
4 allow a compact car to get in?

5 MR. KIRK: Unfortunately, the  
6 Uniform Construction Code does not set standards  
7 as to what size a garage must be.

8 COMMISSIONER FLICKER: So a garage  
9 could be 10 feet long?

10 MR. KIRK: There are no minimum  
11 standards for the size of a garage.

12 COMMISSIONER FLICKER: So the  
13 inspector doesn't use common sense?

14 MR. KIRK: The inspector's job is to  
15 enforce the Uniform Construction Code.

16 COMMISSIONER FLICKER: And my  
17 question again is the inspector doesn't use common  
18 sense when he sees something that is obviously  
19 deficient even if it's not addressed by the  
20 Construction Code?

21 MR. KIRK: I would say common sense  
22 was not used.

23 COMMISSIONER FLICKER: Thank you.

24 CHAIRMAN SCHILLER: Thank you very  
25 much, Mr. Kirk.

-PUBLIC HEARING-

1 MS. GAAL: Glenn Gerken.

2 First of all, counsel, will you  
3 enter your appearance?

4 MR. PLAZA: Yes. Good afternoon.  
5 My name is Ed Plaza and I appear on behalf of  
6 Glenn Gerken.

7 MS. GAAL: Mr. Gerken, would you  
8 please stand and be sworn in by the court  
9 reporter.

10 GLENN GERKEN, sworn.

11 BY MS. GAAL:

12 Q. May we have your name, please, for  
13 the record?

14 A. Glenn Gerken.

15 Q. And by whom are you employed?

16 A. I am currently employed by Shore  
17 DePalma, Inc.

18 Q. Did you serve as the Municipal  
19 Engineer in the Township of Wall during the  
20 construction of the Four Seasons at Wall?

21 A. Yes, I did.

22 Q. And were you also at that point a  
23 principal or owner of Bay Point Engineering?

24 A. Yes, I was a principal with Bay  
25 Point Engineering.

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1 Q. And did you, in your capacity as a  
2 Wall Township Engineer, approve payments to Bay  
3 Point Engineering in connection with the Four  
4 Seasons at Wall development?

5 A. Absolutely not. I never approved,  
6 never recommended any payments at all to Bay Point  
7 Engineering.

8 Q. And who approved or recommended the  
9 payments?

10 A. The Township of Wall has a standard  
11 approval process and then ultimately they're put  
12 on a calendar and voted on by the Township  
13 Committee for payment.

14 Q. Did you personally have anything to  
15 do with the inspection at Four Seasons at Wall?

16 A. Yes.

17 Q. And what did you do?

18 A. We did site inspection in accordance  
19 with the Municipal Land Use Law. There are  
20 certain improvements listed to be bonded by the  
21 municipality. We inspect those bonded  
22 improvements. The easy way to distinguish it  
23 basically, we would inspect the infrastructure  
24 items up to the sidewalk area. We would not be  
25 inspecting any public utilities of gas, electric,

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1 et cetera and then the house services and that  
2 would all be inspected through the Building  
3 Department. Basically, at the back of the  
4 sidewalk is where we would basically stop.

5 Q. Okay. Now, just so we understand,  
6 did you personally conduct the inspections or were  
7 other people out there doing them?

8 A. There was other people doing the  
9 inspections at the site. I, on certain occasions,  
10 did go to the site and perform but predominantly  
11 there was other people doing the inspections for  
12 me in the field.

13 Q. Were they out there on a daily or  
14 continuing basis or was it more of a spot  
15 checking?

16 A. The inspection work is both.  
17 Sometimes it is a continuous basis. We have no  
18 control over the contractor to his number of crews  
19 that he brings on during a particular day to do  
20 this work or the hours that they work or they're  
21 not even notifying us as to when they are going to  
22 be working, so the answer is yes, sometimes we're  
23 there on a daily basis and continuous; other  
24 times, it's from one spot to another because you  
25 have to understand, it was a 200 acre site with

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1 400 homes that were going in and the  
2 infrastructure, you know, to support that, so  
3 sometimes it was from site to site.

4 Q. Can you explain to us anything  
5 concerning any of the deficiencies at Four Seasons  
6 at Wall, particularly those that we've talked  
7 about today, those concerning the Belgian block,  
8 the concrete sidewalks, the aprons, contraction  
9 joints, anything along that line?

10 A. Yes.

11 Q. How would you explain those?

12 A. You want me to take them one at a  
13 time?

14 Q. However you want to.

15 A. Okay. With the Belgian block  
16 curbing, there is a detail shown on the plan which  
17 is a general detail. With it, one thing that  
18 didn't get brought up by Mr. Pierce, there was  
19 some changes made with that which are improvements  
20 to the site. For example, the size of the Belgian  
21 block specified on the plan was a four inch by  
22 four inch block. The blocks which were installed  
23 were four inch by seven and a half inches. And  
24 why is that a benefit? It's because you almost  
25 have 50 percent less joints involving the block.

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1 You see more of the granite face of it and much  
2 better aesthetics and appearance with it.

3 At the driveways, there were some  
4 changes where the block instead of being stood up  
5 was laid down with the long face exposed as well.  
6 With the joints, Mr. Pierce mentioned excessive  
7 joints. I think we have a difference of  
8 understanding with it. In my opinion, the joint  
9 is the width separating the blocks. These are  
10 granite blocks which are not machine made.  
11 They're not from a form so they are irregular  
12 along their surface. You can have some areas  
13 which would be wider than three-quarter because at  
14 the closest point it would probably be only  
15 three-quarters.

16 Q. So are you saying there's no problem  
17 with the Belgian block?

18 A. There are some problems which we've  
19 identified and we've got them on a punch list of  
20 deficiencies to be corrected. They consist of at  
21 certain driveways there's some excess depression  
22 with it. They need to be removed and replaced.  
23 There is also some areas where the joints have  
24 popped out with it and need to be re-pointed up.  
25 But basically, from Mr. Pierce, he's going by the

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1 width of the mortar. The mortar covers the joint  
2 and wraps around on part of the block.

3 Q. Now, these deficiencies, are these  
4 deficiencies that you noted after the homeowners  
5 moved in or before?

6 A. No, this was constructed and was  
7 observed being constructed and we did not see this  
8 as a deficiency with regard to the increased size  
9 of the block, no way, with the block like that.

10 Q. We've heard some testimony today  
11 concerning sink holes that appeared throughout the  
12 property. Do you know anything about those?

13 A. Yes, there were some sink holes.

14 Q. What are they from?

15 A. The sink holes as you saw varied in  
16 size with it. Predominantly, ones that I was  
17 aware of, it might even have been the one where  
18 you saw Mr. Pierce with his foot sticking down in  
19 the hole, there was one where we inspected the  
20 line up to the clean out which is at the sidewalk.  
21 From that point on, the plumbing inspector picks  
22 up the inspection later on whenever that plumbing  
23 line is installed. There was one place where the  
24 joint pulled apart by a couple of inches, the soil  
25 washed down into the hole with it, then that had

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1 to be excavated and repaired. There was another  
2 one which I was aware of where telephone electric  
3 conduit went across the streets. There was a  
4 damaged conduit from that outside utility company  
5 which again caused a sink hole. There were a few  
6 damage to the pipe sections. I think Mr. Pierce  
7 indicated when those were dug up, they were  
8 repaired. I think that was some of the repair  
9 work done to the damage to the pipe itself.

10 Q. During the installation?

11 A. No. You've got to understand, the  
12 piping, when it's installed, is practically the  
13 first item done on the site after it's stripped  
14 and cleared. The sanitary sewer system is  
15 basically a closed system which is pressure-tested  
16 and other tests with it. That is then basically  
17 sealed up with the manholes and the caps on the  
18 lines. The water main system, when that's  
19 inspected, there are pressure tests and bacteria  
20 tests done on the system and that is under  
21 pressure from that point on. In fact, these two  
22 systems have been under operation for over five  
23 years without problems.

24 Q. How about the storm drain system?

25 A. That's where I was just getting to,

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1 ma'am. With the storm drain system, that's  
2 installed right up front. That's one of the first  
3 items. Again, we have a 200 acre site. We've got  
4 many, many hundreds and hundreds of crews and  
5 people working at the site. There are over 250  
6 catch basins which have large eight inch openings  
7 across a four foot width across the back of them.  
8 As far as debris goes, that would easily be washed  
9 down by drainage, storms, et cetera. There could  
10 be any one of the hundreds and hundreds of crews  
11 that are working there could throw stuff down  
12 there. In fact, there's even one place where we  
13 see apparently a concrete truck finished pouring  
14 somewhere on the site and went and dumped the  
15 concrete down the catch basin. These are an open  
16 system which, while we inspect it and everything  
17 looks fine with it, but during the course of the  
18 construction, it can get damaged.

19 Q. Did you see the Styrofoam that was  
20 stuck in the holes, did you see any of that during  
21 construction?

22 A. No. If we saw that during  
23 construction, we would have that removed. But let  
24 me understand or for your agency to -- we have --  
25 well, let me back up. We have not finished

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1 inspections on this project. There is still a  
2 substantial amount of work we're trying to get the  
3 developer to complete. We have punch lists which  
4 are lists of unacceptable, incomplete items which  
5 we are demanding that the developer complete. The  
6 Township is holding approximately five million  
7 dollars in cash and performance bond guarantees to  
8 assure this. The storm drain system, when initial  
9 questions were asked by the Homeowner's  
10 Association, we weren't even close to being  
11 finished with that and because, as I explained,  
12 the openness and the vulnerability of this system,  
13 that that is probably one of the last things we do  
14 before we make a final recommendation or release  
15 with it.

16 So when the storm drainage system  
17 was videotaped by the Homeowner's Association, we  
18 had requested that we could get copies of those  
19 and then prepare the necessary lists to demand the  
20 developer to get completed.

21 Q. But, sir, if the homeowners hadn't  
22 done the videotaping, you wouldn't have known  
23 about the problems, am I right?

24 A. No, that's not correct. As I just  
25 said, we would have been -- when they are getting

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1 close with everything else on that project to go  
2 off of their performance guarantees before they go  
3 on to their two year maintenance guarantee, we  
4 would have been going catch basin by catch basin  
5 doing a final inspection so that we could make  
6 sure all debris was out, all sediment was washed  
7 out of the system and any damage done was taken  
8 care of.

9 As you noticed, there was this  
10 tonsil where we feel that probably was an augering  
11 machine for landscaping that augered down into the  
12 plastic pipe. With the gas main which was sliced  
13 through there, that was either sliced or what they  
14 call power drilled, you know, through the ground  
15 surface with it. Those things were done after our  
16 initial inspection but hopefully most of those  
17 would have been picked up at our final inspection.

18 Q. How in the world would you have  
19 picked those kinds of things up? The homeowners  
20 went out and hired a videotape robot to film 25  
21 thousand linear feet. You don't normally do that,  
22 do you?

23 A. No, that is not a normal inspection,  
24 no. But in this particular case, since they would  
25 not release the information to us, from what they

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1 did -- and nobody said they had to go do that but  
2 since they did and wouldn't release it, we  
3 demanded that the developer videotape it and there  
4 is a second videotape that's been done of the  
5 total system.

6 Q. Mr. Gerken, isn't the inspection to  
7 be done during the construction? Isn't somebody  
8 supposed to be out there before the pipes are  
9 covered over to see what's going on, to see if  
10 there's holes in the pipes, to see if there's  
11 breaks in the pipes, to see if the joints are  
12 sealed? Isn't that when the inspection is to  
13 occur?

14 A. We are doing inspections during  
15 construction but we are not there during a hundred  
16 percent of the time. There could be another crew  
17 starting up where an inspector has to jump from  
18 one site to another and there can be times where  
19 the contractor covers it up without us getting to  
20 see it. Then there's also backhoes, earth-moving  
21 equipment, everything constantly for years and  
22 years thereafter riding over top of this, some of  
23 it very shallow, some of it getting crushed with  
24 it that that happens.

25 Q. Did you or your inspectors find any

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1 of these problems during the construction?

2 A. The problems did not occur during  
3 the construction with these ruptures. Yes, we did  
4 find stuff where we still had a punch list for  
5 steps and items throughout the catch basins,  
6 manholes to be completed but we did not finish our  
7 final inspection.

8 Q. I want to make sure I understand  
9 you. You are saying that you found violations  
10 during the construction? Do you have those  
11 recorded somewhere? Can you provide them to us?

12 A. I think I -- I believe I can, but my  
13 point is we are right there on the spot. We did  
14 not issue a violation notice when they see that  
15 there is a chipped joint on the outside. We tell  
16 the contractor right there to fix it. There is no  
17 paperwork we would be able to provide you saying,  
18 oops, we failed it. But with regard to the water  
19 main system and sanitary sewer systems, when those  
20 other tests are performed, those are failures of  
21 which then, yes, we have all those reports.

22 Q. I'm talking specifically, let's just  
23 stick with the storm drain system. We saw a small  
24 snippet today, but I looked at a lot of other  
25 video and there appears to me to be -- and I'm a

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1           layperson -- significant problems in that system  
2           and my question to you is do you have any records  
3           of any inspections during the course of the  
4           construction where defects were found, yes or no?

5           A.       I would have to recheck the files.  
6           I didn't recheck everything with that, but, again,  
7           most of that debris, sedimentation and damage was  
8           done after initial inspection and also with regard  
9           to certain minor cracking and concrete pipe, that  
10          is expected.

11          Q.       How do you know it was done after  
12          initial inspection?

13          A.       Because there was an inspector who  
14          was on the site who watched the installation as  
15          much as they could and then visually looked  
16          through the lines knowing that they were going to  
17          be coming back at a later date to do it again.

18          Q.       Did he notice there weren't any  
19          manhole rungs?

20          A.       Yes.

21          Q.       How did he get down there?

22          A.       Pardon?

23          Q.       How did he get down there?

24          A.       If it was only a two or three foot  
25          deep manhole, you wouldn't -- he could easily just

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1 go down there.

2 Q. Do you have any record of what  
3 you're saying, these deficiencies that were noted,  
4 any record anywhere?

5 A. I would have to review the  
6 inspection folder. I did not review that in  
7 detail.

8 Q. Did you personally review or notice  
9 any of these deficiencies before it was pointed  
10 out either by the homeowners or their engineering  
11 representatives?

12 A. With regard to the drainage system  
13 myself?

14 Q. Yes.

15 A. No.

16 Q. Now, this person that you mentioned  
17 that you had on site, was that Tom Boyan?

18 A. He was one of them.

19 Q. Were you aware that when this sink  
20 hole, the first sink hole was noted, that Mr.  
21 Boyan actually went down and looked down and said  
22 there was no problem? Are you aware of that?

23 A. I would have to check my records on  
24 that.

25 Q. He indicated there was no problem

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1 and it wasn't until Mr. Pierce went down that the  
2 first serious problem was noted. You are not  
3 aware of that?

4 A. I would have to check my notes  
5 again.

6 Q. Now, Mr. Boyan, is he an employee or  
7 was he an employee of Bay Point?

8 A. He was employed by Bay Point.

9 Q. As what?

10 A. As a subcontractor.

11 Q. What is his background, professional  
12 background?

13 A. Mr. Boyan has over 50 years  
14 experience in the engineering and construction  
15 industry. He started off originally as a party  
16 chief, then a design engineer on items such as the  
17 New York Thruway, New Jersey Turnpike. He was a  
18 resident engineer for the approaches to the George  
19 Washington Bridge, for I-80 and I-95. He then had  
20 his own construction company for many years  
21 specializing in sanitary sewer, water main, storm  
22 drainage, heavy construction.

23 Q. Is he a licensed engineer?

24 A. No, he's not.

25 Q. And he was your representative on

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1 site?

2 A. He was my project manager for the  
3 field inspection portion.

4 Q. Can we have Number 222 put up. Is  
5 that exhibit up?

6 Can you see that, sir, the exhibit?

7 A. Yes.

8 Q. Can you tell us what it is?

9 A. What this is is, as a service  
10 through the Land Use Department, when the Building  
11 Department is getting near to issuing a  
12 certificate of occupancy for the house, we go out  
13 and do a walk-through visual inspection for health  
14 and safety issues associated with certain lot  
15 improvements. As I indicated before, we do  
16 detailed inspections which do not go beyond the  
17 curb line. However, we do do a walk-through and a  
18 cursory inspection for the Land Use Department at  
19 the time they're looking for a CO for the house.

20 Q. When you say we, do you mean you  
21 personally?

22 A. No, meaning people from my company  
23 who are doing inspection work out at the site.

24 Q. Is this an example of one of those  
25 inspection reports?

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1 A. Yes, it would be.

2 Q. Is it called -- I shouldn't say it's  
3 called, but on the top left-hand corner it says  
4 Certificate of Occupancy. What does that mean?

5 A. That means that this is the  
6 inspection report done at the time of the  
7 certificate of occupancy. This is not a  
8 certificate of occupancy whatsoever for the  
9 property.

10 Q. But it's the inspection report  
11 that's done at the time of the certificate of  
12 occupancy?

13 A. For the site -- exterior items on  
14 the site as listed on here, those particular  
15 items.

16 Q. The lower left-hand corner about a  
17 half an inch before the exhibit, above the exhibit  
18 tag it says Inspector. Can you read who signed  
19 there?

20 A. Probably Ray Gordon.

21 Q. Who is he?

22 A. He was one of the field inspectors  
23 who worked on this project.

24 Q. And the last sentence on the page,  
25 would you read that to me?

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1           A.       I have reviewed this report and  
2 believe that it accurately describes the  
3 conditions found on the subject property on the  
4 date indicated.

5           Q.       And it's signed by whom?

6           A.       That's signed by Thomas Boyan.

7           Q.       And it's written in for you, is that  
8 right?

9           A.       Correct.

10          Q.       The vast majority of the inspection  
11 reports we looked at were signed this way. Is  
12 that the way you handled this project?

13          A.       Yes. Some of them I did sign but  
14 the vast majority were signed by him.

15          Q.       Even though he is not a licensed  
16 engineer?

17          A.       This does not require a licensed  
18 engineer to do this inspection whatsoever.

19          Q.       Did it cause you any concern given  
20 the size of the project, the speed and the  
21 rapidity with which it was being built that there  
22 wasn't a licensed engineer out there doing these  
23 inspections?

24          A.       No. For these inspections, they are  
25 a general health and safety issue. These are not

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1 a quantitative, qualitative inspection of these  
2 items listed on here. They're just do they exist?  
3 Yes, they exist. Do they appear acceptable? Yes,  
4 they appear acceptable. For the Building  
5 Department to not issue a certificate of  
6 occupancy, there would have to be some health and  
7 safety issues and that's basically what we were  
8 looking at.

9 Q. You've seen the video that was done  
10 by the -- that the homeowners had done of the  
11 storm drain system?

12 A. I saw a cut and paste that they  
13 showed us for like 15 minutes and we've been  
14 asking if we could get it since then. Since they  
15 didn't, we demanded that the developer do a  
16 complete video which has been done and we have  
17 reviewed those.

18 Q. And based on what you've seen, do  
19 you have any concerns?

20 A. Oh, yes. We've got problems there.

21 Q. What kind of problems?

22 A. Well, we got problems where there's  
23 cracked pipe, there's ruptured joints, there's  
24 protrusions. With it, there's some -- a few  
25 separated joints. We've identified those. We've

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1 got a listing of those and there are several  
2 hundred feet of pipe that will have to be replaced  
3 and there is also numerous areas where there will  
4 have to be repair work done to the chips or  
5 joints, et cetera.

6 Q. Earlier today you may have heard Mr.  
7 Kirk from the Construction Department indicating  
8 that this job was -- and these are my words --  
9 rushed, so to speak, that there was a lot of  
10 construction going on, it was going on rapidly,  
11 there was a lot of inspections being done and they  
12 had difficulty, it seems, to keep up with it.

13 Did you experience the same thing on  
14 the engineering side?

15 A. Yes. There was an awful lot of  
16 construction going on, a lot of unannounced  
17 construction which would go on and we'd have to  
18 catch up with it and it was a very rapid built  
19 project.

20 Q. Given whatever you've seen in those  
21 videos or whatever that's been presented to you  
22 concerning that storm and waste water drainage  
23 system, if you had known then what you know now  
24 about it, would you have approved it before people  
25 moved in?

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1           A.       It has not been approved as of today  
2 even as we speak.

3           Q.       Is there any requirement that it be  
4 approved before any homeowners move in?

5           A.       No.

6           Q.       Is there any requirement that it be  
7 approved before a Homeowner's Association take  
8 responsibility for it?

9           A.       What there is we have the Municipal  
10 Land Use Law which governs the bonding of certain  
11 improvements. What that requires is that when the  
12 developer sends in a request for this -- the  
13 system the way it works is bonding is done, then  
14 there's requests for reductions in the bonds.  
15 There are statutory times when myself and the town  
16 must act on those based on the current state of  
17 conditions on that date. We have not released --  
18 we're down to 30 percent which statutorily is the  
19 maximum we can hold on to at this stage.

20          Q.       And are you holding on to it to a  
21 large degree based upon what the homeowners have  
22 presented to you?

23          A.       No. Let me tell you one thing, too.  
24 We've almost begged for any information that they  
25 would come up with to share with us so we could

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1 address any of their concerns for the homeowners.  
2 You know, we're concerned that when the homeowners  
3 move in that all the improvements are complete and  
4 acceptable so that there's no extra burden put on  
5 them. They have not shared one thing with us.  
6 Even any of this testing, they don't even tell us  
7 what they're doing with items with it and we'd be  
8 very happy if they could share it with us.

9 Q. Do you know anything about those  
10 oily slicks that we heard about today?

11 A. This is the first I've heard about  
12 it right here.

13 Q. Doesn't cause you any concern?

14 A. It causes me concern. I'd like to  
15 know what it is with it and something where I  
16 would talk with the Township and see if they want  
17 to have any type of investigative work done on it.

18 Q. Were you aware of any environmental  
19 issues on that site and whether there was site  
20 remediation done before that construction took  
21 place? Were you aware of that at that time?

22 A. I believe there was through DEP,  
23 there was a -- the site was an old sand and gravel  
24 mining site. I believe that there was a certain  
25 area on site where certain debris had been buried

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1 with it and DEP had mandated certain clean up.  
2 The developer had a separate geotechnical soils  
3 engineer handle the engineering work for them on  
4 that.

5 Q. Did you have any involvement at all  
6 on behalf of the municipality overseeing that at  
7 all?

8 A. No, not at all.

9 Q. Did Bay Point Engineering receive  
10 over \$579,000 in inspection fees connected to this  
11 project?

12 A. I believe that would be the proper  
13 amount over the life-span of the project which is  
14 probably seven years or more as of this time.

15 Q. Is 222 still up? Just one last  
16 question that I forgot to ask you. When you look  
17 down about an inch and a half from the bottom of  
18 the page, it's recommended that a CO be issued and  
19 that it be and permanent is circled, is that  
20 right?

21 A. That's what's circled, correct.

22 Q. And is that -- so, in essence, a  
23 recommendation was made for a permanent CO to be  
24 issued?

25 A. From the site health and safety

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1 aspects as represented on this.

2 Q. Do you have any idea what it will  
3 cost to remediate just that storm drain system?

4 A. Not exactly, but let me clarify.  
5 The original system, entire system was probably  
6 about 1.4 million dollars which included a litany  
7 of items, all of which are not under question with  
8 it. There was over 26,000 feet of pipe and there  
9 are several hundred feet of pipe to be replaced.  
10 There are numerous places to be repaired. It  
11 nowhere comes close to replacement of the entire  
12 system but is a very small percentage of that. We  
13 would -- well, one, as we speak, lists have been  
14 given to the developer for corrective work. They  
15 are getting prices right now to have that work  
16 completed and I would probably imagine that within  
17 about a month, cleaning and flushing repair work  
18 will have been started out there. But we're  
19 probably looking in the magnitude of maybe half a  
20 million dollars.

21 Q. Do you know if the roadways at Four  
22 Seasons at Wall meet DOT standards?

23 A. As far as I know, they do.

24 Q. And on what, if anything, do you  
25 base that opinion?

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1           A.       Well, one, the two layers of asphalt  
2           came from certain plants which were a certain  
3           gradation mix, an I-5 and I-2 which was the  
4           required standard. On the -- that's graded  
5           aggregate. We do not do any laboratory analysis  
6           at the time of construction. In fact, it was  
7           probably two years after the surface course was  
8           down that you call it eruptions, I call it more  
9           blistering appeared because they're predominantly  
10          maybe about two inches in size, it raised up about  
11          a half inch in the surface and then after time  
12          settled back down. So except for the circles that  
13          they painted around, you probably wouldn't notice  
14          that.

15          Q.       Have you ever seen anything like  
16          that before?

17          A.       In my -- not exactly like that, no,  
18          no.

19          Q.       It seems unusual, doesn't it?

20          A.       Yes, it does.

21          Q.       Do you have an opinion as to what's  
22          causing it?

23          A.       No. It would be only speculation,  
24          you know, at this point.

25          Q.       So am I to understand that you did

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1 not know what the sub-base was?

2 A. When it going down, the State  
3 encourages, you know, recycling and also for dense  
4 graded aggregate the use of DGA which contains a  
5 certain amount of wood, certain amount of brick,  
6 cement and when it was going down, it looked good.  
7 We did proof tests on it with basically compaction  
8 tests. It compacted up extremely well and, in  
9 fact, the roadway surface is in extremely good  
10 condition out there from a rideability and  
11 construction standpoint. Even with these  
12 blisterings that has occurred, perhaps not that  
13 any dislodgement of any of the asphalt, there has  
14 not been any potholes, no breaking up of it,  
15 it's -- you know, it's slight eruption and then it  
16 has settled back down. But, yes, there is a  
17 problem with that and we put the developer on  
18 notice -- well, let me go back.

19 We did, while Mr. Pierce was doing  
20 some excavation there, extract three samples of  
21 the DGA with it and we had that sent to Craig  
22 Testing Laboratories with it and they sent back  
23 that it did meet the gradation requirement. We  
24 have put demand on the developer to have certified  
25 labs come out to take samples at these particular

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1 failure points with it and we're going to be  
2 demanding that it get repaired. If they don't  
3 respond, which we're having problems getting the  
4 developer to respond to this work, I'm going to  
5 make recommendation to the Township that the  
6 Township hire a certified testing lab so we can  
7 address what the problem is with it and be  
8 finished. We want to get the project finished so  
9 the homeowners aren't burdened with having these  
10 imperfections in their development.

11 Q. We've also heard that driveways had  
12 to be replaced in the development, some of them  
13 two or three times. Why is that?

14 A. I really don't know because we don't  
15 do a detailed inspection of the driveway. That's  
16 not one of the items that we inspect.

17 Q. Does anyone to your knowledge?

18 A. I don't know. I know we do not  
19 inspect it.

20 Q. You just said a moment ago you  
21 wanted things corrected so the homeowners aren't  
22 burdened. Don't you think this has been an  
23 incredible burden for these homeowners?

24 A. For the homeowners that are living  
25 in the development, a lot of these items are not a

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1       burden to them from certain standpoints with it,  
2       but, yes, I do agree with it, that it is a burden  
3       on them, it should get done and we want the  
4       developer to finish up the landscaping, finish up  
5       these items and be done with it so they can have  
6       it done properly so then they can move out.

7               Q.       What about the financial burden? I  
8       think we heard earlier they spent over a hundred  
9       thousand dollars in expert fees to get these  
10       various issues analyzed. Is that what one would  
11       expect a homeowner to have to do when they move  
12       into a new home in a 55 and over community?

13              A.       Absolutely not, but I think had  
14       there been more cooperation between the Township  
15       and the Homeowner's Association, I believe the  
16       Township would have done a great majority of that  
17       work other than what they've gone off on their own  
18       to do.

19                      MS. GAAL: That's all I have, Mr.  
20       Chairman.

21                      COMMISSIONER EDWARDS: Mr. Gerken,  
22       prior to this, I asked the building inspector if  
23       he has any suggestions about how we might be able  
24       to avoid the circumstances that have led us to two  
25       and a half, three years of acrimony between a

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1 large group of homeowners in the community and the  
2 community itself with reference to the inspections  
3 and deficiency in the builder's construction of  
4 their project.

5 Do you have any suggestions about  
6 how, either now or later -- this is the first time  
7 we've really heard from you about some of these  
8 issues and either now or later you could let us  
9 know how you feel about what might be done to  
10 avoid these kinds of problems in the future. I  
11 heard you say to some extent you're not getting  
12 enough data from the homeowners and cooperation  
13 from the homeowners. They claim they're not  
14 getting enough data from you and from the town  
15 with reference to this system. That is not a good  
16 relationship to start with. So do you have any  
17 suggestions for us that we may be able to grasp  
18 hold of or take from this?

19 MR. GERKEN: I would be happy to  
20 think about that and present you with some stuff.  
21 As Ms. Gaal asked one question, I think there are  
22 some holes out there where a homeowner might think  
23 a certain inspection is being done and it might  
24 not be, like if the homeowner with their  
25 driveways, for instance, if they thought that

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1 somebody was protecting them by a quality  
2 assurance inspection of the driveway, I don't  
3 believe that's being done. But there is this area  
4 where the building inspector and his people more  
5 concentrate in the building issue itself. Our  
6 office as the Municipal Engineer concentrate on  
7 what's the bonded items set up by the Municipal  
8 Land Use Law. I think there are some gaps in  
9 between those that could be somehow tightened up.

10 COMMISSIONER EDWARDS: Gaps like Mr.  
11 Kirk said he covered six feet away from the  
12 building property; you claim you're inside the  
13 curb. There is a big difference. There is a no  
14 man's land in there that people are not accepting  
15 responsibility for. I'm not as interested in that  
16 part. Somebody used the driveway as an example.  
17 Nobody is inspecting the driveway. No one  
18 inspects the garage. We just learned that the  
19 inspections don't cover the garage. I can build a  
20 garage that's eight foot long, you can't fit a car  
21 in, maybe not even a motorcycle, nobody is  
22 inspecting that. There is a compartmentalization  
23 here that I take care of this and he's taking care  
24 of that; unless you fit into my cubbyhole, I don't  
25 want to hear from you kind of mentality that

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1 exists and response for sure that exists. That  
2 was your response; that was Mr. Kirk's response  
3 and I just for one think that's a deplorable  
4 circumstance for a government that is being relied  
5 upon to provide quality construction in homes, to  
6 provide assurances to homeowners, that's what the  
7 Uniform Construction Code was written for, that's  
8 what the Municipal Land Use Law was written for --  
9 I was there when both were written and passed as  
10 legislation. That was not the intent of them.  
11 The intent was to assist and protect homeowners in  
12 the community and sometimes I think we forget that  
13 in our compartmentalization of what we do and  
14 maybe there's some ways as a professional who  
15 works in that compartmentalized world, you, Mr.  
16 Kirk who was here before might get back to us with  
17 some ways to stop compartmentalization and start  
18 working for our objectives of what the statutes  
19 asked for.

20 MR. GERKEN: And also, I think  
21 another area is basically if there could be  
22 somehow control onto the speed of developments and  
23 the rampant construction crews working, if we  
24 could somehow -- but I will put together some  
25 comments and will submit it to the Commission.

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1                   COMMISSIONER EDWARDS: I'm not  
2                   unmindful of the cost involved, the cost to the  
3                   developers who pass it on to the homeowners and  
4                   drive up the cost of real estate. And time is  
5                   important. Speed of inspections is important on  
6                   both sides. People want to move into the houses  
7                   and developers want to get their houses complete.  
8                   And we are kind of the people in the middle, the  
9                   government, who have the responsibility to make  
10                  sure that's done properly and with speed. So keep  
11                  an eye on both of those. I don't want to be  
12                  unmindful of either side of that.

13                 COMMISSIONER FLICKER: Mr. Gerken,  
14                 just so I'm clear, it was your responsibility or  
15                 came under your jurisdiction to inspect the storm  
16                 sewers in this development?

17                 MR. GERKEN: Yes. We inspected the  
18                 sanitary sewer, water main and storm sewer. All  
19                 those pipes, in fact, there was over 86,000 feet  
20                 of piping on the project with it, except for one  
21                 minor sheer crack that Mr. Pierce mentioned with  
22                 the sanitary sewer after all of our inspections  
23                 were finished, I do not know of any other problems  
24                 with any of those. The only ones that I know was  
25                 with the storm drainage.

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1                   COMMISSIONER FLICKER: Now, with the  
2 storm drains, you made it sound like the problems  
3 we saw in the videotape are almost common, that  
4 they're one of the first items put in and given  
5 the other construction crews that are on site, one  
6 would almost anticipate that the storm drains  
7 would have this kind of damage?

8                   MR. GERKEN: It is the thing that  
9 has the most vulnerability, yes, it is.

10                   COMMISSIONER FLICKER: Then tell us  
11 did you do interim inspections?

12                   MR. GERKEN: No, we did not on the  
13 entire system. We just did it if we saw areas  
14 where the soil was washing into the catch basin.  
15 Normally we would call Freehold Soil Conservation  
16 District, tell them help stop this erosion  
17 problem.

18                   COMMISSIONER FLICKER: How often did  
19 you do that?

20                   MR. GERKEN: That's done on a daily  
21 basis.

22                   COMMISSIONER FLICKER: No. How often  
23 on this particular project did you call someone to  
24 say that you saw some problems?

25                   MR. GERKEN: On the onset, I

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1 personally called Freehold Soils and we had  
2 several meetings with them right at the site.

3 COMMISSIONER FLICKER: So that  
4 should be in your records that you're going to  
5 turn over to Ms. Gaal?

6 MR. GERKEN: They have them already.

7 COMMISSIONER FLICKER: So that  
8 should be documented?

9 MR. GERKEN: Yes. It was a meeting  
10 between Brielle, Wall Township officials, Freehold  
11 Soil Conservation District, ourselves.

12 COMMISSIONER FLICKER: If you know  
13 that the storm sewers are this vulnerable and  
14 these problems occur, why didn't you do more  
15 interim inspections to ensure that this type of  
16 damage wouldn't get worse?

17 MR. GERKEN: The problem is there is  
18 numerous bulldozers, backhoes, heavy earth-movers  
19 on a daily basis moving across all these systems.  
20 We could do an inspection one day and the next day  
21 the damage could have occurred and we'd have to  
22 constantly be doing these inspections. We wait  
23 until we get to a certain stage in the development  
24 and then we know it was good at the point it was  
25 installed. Then we go ahead and do what we call

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1           like a final inspection of the system.

2                         COMMISSIONER FLICKER:  And that has  
3           now been years, 10 years?

4                         MR. GERKEN:  No, no, no.

5                         COMMISSIONER FLICKER:  You still  
6           haven't done a final inspection, correct?

7                         MR. GERKEN:  We have done a final  
8           inspection, have issued a memorandum to the  
9           Township and developer on the storm drain system.

10                        COMMISSIONER FLICKER:  And that  
11           final inspection, did it pass?

12                        MR. GERKEN:  Absolutely not.  It's  
13           like a 40 page document identifying all sorts of  
14           cracks, ruptures and that to be repaired and  
15           demand has been made on the developer to have it  
16           repaired.

17                        COMMISSIONER FLICKER:  But let me  
18           make sure I understand this.  You do a preliminary  
19           inspection and between the preliminary and your  
20           final inspection, which in some instances can be  
21           years later, correct --

22                        MR. GERKEN:  Correct.

23                        COMMISSIONER FLICKER:  Between the  
24           preliminary and the final, you almost anticipate  
25           that there will be damage to this piping and

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1 perhaps to others, correct?

2 MR. GERKEN: It can happen, yes.

3 COMMISSIONER FLICKER: And you still  
4 go ahead and you issue certificates of occupancy  
5 to homeowners to move in, is that correct?

6 MR. GERKEN: I do not issue any  
7 certificate of occupancy.

8 COMMISSIONER FLICKER: You pass  
9 whatever you have to pass which then allows a  
10 certificate of occupancy to be issued?

11 MR. GERKEN: I turn in a document to  
12 the Land Use office who then I guess, in turn,  
13 does some paperwork with the Building Department  
14 for issuance of the certificate of occupancy.

15 COMMISSIONER FLICKER: If you fail  
16 or reject things based upon your inspection, they  
17 have to be corrected in some instances before COs  
18 can even be considered, correct?

19 MR. GERKEN: Certain items  
20 pertaining to the lot itself. The improvements  
21 are all covered by performance guarantees.

22 COMMISSIONER FLICKER: I'm not  
23 talking about that. I'm just getting to the  
24 basics that certificates of occupancy were all  
25 issued in this community and now the homeowners

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1 are still dealing with some conditions that may be  
2 life-threatening. I mean would you agree that the  
3 gas line going through the storm drain could have  
4 been catastrophic if that hadn't been picked up?

5 MR. GERKEN: Oh, absolutely.

6 COMMISSIONER FLICKER: Was that  
7 picked up by you and your inspectors?

8 MR. GERKEN: No. We weren't even  
9 present -- we don't inspect any of the gas main  
10 installations or the service into the house or to  
11 the gas main coming into the house at all. We  
12 don't do any of those inspections.

13 COMMISSIONER FLICKER: So if the  
14 homeowners had not hired their own inspector, this  
15 would not have been discovered, is that correct?

16 MR. GERKEN: At that time, it would  
17 not have been picked up. Hopefully, we would have  
18 picked it up at the time of our final inspection.

19 COMMISSIONER FLICKER: The sink  
20 holes, would that have been something that you  
21 would have been responsible for inspecting?

22 MR. GERKEN: Some of it was caused  
23 by items we inspected and some was not caused by  
24 items we inspected.

25 COMMISSIONER FLICKER: Some that

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1 were caused by items you inspected, that would  
2 fall within your area of responsibility?

3 MR. GERKEN: Correct.

4 COMMISSIONER FLICKER: How many sink  
5 holes did you uncover?

6 MR. GERKEN: When the sink holes  
7 appeared at the site and we responded to get them  
8 corrected.

9 COMMISSIONER FLICKER: How many were  
10 there?

11 MR. GERKEN: I'm aware of about a  
12 half a dozen.

13 COMMISSIONER FLICKER: Do you  
14 perform interim inspections on any of these pipes  
15 and lines after your preliminary inspection is  
16 done?

17 MR. GERKEN: Storm drainage or the  
18 other pipes, too?

19 COMMISSIONER FLICKER: I'd say all  
20 of them.

21 MR. GERKEN: On the sanitary sewer  
22 lines, once they're installed and the contractor  
23 feels that they are complete, we do a pressure  
24 test on the sewer lines which is an air test which  
25 many of those failed at a certain time, many

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1       didn't. We also do a mandril test which is  
2       pulling an object through the pipe.

3                       For the water main system, we do a  
4       pressure test and then there is a bacterial test  
5       done. Once the water main system is complete and  
6       is operational, we do not do any more testing on  
7       it. Same thing with the sanitary sewer lines.

8                       COMMISSIONER FLICKER: How long were  
9       you the municipal inspector for the Township of  
10      Wall?

11                      MR. GERKEN: I'm the Municipal  
12      Engineer and I've been since 1988.

13                      COMMISSIONER FLICKER: To today?

14                      MR. GERKEN: Correct.

15                      COMMISSIONER FLICKER: You are the  
16      municipal inspector -- I'm sorry, engineer, for  
17      the Township of Wall as of today?

18                      MR. GERKEN: Yes, I am.

19                      COMMISSIONER FLICKER: So you  
20      spanned the entire project?

21                      MR. GERKEN: Yes.

22                      COMMISSIONER FLICKER: Are you a  
23      Municipal Engineer for any other townships?

24                      MR. GERKEN: Yes, I am.

25                      COMMISSIONER FLICKER: What other

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1 townships?

2 MR. GERKEN: The Township of Colts  
3 Neck and the Township of Upper Freehold.

4 COMMISSIONER FLICKER: And you are a  
5 direct employee of those townships? You're not a  
6 consultant?

7 MR. GERKEN: No, no. I thought I  
8 cleared that up in the beginning. I am a  
9 consultant. I am not on a direct salary or paid a  
10 retainage, any fee. I am hired by, back at this  
11 point, Bay Point Engineering and I draw a salary  
12 from that company.

13 COMMISSIONER FLICKER: Were you ever  
14 the direct employee of any of those townships?

15 MR. GERKEN: Never have been in my  
16 life.

17 COMMISSIONER FLICKER: I have  
18 nothing else.

19 COMMISSIONER MARINELLO: What part  
20 of the on site inspection process that Bay Point  
21 was involved in at this project is an engineer  
22 required to review? In other words, we already  
23 spoke about Mr. Boyan's involvement and he's not a  
24 licensed engineer. Is there any other part of  
25 this process, be it the storm drains, the streets,

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1 the sidewalks, what part of it do you feel an  
2 actual licensed engineer is necessary to be  
3 inspecting?

4 MR. GERKEN: I don't feel a licensed  
5 engineer has to inspect any of those items, but he  
6 must have qualified personnel in the field with it  
7 and have knowledge and review the work that's  
8 being done because ultimately I have to sign off  
9 with the municipality that it's acceptable for  
10 them to, in the end, to release these performance  
11 guarantees.

12 COMMISSIONER MARINELLO: So at the  
13 time that the final inspection is to be done on  
14 this location, would it be safe to say that your  
15 company would send out people who are not licensed  
16 engineers to do the type of work that would be  
17 necessary at that time?

18 MR. GERKEN: Underneath my  
19 direction, correct.

20 COMMISSIONER MARINELLO: Okay.

21 MR. GERKEN: Of course, one of them  
22 could be licensed, but there's no requirement that  
23 they would have to be.

24 COMMISSIONER MARINELLO: Well, when  
25 you say there's no requirement, who would set the

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1 requirement? I mean you say there's no  
2 requirement. You're choosing to send who you send  
3 as any business would choose to do. There's no --  
4 what you're saying is there is no statutory  
5 requirement or code requirement that a licensed  
6 engineer do this work?

7 MR. GERKEN: Correct.

8 COMMISSIONER MARINELLO: Is it your  
9 understanding that the people who employ Bay Point  
10 and now Shore DePalma, in other words, the  
11 municipalities themselves, understand the people  
12 that you send out to do these inspections are not  
13 licensed engineers?

14 MR. GERKEN: I'm quite certain they  
15 understand that.

16 COMMISSIONER MARINELLO: How would  
17 they know that?

18 MR. GERKEN: Because the people do  
19 not represent themselves to be licensed engineers.  
20 They never sign off on it. I advise them that  
21 they're not.

22 COMMISSIONER MARINELLO: You advise  
23 them that they're not?

24 MR. GERKEN: Yes.

25 COMMISSIONER MARINELLO: How does

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1 that take place?

2 MR. GERKEN: For example, in a  
3 certain town, we try to have a certain inspector  
4 handle work there for familiarity with the  
5 projects going on. I introduce them to like the  
6 business administrator and then advise that, you  
7 know, they are my inspector out in the field and  
8 they're not licensed personnel.

9 COMMISSIONER MARINELLO: There's --

10 MR. GERKEN: In fact, even on our  
11 billing classifications, we have classifications  
12 for inspectors and various categories. One of  
13 them is like a principal engineer, so forth, so  
14 they do not even have titles that would relate to  
15 an engineer.

16 COMMISSIONER MARINELLO: I think my  
17 concern is maybe more of a comment than a  
18 question. I think people in Wall Township and I  
19 think other municipalities where this goes on and  
20 even probably the council people and trustees who  
21 vote on your bills assume when they get a bill  
22 from Bay Point Engineering for a review of the  
23 work that's been done at these locations that a  
24 licensed engineer has done that work. I'm not  
25 saying that there is a requirement of that, but I

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1 think the assumption is that someone with the  
2 proper licenses has done this work. Do you agree  
3 with me?

4 MR. GERKEN: I don't really think  
5 so. I think they know it's been done under the  
6 supervision and direction of a licensed engineer,  
7 but not necessarily done by a licensed engineer.

8 COMMISSIONER MARINELLO: I can't get  
9 away from the fact that it troubles me to think  
10 that this work is being done, there's no engineer  
11 on site, the bills are being submitted by an  
12 engineering firm and I'm going to buy a home based  
13 on the fact that I know that a Municipal Engineer  
14 has reviewed it and okayed it, but, in fact --  
15 now, it may be that you found a very qualified  
16 person to do this work and that person went out  
17 and did this work, but I am relying on the  
18 engineer to do it as the home buyer or the citizen  
19 of the town. I'm not relying on somebody the  
20 engineer used discretion upon who he hired. Do  
21 you see the distinction?

22 MR. GERKEN: Yes.

23 COMMISSIONER MARINELLO: You don't  
24 think the average person who bought in this  
25 development or any development, for that matter,

-PUBLIC HEARING-

1 assumes that a licensed engineer reviewed this  
2 work and said it was okay?

3 MR. GERKEN: Reviewed it or  
4 inspected it?

5 COMMISSIONER MARINELLO: Inspected  
6 it. You reviewed -- what you're telling me is you  
7 review the inspections?

8 MR. GERKEN: Correct.

9 COMMISSIONER MARINELLO: Which is a  
10 piece of paper --

11 MR. GERKEN: And speak with that  
12 person on any questions that might arise.

13 COMMISSIONER MARINELLO: But if you  
14 got a report back from the person who did the  
15 inspection and said everything was okay, under  
16 normal circumstances you wouldn't have anything to  
17 discuss with that individual?

18 MR. GERKEN: No. I would check with  
19 them that --I would normally have a conversation  
20 with them and say yes, you were at that lot,  
21 everything is okay like you put on your sheet of  
22 paper and then I would sign off on it.

23 COMMISSIONER MARINELLO: I don't  
24 have anything further.

25 CHAIRMAN SCHILLER: Mr. Gerken, you

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1 fill the role of Township Engineer at Wall  
2 Township, correct?

3 MR. GERKEN: Correct.

4 CHAIRMAN SCHILLER: And how does Bay  
5 Point get selected or who decided Bay Point should  
6 be selected to do the inspections for the  
7 infrastructure?

8 MR. GERKEN: I have an annual  
9 contract with Wall Township of which myself and  
10 the personnel of Bay Point Engineering are covered  
11 in that contract.

12 CHAIRMAN SCHILLER: I understand  
13 that, but this is work over and above your  
14 standard Township engineering, is that correct?

15 MR. GERKEN: No, it's not. This is  
16 all part of --

17 CHAIRMAN SCHILLER: It's part of  
18 your contract?

19 MR. GERKEN: Yes.

20 CHAIRMAN SCHILLER: But isn't there  
21 a statutory role that the Township Engineer plays  
22 over and above and separate and apart from these  
23 inspections? You could hire another firm, for  
24 instance?

25 MR. GERKEN: They could hire another

-PUBLIC HEARING-

1 firm.

2 CHAIRMAN SCHILLER: And for the  
3 outside work, you got a percentage of the  
4 performance bonds?

5 MR. GERKEN: Our company bills on an  
6 hourly basis based on the actual hours utilized on  
7 the project.

8 CHAIRMAN SCHILLER: Is that what  
9 happened here at this project?

10 MR. GERKEN: Yes. There is an  
11 escrow account set up based on the Municipal Land  
12 Use Law with the Township. We bill and they pay  
13 out of that escrow account.

14 CHAIRMAN SCHILLER: And that escrow  
15 account is calculated upon a performance bond or  
16 percentage of it?

17 MR. GERKEN: Yes. I believe it's  
18 five percent of the estimated cost of  
19 construction.

20 CHAIRMAN SCHILLER: And you said you  
21 so far have released certain amounts of the  
22 performance bond or certain things that were  
23 covered under the performance bonds?

24 MR. GERKEN: None of the bonds have  
25 been released. They've been reduced.

-PUBLIC HEARING-

1 CHAIRMAN SCHILLER: What are they at  
2 now?

3 MR. GERKEN: They're at 30 percent  
4 of what the original bond was.

5 CHAIRMAN SCHILLER: What is that  
6 amount?

7 MR. GERKEN: The last one I saw was  
8 approximately five million dollars, slightly less.

9 CHAIRMAN SCHILLER: So that would be  
10 sufficient enough to cover the work that needs to  
11 be done on the infrastructure?

12 MR. GERKEN: Yes, in my opinion.

13 CHAIRMAN SCHILLER: And it would be  
14 your role to release that at an appropriate time  
15 or accept the work that's being done?

16 MR. GERKEN: It would be my role to  
17 accept it and make a recommendation to the  
18 governing body which they, by resolution, would  
19 have to release it. At that point in time,  
20 though, there would be a two year maintenance  
21 guarantee which would be employed which would be  
22 roughly a two million dollar separate bond which  
23 would go on for another two years after the  
24 performance guarantee is released.

25 CHAIRMAN SCHILLER: So your firm

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1 would be recommending and you as the Township  
2 Engineer that the work either be accepted or  
3 rejected?

4 MR. GERKEN: Myself as the Township  
5 Engineer will be making a recommendation to the  
6 Township at a certain point in time.

7 CHAIRMAN SCHILLER: And you're  
8 relying on what your firm is recommending to you?

9 MR. GERKEN: No. The people who  
10 work directly under my responsible charge report  
11 to me and my going over all of the items remaining  
12 to be completed.

13 CHAIRMAN SCHILLER: When you asked  
14 the developer to do the robot videos of the storm  
15 sewer, when was that?

16 MR. GERKEN: Probably a year ago.

17 CHAIRMAN SCHILLER: And I believe  
18 that the homeowners said that they had done the  
19 original one in the beginning of 2000 so we're in  
20 2003 now. So that would have been about a year  
21 and a half after they commenced their  
22 investigation?

23 MR. GERKEN: Probably about a year  
24 after. I think it was roughly about a year, when  
25 we finally came to the realization that they

-PUBLIC HEARING-

1 weren't going to release anything to us.

2 CHAIRMAN SCHILLER: They didn't have  
3 any obligation to do that.

4 MR. GERKEN: I know.

5 CHAIRMAN SCHILLER: Isn't it your  
6 job to do exactly what they're asking, to go do  
7 the inspections?

8 MR. GERKEN: It's my job to do the  
9 inspections.

10 CHAIRMAN SCHILLER: And make sure  
11 they are done correctly?

12 MR. GERKEN: Correct.

13 CHAIRMAN SCHILLER: And this is not  
14 an uncommon thing to do to ask a developer to put  
15 a robot down there, is it?

16 MR. GERKEN: Normally in a storm  
17 drain system it's not done often.

18 CHAIRMAN SCHILLER: Even on large  
19 systems it's not done that often?

20 MR. GERKEN: On storm drains? No.

21 CHAIRMAN SCHILLER: In Jersey City  
22 we do them all the time before we allow anything  
23 to be turned over. It would be just common sense  
24 to do that. You don't have to pay for it, do you?  
25 The developer pays for it, doesn't it?

-PUBLIC HEARING-

1 MR. GERKEN: He would.

2 CHAIRMAN SCHILLER: So it's nothing  
3 for you to demand for the protection of the  
4 homeowners and for this particular Homeowner's  
5 Association to demand that that be done; in fact,  
6 you could do that routinely, couldn't you?

7 MR. GERKEN: I guess I could.

8 CHAIRMAN SCHILLER: And isn't that  
9 really what your role is to protect the Township  
10 and the homeowners, the residents of that town,  
11 not to worry about the developer?

12 MR. GERKEN: Oh, no. Absolutely  
13 it's not to worry about the developer. It's to  
14 protect the homeowner and the Township,  
15 absolutely. And that's what we do.

16 CHAIRMAN SCHILLER: So, therefore,  
17 you should be really their ally and that's what I  
18 think we're basically coming to is that the  
19 Township and the city people have to be the allies  
20 of the homeowners to protect the people who can't  
21 protect themselves and don't have a vehicle to do  
22 that and that's what these hearings are all about.  
23 In this instance, it seems to me it was a  
24 response, not an initiative on the part of the  
25 members of Wall Township as to protecting the

-PUBLIC HEARING-

1 homeowners and that's what is really the crying  
2 shame here, that it should have been initiated by  
3 the government people, not by the homeowners to  
4 protect their rights and that's what's concerning  
5 us and that's what is concerning me in particular  
6 because many of these things could have been done  
7 all along and you as an engineer, as a supervising  
8 engineer in a town knew that you could have  
9 demanded that at any time and you didn't have to  
10 rely on the information coming from the homeowners  
11 and for you to categorize them as not sharing with  
12 you is absolutely offensive to me.

13 (Applause.)

14 CHAIRMAN SCHILLER: I'm sorry but I  
15 just feel that way and I have no further  
16 questions.

17 COMMISSIONER FLICKER: Could we have  
18 Exhibit 222 back on the screen. Is it on the  
19 screen?

20 Mr. Gerken, three lines from the  
21 bottom or four lines from the bottom, there is a  
22 space there for unacceptable items covered by  
23 bond.

24 MR. GERKEN: Yes.

25 COMMISSIONER FLICKER: That, of

-PUBLIC HEARING-

1 course, would include anything found in the storm  
2 drain?

3 MR. GERKEN: No, it would include  
4 just the items shown on here, curbing or sidewalk  
5 or aprons.

6 COMMISSIONER FLICKER: So that  
7 wouldn't deal with the storm drain?

8 MR. GERKEN: No.

9 COMMISSIONER FLICKER: When the  
10 storm drain -- I keep going back to the storm  
11 drain because we saw that video and I know that  
12 you told us that big pieces of earth-moving  
13 equipment could crack it and there could be damage  
14 to it while it was -- while other things were  
15 being built. It's hard for me to believe, though,  
16 that once that storm drain is in place someone  
17 walked into the storm drain without the rungs on  
18 the manhole covers being there and put a piece of  
19 Styrofoam into a crack that was there.

20 Now, would that be an acceptable  
21 condition for that storm drain, Styrofoam?

22 MR. GERKEN: No. In fact, it looked  
23 to me like that was put from the outside, not the  
24 inside of the pipe.

25 COMMISSIONER FLICKER: How about the

-PUBLIC HEARING-

1 rungs on the manhole? Shouldn't that have been  
2 uncovered in an initial inspection?

3 MR. GERKEN: Yes. But with the  
4 checks and balances that would have been picked  
5 up, if it was missed on the initial one, when we  
6 did our final inspection.

7 COMMISSIONER FLICKER: Well, you  
8 keep talking about the final one. The initial  
9 inspection had to be sometime before '97?

10 MR. GERKEN: No, that's not correct.  
11 It probably was during '97, '98.

12 COMMISSIONER FLICKER: Well, we have  
13 this document in front of us. 222 has a date of  
14 10-23-97. That would have been before the storm  
15 drain?

16 MR. GERKEN: The storm drain would  
17 have been done for this particular section. There  
18 was five sections in the development with it and  
19 they were constructed section by section.

20 COMMISSIONER FLICKER: Did you as  
21 the Township Engineer get individual complaints  
22 given to you by homeowners during the six years  
23 between 1997 and today?

24 MR. GERKEN: There were several  
25 complaints of which we responded to, correct.

-PUBLIC HEARING-

1 COMMISSIONER FLICKER: Did you note  
2 those? Are they in your file?

3 MR. GERKEN: Most of the complaints  
4 would have went to Thomas Boyan who would have  
5 responded to them at that time.

6 COMMISSIONER FLICKER: Did you put  
7 them in your file? Were they documented?

8 MR. GERKEN: I would have to take a  
9 look. I hope so.

10 COMMISSIONER FLICKER: And as the  
11 Chair pointed out, the homeowners have no  
12 obligation to provide you with copies of the work  
13 product that they had put together but I want to  
14 know did you go to the Homeowner's Association and  
15 say I want to know what you've done because we  
16 want to work together?

17 MR. GERKEN: The Township --

18 COMMISSIONER FLICKER: No, not the  
19 Township.

20 MR. GERKEN: -- and myself have made  
21 requests to get information from them which they  
22 did not. It became an obvious point where they  
23 were not going to -- there was not going to be any  
24 cooperation between them and us.

25 COMMISSIONER FLICKER: One has to

-PUBLIC HEARING-

1 presume that the residents of this particular  
2 community felt that you had become less than  
3 cooperative with them, correct?

4 MR. GERKEN: Yes.

5 COMMISSIONER FLICKER: Do you think  
6 it might be that they felt that the inspections  
7 done by you and the people working for you were  
8 less than satisfactory?

9 MR. GERKEN: I don't know.

10 COMMISSIONER FLICKER: Do you think  
11 it's obvious that they felt that even if they  
12 brought their complaints to you, you wouldn't have  
13 done anything about it?

14 MR. GERKEN: I don't think so  
15 because any complaints that did come directly to  
16 us, we did look into it.

17 COMMISSIONER FLICKER: You said the  
18 storm drain was done section by section?

19 MR. GERKEN: Yes. There was five  
20 sections on the project.

21 COMMISSIONER FLICKER: Could there  
22 have been any repairs done section by section?

23 MR. GERKEN: Could be.

24 COMMISSIONER FLICKER: Have there  
25 been any repairs done?

-PUBLIC HEARING-

1 MR. GERKEN: We've been trying to  
2 get the developer to the site to do the repair  
3 work for several years now and they have not  
4 responded.

5 COMMISSIONER FLICKER: So that the  
6 developer has not responded to your requests, is  
7 that what you're saying?

8 MR. GERKEN: And to the Township's  
9 requests.

10 COMMISSIONER FLICKER: And what  
11 actions have you taken because of that?

12 MR. GERKEN: I've had meetings with  
13 the administrator and the attorney for the  
14 Township explaining to them the work and the lack  
15 of progress and there are ongoing meetings now  
16 involving that as well.

17 COMMISSIONER FLICKER: And at what  
18 point do you act on the bond?

19 MR. GERKEN: A bond action does not  
20 take place unless there is a request by the  
21 developer to have a reduction or release of that  
22 performance.

23 COMMISSIONER FLICKER: Haven't there  
24 been releases all along?

25 MR. GERKEN: No, there's not been

-PUBLIC HEARING-

1 releases at all. There's been reductions.  
2 Everything is still covered by that five million  
3 dollars. It's not one specific item specifically  
4 is covered and another is not.

5 CHAIRMAN SCHILLER: I believe what  
6 the Commissioner is asking you is why can't you  
7 act on the bond yourself to call the bond and pay  
8 for the work to be done and at what point do you  
9 do that?

10 MR. GERKEN: I have to talk with the  
11 Township Administrator and attorney. It's up to  
12 them to --

13 CHAIRMAN SCHILLER: Would you do  
14 that and let's see if we can get some action on  
15 that? Why can't you call the bond in and see  
16 about getting some work done?

17 MR. GERKEN: As of the last meeting  
18 we had with the Township a month ago, the  
19 developer was told by the Township that they were  
20 going to be given a final list. If they didn't  
21 have a schedule or response to get it done, they  
22 were going to do exactly that.

23 CHAIRMAN SCHILLER: Thank you very  
24 much, Mr. Gerken.

25 We're going to take a break and

-PUBLIC HEARING-

1 we'll resume with Mr. Wadja if we could in 45  
2 minutes, so we'll be back here at quarter after  
3 2:00.

4 (Luncheon recess taken at 1:25 p.m.)

5 (Resumed at 2:17 p.m.)

6 CHAIRMAN SCHILLER: Good afternoon,  
7 ladies and gentlemen. Please be seated.

8 COMMISSIONER EDWARDS: Good  
9 afternoon. Thank you for your patience as we try  
10 to fit in a very crowded agenda today. We all  
11 appreciate your patience in doing that.

12 One of the most troubling themes to  
13 emerge in the investigation is the inability or  
14 unwillingness of appropriate agencies of  
15 government to respond to the needs of citizens in  
16 a timely, productive fashion. Where do you go if  
17 a builder or inspector leaves you holding the bag  
18 in your own home, no less, for repeated code  
19 violations or problems? What recourse do you have  
20 if your new house is falling apart or the  
21 contractor assigned to do the remedial work is the  
22 same one that caused the problem in the first  
23 place? How much do people have to put up with  
24 before they get some satisfaction and how long  
25 should that take?

-PUBLIC HEARING-

1                   This afternoon we'll hear from a  
2                   range of witnesses who will describe some more of  
3                   the bureaucratic problems awaiting those who try  
4                   to get answers to questions like these.

5                   In some instances the wronged  
6                   homeowner himself, at his own expense, had to show  
7                   the code violations or problems existed before the  
8                   appropriate agency would intervene and take some  
9                   action.

10                   In others, the failure of the  
11                   municipal inspectors to detect code violations  
12                   during the construction process were treated  
13                   instead like failures by the homeowner, not by the  
14                   local government.

15                   The testimony to be presented here  
16                   this afternoon is an important extension of what  
17                   we've already heard earlier and is designed to  
18                   reinforce the need for fundamental change and, Mr.  
19                   Chairman, I would ask you to call the first  
20                   witness.

21                   MS. GAAL: John Wadja.

22                   JOHN WADJA, sworn.

23                   BY MS. GAAL:

24                   Q.        Would you please state your name and  
25                   address, please, for the record?

-PUBLIC HEARING-

1           A.       John Wadja, 309 North Garden  
2 Boulevard, Edgewater Park, New Jersey.

3           Q.       Thank you. And what is your present  
4 occupation?

5           A.       I'm a construction superintendent  
6 for a developer.

7           Q.       In the past, did you work for a  
8 large builder?

9           A.       Yes, I have.

10          Q.       And who was that?

11          A.       HovSons.

12          Q.       Do you remember when it was that you  
13 worked there?

14          A.       1996 through 1997.

15          Q.       And what position did you hold at  
16 HovSons?

17          A.       Construction superintendent.

18          Q.       As a construction superintendent,  
19 what were your duties?

20          A.       I was responsible for building the  
21 houses, dealing with building inspectors, dealing  
22 with homeowners, all those issues.

23          Q.       Was it sort of a nuts to bolts sort  
24 of thing?

25          A.       Yes.

-PUBLIC HEARING-

1 Q. Now, did you work as the  
2 construction superintendent at a development known  
3 as Holiday City at Monroe?

4 A. Yes, I did.

5 Q. And in what county is that?

6 A. Gloucester County.

7 Q. When you started to work at that  
8 project, was it already under construction?

9 A. Yes, it was.

10 Q. Can you give us generally an idea of  
11 how much of it had been constructed when you came  
12 on board?

13 A. I would say a third.

14 Q. And were you given any instructions  
15 from your employer as to what you were to get done  
16 there?

17 A. No. He basically threw me in there  
18 and said build the houses.

19 Q. Had you ever done that before?

20 A. I was the construction  
21 superintendent for another company, yes.

22 Q. In general, how long does it  
23 typically take to build a house like those that  
24 were being constructed at Holiday City in Monroe  
25 in your position?

-PUBLIC HEARING-

1 A. A hundred and 20 days.

2 Q. Now, did HovSons utilize its own  
3 employees to build those houses or did it use  
4 subcontractors?

5 A. All subcontractors.

6 Q. All subcontractors?

7 A. Yes.

8 Q. None of them were their own  
9 employees?

10 A. No.

11 Q. Did you encounter any particular  
12 problem or problems during the construction of  
13 that project, any particular thing that stands out  
14 in your mind as caused some concerns?

15 A. Just lack of help with the  
16 contractors.

17 Q. And what do you mean by lack of  
18 help?

19 A. They wouldn't -- they weren't  
20 helpful to me at all. They just didn't produce.

21 Q. Can you give us in your opinion why  
22 didn't they produce?

23 A. Lack of pay.

24 Q. Lack of pay? Did they complain to  
25 you about that?

## -PUBLIC HEARING-

- 1 A. Yes, daily.
- 2 Q. The workers did?
- 3 A. Yes.
- 4 Q. How would you characterize their  
5 skill level?
- 6 A. They were skilled.
- 7 Q. Now, was there any problem on that  
8 site with water, ground water?
- 9 A. Yes.
- 10 Q. What was the problem?
- 11 A. There was standing water on the  
12 site. Homeowner's basements or crawl spaces had  
13 standing water all the time.
- 14 Q. Was that an issue that impacted the  
15 construction?
- 16 A. Standing water in crawl spaces?  
17 Yes, it did.
- 18 Q. Had you ever encountered anything  
19 like that before?
- 20 A. No, I hadn't.
- 21 Q. Did you have a plan or did anyone  
22 give you a plan as to how you were supposed to  
23 deal with all that ground water?
- 24 A. No one gave me any plans at all.
- 25 Q. Just keep building the houses?

-PUBLIC HEARING-

1 A. Yes.

2 Q. Did you have to do any extra work to  
3 facilitate the run-off or to try to deal with that  
4 water?

5 A. Everything was built per plan. I  
6 don't know if the plans were right, but everything  
7 was built per plan and we didn't do anything to  
8 change the plan.

9 Q. I need to ask you a couple questions  
10 then. What you are saying then, the plan didn't  
11 deal with the water or the plan did deal with the  
12 water?

13 A. The plan dealt with the water.  
14 There were different elevations on the plan that  
15 the water was supposed to go this way and that way  
16 and the drawings were bad.

17 Q. Was there any flexibility in things  
18 once you saw that the water didn't go the way you  
19 expected it to go?

20 A. There wasn't much flexibility  
21 because the houses were so close together and the  
22 water table was so high there that the water  
23 didn't have a chance to run anywhere.

24 Q. Now, as part of your job did you  
25 arrange for inspections from the local code

-PUBLIC HEARING-

1 office?

2 A. Yes, I did.

3 Q. And how would you go about doing  
4 that?

5 A. I would make a phone call and say we  
6 were ready for a framing inspection or a plumbing  
7 inspection, electrical, whatever needed to be  
8 done.

9 Q. And did they come out and do it?

10 A. Yes.

11 Q. Did they do their inspections on a  
12 timely basis?

13 A. Yes.

14 Q. Did you ever have anybody ask you  
15 what inspections you were going to do that week  
16 and basically hand you the tickets or the  
17 stickers?

18 A. I had that happen, yes.

19 Q. Tell us about that. What happened?

20 A. I would be on the site and the  
21 building inspector would say to me how many  
22 foundation inspections are you going to have  
23 today? And I would say, you know, how many we  
24 needed for that week and he would say okay, don't  
25 put the sticker on until the foundation is done.

-PUBLIC HEARING-

1 Q. And did he do the inspections to  
2 your knowledge?

3 A. I don't know.

4 Q. Did you put the stickers on when the  
5 foundation was done?

6 A. Yes, I did.

7 Q. So he would give you their own  
8 stickers and you would affix them to the building?

9 A. That's correct.

10 Q. How many times did something like  
11 that happen?

12 A. It happened on a daily basis.

13 Q. On a daily basis?

14 A. Yes.

15 Q. What particular inspections were  
16 covered that way? Was it all of them or just --

17 A. The building inspector did that  
18 quite a bit. He was pretty much the only  
19 inspector who did that.

20 Q. Now, what was his name?

21 A. The building inspector was Lou --

22 Q. DeSalvatore?

23 A. Yes, Lou DeSalvatore, that's  
24 correct.

25 Q. How about in the electrical area?

-PUBLIC HEARING-

1 Did anything like that occur in connection with  
2 the electrical panels?

3 A. Not to my knowledge.

4 Q. Did you ever have occasion where you  
5 needed to get a CO, you knew there was a closing  
6 scheduled and you had to call the local office for  
7 a rush inspection or a rush CO?

8 A. Every one.

9 Q. Every one? And how was that  
10 handled?

11 A. I would call them and say I need you  
12 to do an inspection and the building inspector  
13 would say all the inspections aren't complete. So  
14 the people would just move in without inspections.

15 Q. People moved in without inspections?

16 A. Yes.

17 Q. Now, were you rushed from your  
18 employer's end?

19 A. Yes.

20 Q. Describe that for us.

21 A. The end of the year -- the year's  
22 end was in January and one particular case I can  
23 remember trying to close 50 homes, up to 50 homes  
24 in the month of January and that's unheard of.

25 Q. You were supposed to close 50 homes

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1 in January?

2 A. Around about that number, yes.

3 Q. Was January 31st the end of their  
4 fiscal year?

5 A. Yes.

6 Q. And at what stage were those homes  
7 when you were told you have to get 50 done that  
8 month?

9 A. Some of them were foundation only.

10 Q. Were you under regular pressure in  
11 this area from your employer, daily pressure?

12 A. Daily.

13 Q. Did you have disagreements about it,  
14 arguments about it?

15 A. No. I wasn't the argumentative  
16 type. I was a young guy, I had a job and I was  
17 trying to get it done.

18 Q. How old were you then?

19 A. Thirty -- 29, 30.

20 Q. Did you feel that your job was on  
21 the line if you didn't get it done?

22 A. Yes.

23 Q. Were you told the closing dates in  
24 advance?

25 A. Yes.

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1 Q. How early in the completion of a  
2 home did you know when the closing date was?

3 A. I would receive a package from the  
4 sales department and in that package there would  
5 be a date. Usually 60 days.

6 Q. Sixty days before --

7 A. They were supposed to close.

8 Q. You knew the date?

9 A. Yes.

10 Q. Did you get flexibility in making  
11 that date?

12 A. No.

13 Q. You had to make that closing date?

14 A. Yes.

15 Q. Did anyone explain to you why they  
16 needed all these closings in the month of January?

17 A. Just that they needed to make their  
18 numbers for the fiscal year.

19 Q. For the fiscal year?

20 A. Yes.

21 Q. What did you do to achieve some of  
22 those deadlines?

23 A. I did whatever I had to do. I mean  
24 I did whatever I could. At some point people  
25 needed to move in. I forged COs so people could

-PUBLIC HEARING-

1 move in.

2 Q. And why did you do it? Can you give  
3 us a little more information?

4 A. I did it because I was in fear of my  
5 job, losing my job.

6 Q. And did anybody at your employer  
7 direct you to do that?

8 A. No.

9 Q. Did you think they knew what you  
10 were doing?

11 A. I believe so.

12 Q. And why do you say that?

13 A. Because it was never -- no one ever  
14 questioned me about it.

15 Q. Do you remember how many COs you  
16 forged?

17 A. I don't remember how many.

18 Q. Did you try to get inspections of  
19 those homes before you forged the COs?

20 A. In some cases, yes.

21 Q. And what happened?

22 A. They just weren't ready. The  
23 inspector would come out and the electrical wasn't  
24 ready, but I always called them in.

25 Q. You called them in?

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1 A. Yes.

2 Q. You tried?

3 A. Yes.

4 Q. And did you tell anyone at your  
5 employer that this house isn't ready yet?

6 A. Yes.

7 Q. And what were they saying?

8 A. Do whatever you have to do to get  
9 them in.

10 Q. Did the mortgage companies that were  
11 involved require the original COs?

12 A. The majority of them -- homeowners  
13 didn't have mortgages from what I remember. They  
14 would go to the sales department and do their  
15 closing right at our sales office. I'd say  
16 probably 10 percent had mortgages.

17 Q. The majority of the homeowners you  
18 say did not have mortgages. Do you recall the  
19 type of homeowners that were moving into that  
20 development?

21 A. They were retirement families.

22 Q. Were they often people that maybe  
23 had sold another home?

24 A. Yes.

25 Q. So they had cash?

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1           A.       I don't know what they had. I  
2       mean -- maybe.

3           Q.       But there were no mortgage companies  
4       involved?

5           A.       No.

6           Q.       At some point it was discovered that  
7       you had forged the COs, is that right?

8           A.       That's correct.

9           Q.       Were you still working for HovSons  
10       at the time?

11          A.       No, I wasn't.

12          Q.       Why did you leave?

13          A.       Someone had offered me another  
14       position at another company.

15          Q.       Was there any issue with respect to  
16       the stress or your family or anything?

17          A.       No, not at that time.

18                    MS. GAAL: That's all I have.

19                    COMMISSIONER MARINELLO: Did the  
20       Township, did anyone in the code office, the  
21       construction code office have any idea that you  
22       were forging these COs?

23                    MR. WADJA: I don't believe so.

24                    COMMISSIONER MARINELLO: And what  
25       makes you think if there is anything specific that

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1 your supervisor knew that you were forging the  
2 COs? Is it just a practical issue that no one  
3 could complete that many homes in that little  
4 time?

5 MR. WADJA: That's correct.

6 COMMISSIONER MARINELLO: When he  
7 said or someone said to you do whatever you have  
8 to do to get it done, did you take that impliedly  
9 to mean if you have to forge the COs, forge them?

10 MR. WADJA: I did because I was  
11 under pressure to get the houses done, so I did  
12 whatever I had to do.

13 COMMISSIONER MARINELLO: How did you  
14 actually forge the COs?

15 MR. WADJA: I would just make a  
16 mimeograph copy of a previous one and sign the  
17 name of the building sub-code official on the  
18 bottom of it.

19 COMMISSIONER FLICKER: What were the  
20 condition of the houses that you gave COs to?

21 MR. WADJA: They were move in  
22 condition, but I wouldn't have moved into them.

23 COMMISSIONER FLICKER: What were  
24 some of the problems in some of those houses?

25 MR. WADJA: Some of them -- like the

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1           finals -- plumbing finals weren't done. Some of  
2           them were missing toilets. The floors weren't put  
3           in, painting wasn't complete.

4                        COMMISSIONER FLICKER: What was the  
5           reaction of some of the homeowners after they did  
6           move in, what action did they take?

7                        MR. WADJA: They were at my  
8           construction trailer daily and I could only do  
9           what I could do. I mean I was one person. I had  
10          a helper there sometimes, but he couldn't do what  
11          was required.

12                      COMMISSIONER FLICKER: Did  
13          homeowners take to putting signs on their own  
14          lawns?

15                      MR. WADJA: Yes.

16                      COMMISSIONER FLICKER: Would you  
17          explain that?

18                      MR. WADJA: Giant lemons were  
19          attached to their houses or on their front yards.

20                      COMMISSIONER FLICKER: Did the  
21          developer, the head of the company for whom you  
22          worked, ever come to the site?

23                      MR. WADJA: He was responsible -- he  
24          was supposed to come on Thursdays. He would come  
25          one Thursday a month, if, in fact, he even came

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1 one Thursday a month.

2 COMMISSIONER FLICKER: How long in  
3 total did you work for this company?

4 MR. WADJA: Over two years.

5 COMMISSIONER FLICKER: Did you ever  
6 talk to the head of the company about the forged  
7 COs?

8 MR. WADJA: No, I didn't.

9 COMMISSIONER FLICKER: Thank you.

10 COMMISSIONER EDWARDS: Real quickly,  
11 we have a group of homes that were built that were  
12 poorly designed, poorly constructed, not inspected  
13 and no formal COs were granted. And the building  
14 inspector got his salary, the builder who sold  
15 them all, he got his money, you got paid your  
16 salary or all your workers got paid and the only  
17 people who wound up with the short end of the  
18 stick are the people with the lemons that were  
19 sitting on their lawns and their only recourse at  
20 that point was to put signs up and they wound up  
21 with literally houses that were lemons.

22 Is that the sum total of this? I  
23 mean the whole system failed them? Nothing in  
24 this system was there to protect them and they  
25 were the only people who wound up getting the

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1 short end of the stick in the final analysis? Is  
2 that accurate?

3 MR. WADJA: I agree, yes.

4 CHAIRMAN SCHILLER: I just wanted to  
5 thank you for your candidness here and just so  
6 that we understand that you admitted to doing the  
7 forged certificates of occupancy, didn't you, sir?

8 MR. WADJA: That's correct.

9 CHAIRMAN SCHILLER: And you paid for  
10 that in terms of a punishment from the criminal  
11 justice system?

12 MR. WADJA: That's correct.

13 CHAIRMAN SCHILLER: So we appreciate  
14 your coming in and being so candid with us now and  
15 I think Mr. Edwards put it very well, it was just  
16 a total breakdown of the system which is very  
17 apparent here and your indication on that is going  
18 to be a big help in helping to resolve the bigger  
19 problems.

20 MR. WADJA: Whatever it takes.

21 COMMISSIONER MARINELLO: I just have  
22 one follow up on that particular point.

23 You said that you're currently  
24 working as a construction supervisor for another  
25 company?

-PUBLIC HEARING-

1 MR. WADJA: That's correct.

2 COMMISSIONER MARINELLO: What was  
3 the result of the proceedings -- were you put on  
4 probation?

5 MR. WADJA: Yes.

6 COMMISSIONER MARINELLO: Was that  
7 like a PTI probation?

8 MR. WADJA: Yes.

9 COMMISSIONER MARINELLO: So as you  
10 sit here today, the probationary period is over  
11 and you don't have any criminal record to speak of  
12 because it was -- it came under PTI?

13 MR. WADJA: That's correct.

14 COMMISSIONER MARINELLO: Did your  
15 current employer ask you when you applied for this  
16 job or any other employer when you applied for any  
17 other job whether you had a criminal record?

18 MR. WADJA: Yes, they did.

19 COMMISSIONER MARINELLO: And you  
20 were able to answer that question?

21 MR. WADJA: That's correct.

22 COMMISSIONER MARINELLO: That you  
23 didn't have a criminal record?

24 MR. WADJA: I did answer it that I  
25 have a criminal record in the past.

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1 COMMISSIONER MARINELLO: Oh, you  
2 did?

3 MR. WADJA: Yes, I did.

4 COMMISSIONER MARINELLO: I have  
5 nothing further.

6 CHAIRMAN SCHILLER: Thank you very  
7 much. We appreciate you coming in.

8 (Applause.)

9 MS. GAAL: Next is a panel comprised  
10 of Gary Baldino, Michael DePalma and Edward  
11 O'Neill.

12 Gary Baldino, Michael De Palma and  
13 Edward O'Neill, sworn.

14 MS. GAAL: You may be seated.

15 We'll start with Mr. Baldino. May  
16 we have your name, please, and your address?

17 MR. BALDINO: My name is Gary  
18 Anthony Baldino. 523 St. Martin Court,  
19 Williamstown, New Jersey, 08094.

20 MS. GAAL: What is the name of the  
21 development in which you reside?

22 MR. BALDINO: Holiday City at  
23 Monroe.

24 MS. GAAL: Are there age  
25 restrictions in that?

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1 MR. BALDINO: Yes, it's 55. It's an  
2 adult community, 55 and over.

3 MS. GAAL: When did you purchase  
4 your home?

5 MR. BALDINO: I purchased my home on  
6 February 27th, 1998.

7 MS. GAAL: And who was your builder?

8 MR. BALDINO: HovSons, Hovnanian  
9 Corporation.

10 MS. GAAL: What did you pay for it?

11 MR. BALDINO: I paid \$125,000 for my  
12 home.

13 MS. GAAL: Mr. DePalma, may we have  
14 your name?

15 MR. DE PALMA: Michael DePalma. Do  
16 you want my address?

17 MS. GAAL: Go ahead.

18 MR. DE PALMA: 135 Center Street,  
19 Blackwood, New Jersey, 08037.

20 MS. GAAL: By whom are you employed?

21 MR. DE PALMA: Monroe Township.

22 MS. GAAL: What is your position  
23 there?

24 MR. DE PALMA: Construction  
25 Official.

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1 MS. GAAL: How long have you worked  
2 for Monroe Township as the Construction Official?

3 MR. DE PALMA: Two years and four  
4 months.

5 MS. GAAL: What licenses do you  
6 hold?

7 MR. DE PALMA: Construction  
8 Official, Building Inspector, Plumbing Inspector  
9 and Fire Inspector.

10 MS. GAAL: Prior to working in  
11 Monroe, where did you work?

12 MR. DE PALMA: Ocean City.

13 MS. GAAL: Same --

14 MR. DE PALMA: Construction  
15 Official.

16 MS. GAAL: And Mr. O'Neill, may we  
17 have your name?

18 MR. O'NEILL: Edward O'Neill, 2135  
19 Tremont Avenue, Atco, New Jersey.

20 MS. GAAL: And by whom are you  
21 employed?

22 MR. O'NEILL: Monroe Township as the  
23 Building Sub-Code Official and the licenses I have  
24 are Building HVAC Inspector, Construction Code  
25 Official, Sub-Code Official and Electrical

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1 Inspector.

2 MS. GAAL: How long have you worked  
3 for Monroe?

4 MR. O'NEILL: It will be three years  
5 in April.

6 MS. GAAL: And prior to that, where  
7 did you work?

8 MR. O'NEILL: Full time for -- I  
9 didn't work full time for anyone as an inspector.

10 MS. GAAL: Mr. Baldino, do you have  
11 some problems with your home?

12 MR. BALDINO: Many.

13 MS. GAAL: When did you first  
14 discover that you had problems?

15 MR. BALDINO: Well, on the  
16 walk-through when we first bought the home.

17 MS. GAAL: So the walk-through at  
18 closing time?

19 MR. BALDINO: Yes, closing time.

20 MS. GAAL: And if you could, and I  
21 know you want to tell us a lot, but I'm going to  
22 ask you to summarize the problems, just give us a  
23 summary of the problems you saw at your home.

24 MR. BALDINO: First of all, I had  
25 problems ranging from broken glass, I had problems

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1 with the trusses, with doors not closing properly,  
2 paint not being painted properly, areas of that  
3 nature, of course, nail pops, cracks, floors that  
4 squeaked. These are the minor things.

5 MS. GAAL: How about some of the  
6 major ones?

7 MR. BALDINO: The major ones right  
8 now that we know are trusses that were out of  
9 Uniform Construction Code. The trusses that were  
10 supposed to be put in there and supposed to be  
11 inspected were out of code. Plus, the water  
12 situation is devastating in that community as  
13 already noted and, of course, other problems  
14 envisioned concerning the actual landscape, the  
15 actual drainage and numerous other problems.

16 MS. GAAL: Have you had such things  
17 as loose shingles, loose siding?

18 MR. BALDINO: I had that problem,  
19 too. I had shingles on the roof, siding. Also,  
20 we notated the straps in the crawl space were not  
21 sufficient. There was anchor straps plus shims.  
22 When they shimmed my home up, after they did and  
23 when they corrected it, they actually cracked my  
24 walls inside my house when they jacked my house up  
25 to correct the shim problem. That's when it goes

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1 in between the actual, I guess, construction, the  
2 baluster and the board and they have -- they  
3 weren't in there. So basically, when they did  
4 come in and they did the job, they actually  
5 cracked my walls. That's still there. The  
6 cracked walls still have not been repaired.

7 So these are only a few things but,  
8 as I said, I just want to notate something here.  
9 I'm only speaking for myself and I know that  
10 there's other individuals in my group. In fact,  
11 could I just have them raise their hands?

12 MS. GAAL: Not at this point.

13 MR. BALDINO: I just want to make  
14 sure that you know that other people should be  
15 here speaking on my -- I'm not the only one  
16 because you're only going to get my point of view,  
17 but you should get the point of view of all the  
18 residents.

19 MS. GAAL: At this point we're going  
20 to question you and expect that you are here as  
21 the representative of the others, also.

22 Did you bring the problems that you  
23 found to your builder when you first found them?

24 MR. BALDINO: Yes, we did.

25 MS. GAAL: Was that around closing

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1 time?

2 MR. BALDINO: Yes.

3 MS. GAAL: Did you develop some sort  
4 of a punch list?

5 MR. BALDINO: Yes, we did.

6 MS. GAAL: And what was the  
7 builder's response to you as a homeowner when you  
8 brought those things to his or her attention?

9 MR. BALDINO: Well, when I first saw  
10 him, he said we are going to get to those problems  
11 as soon as we can. Now, it's five years later and  
12 I still have them, so you could deduce right there  
13 what the story is.

14 MS. GAAL: But in the beginning,  
15 they said we're going to take care of your  
16 problems and -- you have to answer. You nodded.  
17 You have to say yes.

18 MR. BALDINO: Yes.

19 MS. GAAL: And as a result of those  
20 assurances, did you proceed to closing?

21 MR. BALDINO: Yes, I did.

22 MS. GAAL: Because you thought they  
23 would take care of them?

24 MR. BALDINO: I thought they were a  
25 reputable builder. I though he was a quality

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1 builder. It's been stated recently in the papers,  
2 as of Saturday and Sunday's Inquirer. He's the  
3 largest builder in the State of New Jersey.

4 MS. GAAL: Were there occasions or  
5 attempts made by the builder to rectify the  
6 problems in your home? Did they come in and make  
7 some attempt to rectify some of the problems?

8 MR. BALDINO: They attempted to  
9 rectify some of the problems, but most of the  
10 problems were more like a lackadaisical effort,  
11 more administrative procedures. They also, as far  
12 as I'm concerned, they didn't really take an  
13 interest to them at all. In other words, we're  
14 just another person, another \$120,000. In other  
15 words, I think it's a bait and switch. In other  
16 words, we paid good money for our homes. We were  
17 given counterfeit homes. We paid United States  
18 dollars, but what they gave us was counterfeit.

19 MS. GAAL: Did there come a point in  
20 time when you realized that you were not alone,  
21 that some of your neighbors also had problems?

22 MR. BALDINO: Oh, this was a -- this  
23 is one of the highlights of what we're trying to  
24 get across. We as residents took it upon  
25 ourselves to find out what the problem was in

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1       Holiday City, so I contacted other residents and  
2       we discussed the areas of the problems among us  
3       all and they were kind of close to what I had, the  
4       same problems. Therefore, we said we must go see  
5       the Township and initiate some action because  
6       obviously, we weren't getting any from the  
7       builder. I think that was null and void there.

8                       So we attempted to see the Township  
9       and that's what we did. And that's how we got to  
10      the meeting at Monroe Township.

11                     MS. GAAL: Okay. Take a break.  
12      Now, here's your chance to give me an idea of what  
13      your neighbors' problems are. What are the  
14      problems that some of the other people have?  
15      Particularly, I'd like to hear about that water  
16      problem.

17                     MR. BALDINO: Well, most of the --  
18      the ones I know of in my section, the third phase  
19      basically was where the water is. There's  
20      numerous people with water in their basements. I  
21      mean right now there is an individual with water  
22      with about six inches in his basement. And  
23      nothing has been done. I mean it's just lying  
24      water. Therefore, it creates a health problem.  
25      You're talking about not only mold, you're talking

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1 about the West Nile Virus; you're talking about  
2 respiratory problems in senior citizens. These  
3 are senior citizens. These are not young people.  
4 So you've got to consider what we're doing here  
5 and what we're trying to convey to the Commission.

6 MS. GAAL: Now, did some people have  
7 situations where the cabinets in their homes  
8 aren't aligned properly?

9 MR. BALDINO: True.

10 MS. GAAL: How about floor problems?

11 MR. BALDINO: That's correct.

12 MS. GAAL: What kind of problems do  
13 they have with their floors?

14 MR. BALDINO: Some of the floors are  
15 sinking due to the fact that the actual  
16 foundations are sinking in the homes because of  
17 the water situation. Obviously, if you're sitting  
18 on top of water, I don't think you're going to  
19 have a foundation that will last too long. It's  
20 going to sink but you don't know how because we're  
21 not engineers. So how would you determine only by  
22 looking at it and feeling these problems and  
23 realizing there is a problem. So we're going to  
24 have to have somebody come in and look at the  
25 foundations.

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1 MS. GAAL: So, along with that, do  
2 you have the kind of problems such as the doors  
3 don't fit properly?

4 MR. BALDINO: That's correct. Doors  
5 are out of alignment, don't close. There is a  
6 window problem, doesn't close properly. So I  
7 believe that the total structure of the home is  
8 involved in what we're trying to convey here.  
9 It's the total structure.

10 MS. GAAL: Mr. DePalma, did you have  
11 any involvement in inspecting the Holiday City  
12 development?

13 MR. DE PALMA: Prior to my  
14 employment in Monroe?

15 MS. GAAL: Once you got to Monroe,  
16 were you called upon to look at those homes?

17 MR. DE PALMA: Yes.

18 MS. GAAL: And --

19 MR. DE PALMA: Actually, I was the  
20 Construction Official and Ed, he was the inspector  
21 on site, but we went out together a lot on a lot  
22 of different issues. As Mr. Baldino indicated,  
23 there was a meeting held in Monroe Township but  
24 that was prior to me taking the job as  
25 Construction Official.

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1 MS. GAAL: Right. When you saw  
2 problems during the construction, what did you do?  
3 Did you talk to anybody about that?

4 MR. DE PALMA: Yeah. We had the job  
5 site superintendent out there, just kept failing  
6 him. Eventually it got to where we had to stop  
7 the job.

8 MS. GAAL: Let's go back to during  
9 the construction phase, were you ever working  
10 there while those houses were being constructed?

11 MR. DE PALMA: Yes.

12 MS. GAAL: In what position?

13 MR. DE PALMA: Construction  
14 Official.

15 MS. GAAL: Did you see problems  
16 during the construction?

17 MR. DE PALMA: Yes.

18 MS. GAAL: Whose attention did you  
19 bring it to?

20 MR. DE PALMA: The construction -- I  
21 was the Construction Official. Maybe I'm off base  
22 here. Maybe I don't understand what you're asking  
23 me.

24 MS. GAAL: Weren't you a Sub-Code  
25 Official before you became the Construction

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1 Official?

2 MR. DE PALMA: Yes.

3 MS. GAAL: Okay. Let's go back to  
4 that.

5 MR. DE PALMA: I'm sorry. Yes.

6 MS. GAAL: Relax. We're not giving  
7 you a hard time.

8 MR. DE PALMA: I didn't know what  
9 you were asking. Yes, I was the Plumbing Sub-Code  
10 Official from '96 to 2000.

11 MS. GAAL: All right. Now when you  
12 were out there as a Plumbing Sub-Code Official,  
13 did you see problems in the construction?

14 MR. DE PALMA: Yes, I did.

15 MS. GAAL: Did you bring those  
16 problems to the attention of anyone else working  
17 for the municipality?

18 MR. DE PALMA: I did. I brought it  
19 back to the Building Sub-Code Official and the  
20 Construction Official at the time.

21 MS. GAAL: And what problems stand  
22 out in your mind that you saw in the homes?

23 MR. DE PALMA: Two major problems  
24 that stand out most in my mind. One was truss  
25 bracing issues and the other was crawl spaces were

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1 wet.

2 MS. GAAL: Truss bracing issues and  
3 the crawl spaces were wet?

4 MR. DE PALMA: Correct.

5 MS. GAAL: And you saw a lot of  
6 that?

7 MR. DE PALMA: Yes.

8 MS. GAAL: Did you think the truss  
9 bracing was not being put up properly?

10 MR. DE PALMA: It was not there at  
11 all in same cases and, most cases, it was not  
12 properly for sure.

13 MS. GAAL: So in most cases it  
14 wasn't proper and in some cases there wasn't  
15 anything?

16 MR. DE PALMA: That would be the  
17 gist, yes.

18 MS. GAAL: Did you know that it  
19 wasn't right when you saw it?

20 MR. DE PALMA: Yes.

21 MS. GAAL: And why is it that you  
22 knew it wasn't right?

23 MR. DE PALMA: Before coming to  
24 Monroe, I had moved to Florida for a while and I  
25 was Building Inspector in Florida and as part of

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1       our training in Florida, we had weekly courses on  
2       truss bracing, wind and the effects of wind on a  
3       house and we had intense training on truss bracing  
4       and when I came back and started making the  
5       plumbing inspections at Monroe, I'd point out to  
6       the Building Sub-Code Official that some of that  
7       bracing was missing and there wasn't bracing on  
8       some of those trusses and he said, well, there  
9       would be a red tag if it was required. I said no,  
10      that's not so.

11                   MS. GAAL: And there were no truss  
12      designs or --

13                   MR. DE PALMA: There were no truss  
14      profiles on the job site.

15                   MS. GAAL: So you would bring this  
16      to their attention and basically what, you got  
17      overruled?

18                   MR. DE PALMA: Yes. We argued about  
19      it a few times and I got overruled between the  
20      Building Sub-Code and the Construction Official  
21      and things proceeded.

22                   MS. GAAL: And you weren't the  
23      Construction Official at the time and you weren't  
24      the Building Sub-Code Official? You were the  
25      plumbing --

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1 MR. DE PALMA: Right.

2 MS. GAAL: So it really wasn't your  
3 bailiwick, so to speak?

4 MR. DE PALMA: Exactly.

5 MS. GAAL: Did you feel that proper  
6 inspections were being conducted at that time?

7 MR. DE PALMA: Well, just the fact  
8 the truss bracing was missing and the crawl spaces  
9 were wet, no.

10 MS. GAAL: Now, when you say crawl  
11 spaces were wet, what do you mean?

12 MR. DE PALMA: We would go back even  
13 sometimes on a final and the crawl spaces would  
14 have water and try to make a final inspection.  
15 There were other issues and I felt that there  
16 should be drains installed to relieve the water.

17 MS. GAAL: I can't hear you real  
18 well.

19 MR. DE PALMA: I felt there should  
20 be drains installed to get rid of the water and I  
21 was overruled on that, also.

22 MS. GAAL: I assume that crawl  
23 spaces should not be wet at the final inspection?

24 MR. DE PALMA: That is correct.

25 MS. GAAL: And when you say wet,

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1 what kind of water were you seeing?

2 MR. DE PALMA: Well, they were just  
3 damp dirt to having a few inches of water in some  
4 of them and, of course, our Construction  
5 Official's answer was he gave me a pair of waders  
6 and yellow boots.

7 MS. GAAL: A pair of waders and  
8 yellow boots?

9 MR. DE PALMA: Yeah.

10 MS. GAAL: To go in there?

11 MR. DE PALMA: Yes.

12 MS. GAAL: Did you put them on?

13 MR. DE PALMA: Yes.

14 MS. GAAL: Did you get sick?

15 MR. DE PALMA: No, I didn't get  
16 sick.

17 MS. GAAL: Were those homes issued  
18 COs despite that water being in the crawl space  
19 and with those bracing situations as you saw?

20 MR. DE PALMA: To my knowledge.

21 MS. GAAL: Okay. Now, Mr. Baldino,  
22 getting back to you, during that time frame, did  
23 you bring your issues to the Construction Code  
24 Official?

25 MR. BALDINO: Yes, we did.

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1 MS. GAAL: Okay. Did you bring your  
2 issues eventually to Mr. DePalma?

3 MR. BALDINO: Yes, we did.

4 MS. GAAL: By that point I guess he  
5 was the CO?

6 MR. BALDINO: Yes, he was.

7 MS. GAAL: And what did you learn  
8 when you went to him?

9 MR. BALDINO: He took it more  
10 seriously. In fact, he did a good job, very good  
11 job in correcting these problems. However, prior  
12 to that, the inspectors did not do their jobs.  
13 This is what we were concerned about. That's why  
14 we had the meeting at the Township. That's what  
15 brought on all these officials from the State to  
16 look into this problem. We had Mr. Geist there.  
17 We had Mr. Raoule there from the DCA. We had a  
18 Bob Smith there and this is what happened. After  
19 this, this is why we had to approach it this way  
20 because we felt there was no other way to go.

21 MS. GAAL: Did Mr. DePalma tell you  
22 that someone had forged your CO?

23 MR. BALDINO: Well, we knew that  
24 there was forged COs. I had one personally,  
25 that's why. When I went up to the office with Mr.

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1 Polino who at the time was the Construction  
2 Official, my CO wasn't up to date at all. Mine  
3 was forged and they told me it's just one of those  
4 things that happened and that's just one of those  
5 bypass things. I said I doubt it because you  
6 cannot occupy a home without a CO. It states in  
7 there specifically.

8 MS. GAAL: So you're one of the  
9 homeowners whose house had a forged certificate of  
10 occupancy?

11 MR. BALDINO: Yes.

12 MS. GAAL: And did you subsequently  
13 write a letter to the Department of Community  
14 Affairs?

15 MR. BALDINO: Yes.

16 MS. GAAL: The Office of Regulatory  
17 Affairs.

18 MR. BALDINO: I sure did, Mr. Grace.

19 MS. GAAL: Did you outline your  
20 concerns to him?

21 MR. BALDINO: Yes, I did.

22 MS. GAAL: Did he give you a  
23 response?

24 MR. BALDINO: Well, his response was  
25 they don't have the manpower to look into my

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1       problem. It wasn't a safety issue was the problem  
2       so he figured that's not a concern of his  
3       department. He said he didn't have enough  
4       manpower, therefore -- that was it. That was the  
5       answer I got. So therefore, from that that's why  
6       we had the meeting because we got no response from  
7       the initial -- the DCA response was null and void.  
8       As far as I'm concerned, they didn't care about  
9       the residents of this particular state and this is  
10      why we're here.

11                   MS. GAAL: Did the initial response  
12      from DCA, you mentioned Mr. Grace, did it indicate  
13      that your problems were cosmetic, probably  
14      workmanship?

15                   MR. BALDINO: He said they were  
16      cosmetic in nature. Of course, how could he know  
17      if he didn't inspect? He makes a statement and  
18      just outright makes a statement that they are  
19      cosmetic, but they were not as we know now.

20                   MS. GAAL: Did he indicate that they  
21      didn't have enough manpower?

22                   MR. BALDINO: Exactly. It states in  
23      the letter, lack of manpower.

24                   MS. GAAL: Did you ultimately write  
25      a letter to the Director of the Bureau?

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1 MR. BALDINO: Yes, Mr. Connolly,  
2 yes.

3 MS. GAAL: And what did you indicate  
4 to Mr. Connolly?

5 MR. BALDINO: Well, the same  
6 problems I indicated to Mr. Grace, that we're  
7 going through this period where we have shoddy  
8 workmanship, poor construction, poor inspection  
9 and we wanted the State to handle it. We figured  
10 the State is our last outlet. We went to the  
11 Department of Consumer Affairs to see what they  
12 would have to say. And they -- we had a meeting  
13 in Trenton and --

14 MS. GAAL: We'll get to that  
15 eventually. What did you get back from Mr.  
16 Connolly? Did you get a letter?

17 MR. BALDINO: Mr. Connolly stated  
18 they were going to look into the problem and at a  
19 regular time we're going to have meetings and so  
20 forth and so on. In other words, he recognized  
21 the problem. We wouldn't let him go. Just like  
22 Mr. Grace said, we had Mr. Connolly cornered. I  
23 said either you're going to do something or we're  
24 going to go higher.

25 MS. GAAL: Did he indicate that a

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1 number of your problems were warranty problems?

2 MR. BALDINO: Excuse me?

3 MS. GAAL: Did he tell you in his  
4 letter that many of your problems were warranty  
5 problems?

6 MR. BALDINO: Yes, he said they were  
7 workmanship issues.

8 MS. GAAL: Did you ever attempt to  
9 make a claim under the warranty?

10 MR. BALDINO: Yes, we did. I filed  
11 a complaint and referenced my CO stating why I  
12 should be in a home that's out of code and the  
13 warranty comes back and said we have nothing to do  
14 with code issues. We're only concerned with the  
15 warranty issues in your home. I can't go into too  
16 much because I don't have the thing in front of  
17 me.

18 MS. GAAL: Okay. So you didn't get  
19 any satisfaction from --

20 MR. BALDINO: Not from the warranty  
21 company, no, we did not.

22 MS. GAAL: Now, you mentioned a  
23 meeting and I assume that meeting was a meeting  
24 with your Mayor?

25 MR. BALDINO: Yes.

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1 MS. GAAL: Then Mayor Duffy?

2 MR. BALDINO: Yes, late Mayor Duffy,  
3 and I just want to say that late Mayor Duffy  
4 helped us quite a bit to stem the tide of this  
5 particular situation.

6 MS. GAAL: And according to my  
7 notes, in April of 2000, you organized a meeting  
8 between the residents, the builder, the local  
9 construction officials, elected officials and DCA,  
10 is that right?

11 MR. BALDINO: That's correct.

12 MS. GAAL: Did you have a large  
13 meeting?

14 MR. BALDINO: Yes, we did.

15 MS. GAAL: And as a result of the  
16 meeting, did someone ask the DCA to investigate  
17 the matter?

18 MR. BALDINO: Yes.

19 MS. GAAL: Who was that?

20 MR. BALDINO: That was Senator Geist  
21 at the time, George Geist.

22 MS. GAAL: Okay. And what was the  
23 outcome of that request? Did DCA come down and  
24 investigate?

25 MR. BALDINO: Yes, they actually

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1           took command of the situation after that. Mr.  
2           Geist said you have the ball. You have the ball  
3           and you must take it to the homeowners and find  
4           out exactly what occurred here because we see a  
5           lot of complaints. We had over 250 people at that  
6           meeting. Our complaints were listed right here.  
7           In fact, the DCA has a list of all our complaints  
8           in their computers.

9                           MS. GAAL: Now, did DCA do that  
10           investigation?

11                          MR. BALDINO: Yes.

12                          MS. GAAL: Can you describe for us  
13           or summarize for us any code violations that they  
14           found as far as you know?

15                          MR. BALDINO: Well, first of all,  
16           when they made that inspection, they came down and  
17           wanted to -- I guess they wanted to alleviate some  
18           of the problems between the builder and the  
19           residents and, of course, the DCA. What they did  
20           is the builder, actually, after they initiated the  
21           problem, the builder got his own engineering  
22           company to come down and inspect the homes, French  
23           and Perillo is their name and they did the  
24           inspections of our homes. And after that they  
25           found problems with the code issues.

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1 MS. GAAL: What kind of code issues?

2 MR. BALDINO: Well, the truss code  
3 issues, straps, water in the crawl space. We  
4 had -- of course, I had my shims, also. We have  
5 outside drainage. Those issues were brought up.

6 MS. GAAL: Now, were those problems  
7 problems in many of the homes?

8 MR. BALDINO: Most of the homes,  
9 yes. I would say -- well, let's put it this way.  
10 I know that our section had them. I don't know  
11 about the rest of them. Not all houses were  
12 inspected, by the way.

13 MS. GAAL: Okay. Mr. DePalma, when  
14 you took the job as the Construction Code  
15 Official, not the Sub-Code but the Code Official  
16 job, you knew there were problems in Holiday City,  
17 I take it?

18 MR. DE PALMA: Correct.

19 MS. GAAL: Okay. And was there, by  
20 that point, a formal agreement drafted between the  
21 DCA and the builder?

22 MR. DE PALMA: Yes, there was.

23 MS. GAAL: Okay. And as the  
24 Construction Official, did you have any  
25 responsibility to oversee remediation work at

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1 Holiday City?

2 MR. DE PALMA: Yes. My department  
3 was instructed to make the inspections in  
4 accordance with the repairs.

5 MS. GAAL: Okay. And when the  
6 inspections -- strike that. When the remediation  
7 work was done, did the builder comply with the DCA  
8 directives at least in the beginning?

9 MR. DE PALMA: I think for the most  
10 part, yes.

11 MS. GAAL: Okay. Go ahead.

12 MR. DE PALMA: I would say, as Mr.  
13 Baldino indicated, they had an engineering firm of  
14 French and Perillo that inspected a few of the  
15 first homes. I think they inspected 40 homes,  
16 found code violations. In the agreement, they  
17 separated code violations from warranties and  
18 these code violations were to be corrected.

19 MS. GAAL: What about the warranty  
20 issues?

21 MR. DE PALMA: That was a different  
22 area, but they were supposed to -- I don't know  
23 what happened from them, but the agreement was  
24 they were going to treat all homes as if they were  
25 in the first year of occupancy and deal with any

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1 problems they may have.

2 MS. GAAL: But --

3 MR. DE PALMA: I don't know that  
4 that happened.

5 MS. GAAL: As far as warranty  
6 issues, were they, in fact, out of time on  
7 warranty? Was it too late?

8 MR. DE PALMA: Well, the warranty --  
9 home warranty on the builder's responsibility  
10 before they get into the HOW program which is the  
11 10 year, the builder has a one year warranty on  
12 the homes prior to that. They were going to treat  
13 it as if they were new homeowners and the one year  
14 warranty was still in effect. I don't know if  
15 that happened or not.

16 MS. GAAL: The builder agreed to do  
17 that as far as you know?

18 MR. DE PALMA: Correct.

19 MS. GAAL: Now, what kind of code  
20 violations were found, do you remember?

21 MR. DE PALMA: Yes. We were dealing  
22 with truss bracing in all houses, some type of  
23 truss bracing, foundation anchorage which is  
24 either strapping or bolts is what holds the wood  
25 to the masonry foundation. Both of those were

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1 unacceptable by code and then, also, they made an  
2 inspection of the homes, they gave people a 10-day  
3 window or so to write a request for inspection of  
4 the crawl space to see if they had water or not.

5 MS. GAAL: People had 10 days?

6 MR. DE PALMA: I believe it was only  
7 10 days. Of course, other people may know better  
8 than that. But that is in the agreement. And the  
9 people that responded to that that did write --  
10 and, of course, there were some that were away on  
11 vacation and some that may spend winters in  
12 Florida and not come back yet, but I believe there  
13 were 60 some that they agreed to put drains in.  
14 Now, there's 600-some houses in there.

15 MS. GAAL: Okay. Mr. O'Neill, as  
16 the Building Inspector, did you have  
17 responsibility in inspecting any of that  
18 remediation work?

19 MR. O'NEILL: Yes, the majority of  
20 it.

21 MS. GAAL: And when you inspected  
22 it, do you inspect to code or do you inspect to  
23 the architect and engineer's remediation plan?

24 MR. O'NEILL: No, now we're  
25 inspecting according to the new engineer design.

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1 MS. GAAL: Now, when you say now,  
2 what --

3 MR. O'NEILL: Well, when the  
4 agreement came into effect, they gave us new  
5 engineering for those homes, specific engineering  
6 for each model and those are the repairs made on  
7 that particular model. I inspect those repairs,  
8 that they are according to the engineered design  
9 for that model.

10 MS. GAAL: Let me make sure we all  
11 understand what the facts are. When you say they  
12 gave you engineering design, who is the they?

13 MR. O'NEILL: French and Perillo  
14 which is the engineering firm hired by HovSons,  
15 they gave new designs which were approved by DCA  
16 for each of the houses, prototype designs, so to  
17 speak, for the repair work on the truss bracing  
18 and the sill plate anchorage specifically.

19 MS. GAAL: So when you do your  
20 inspections on the remediation work, you inspect  
21 to the repair plan, not to the code?

22 MR. O'NEILL: That's correct.

23 MS. GAAL: Am I right?

24 MR. O'NEILL: That's correct.

25 MS. GAAL: Now, did you notice any

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1 problems with the remediation work that was being  
2 done?

3 MR. O'NEILL: Well, initially, they  
4 couldn't get it correct. They couldn't do the  
5 repairs according to the engineering design.

6 MS. GAAL: Who is the they you're  
7 talking about?

8 MR. O'NEILL: At that particular  
9 time, it was John Tanuski who was a subcontractor  
10 who was hired by HovSons to do the repair work.

11 MS. GAAL: What do you mean he  
12 couldn't do it right?

13 MR. O'NEILL: Well, you have a  
14 picture in front of you basically and a design and  
15 there are specifics written on the picture, so  
16 many nails, certain types of nails, certain  
17 placement of nails or screws depending on the  
18 design work and the design has to be according to  
19 the picture and either it is or it isn't. It's  
20 cut and dry. So they couldn't get it according to  
21 the picture.

22 MS. GAAL: Was there anything about  
23 the picture that was difficult or impossible?

24 MR. O'NEILL: Not really, no.

25 MS. GAAL: Do you have an

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1 explanation or an opinion as to why they couldn't  
2 get it to the picture?

3 MR. O'NEILL: Not really, I can't  
4 give you an explanation why they couldn't get it.  
5 There were situations where there were some odd  
6 situations that weren't covered by a particular  
7 design and they would have to go back to French  
8 and Perillo to get additional design work done  
9 which took a long time for them to be able to get.  
10 They just couldn't get the updated engineering  
11 done in a timely manner either. So it was just --  
12 the start-up process was very difficult.

13 MS. GAAL: How long is a long time?  
14 What do you mean by that?

15 MR. O'NEILL: For them to get  
16 updated?

17 MS. GAAL: Yes.

18 MR. O'NEILL: In the beginning, it  
19 would take months.

20 MS. GAAL: So, in other words, you'd  
21 be working on a house, there would be a need for  
22 an updated design and months would go by before  
23 there was a new design on the house?

24 MR. O'NEILL: That's correct.

25 MS. GAAL: And the house would what,

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1 sit?

2 MR. O'NEILL: They couldn't continue  
3 repairing that house or that particular model  
4 until they got the updated design.

5 MS. GAAL: And did you fail either  
6 the footing or foundation work?

7 MR. O'NEILL: All the time.

8 MS. GAAL: All the time?

9 MR. O'NEILL: Yes, in the beginning,  
10 yes.

11 MS. GAAL: Did you fail the repair  
12 work on the same house more than once?

13 MR. O'NEILL: Yes.

14 MS. GAAL: Can you give me an idea  
15 how many times you might have failed the repair  
16 work on some of those houses?

17 MR. O'NEILL: As many times as it  
18 wasn't right. Four, five sometimes.

19 MS. GAAL: And you would have to  
20 keep going back out?

21 MR. O'NEILL: Yes.

22 MS. GAAL: And give us an idea then  
23 overall how long the problems went on?

24 MR. O'NEILL: They're still going  
25 on.

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1 MS. GAAL: And there were homeowners  
2 living in the homes, am I right?

3 MR. O'NEILL: All of these homes are  
4 homes that were started prior to Mr. DePalma and  
5 myself coming to work there. Any of the homes  
6 that were started when we got there that we fully  
7 inspected do not come under this agreement because  
8 they were inspected properly, they were done  
9 properly and they don't have the problems. Any of  
10 the prior homes have existing problems and come  
11 under the new designs and have to be repaired  
12 accordingly.

13 MS. GAAL: Do you know about how  
14 many homes are included?

15 MR. O'NEILL: Probably between 500  
16 and 550.

17 MS. GAAL: Now, you mentioned  
18 trusses, the anchors. Is there any remediation  
19 work with respect to all that water we've heard  
20 about?

21 MR. O'NEILL: No, I brought that up.  
22 There was a meeting in Monroe Township with the  
23 official, Mr. Geist, Mr. Smith, Rob Andrews had  
24 people there, Mr. Connolly was there, and Edele  
25 Hovnanian was there, some of the homeowners and I

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1 brought that specific question up because it  
2 wasn't addressed at that time and I said that it  
3 was mentioned that there was a water problem and  
4 they said they were going to put an ad in the  
5 paper and they could contact within 10 days to  
6 have the crawl spaces checked to see if they did  
7 have a water problem and I said, number one, most  
8 of these people are old, they don't go into the  
9 crawl space.

10 Number two, we are in the middle of  
11 a five year drought so the water is very low and  
12 some of these people are snow birds. They're not  
13 even around and at that time, Mr. Connolly said we  
14 would address that as it came up, but I don't know  
15 if anything else has occurred beyond that.

16 MS. GAAL: Are you aware of anything  
17 having come up to address that?

18 MR. O'NEILL: No, not really, no.  
19 Part of that agreement was that the engineer,  
20 French and Perillo, would make inspections of  
21 these homes or the engineer's designated  
22 representative. Now, the problem that I feel is a  
23 problem is that the designated representative  
24 happened to be the employee or subcontractor of  
25 the builder who's making these investigations of

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1 the home and making the determination and I felt  
2 that was a conflict of interest.

3 MS. GAAL: So, in other words, so  
4 we're clear, the agreement says the engineer or  
5 his representative will do it but, in reality,  
6 it's an employee of the builder?

7 MR. O'NEILL: That's correct.

8 MS. GAAL: And so it's not the  
9 engineer, in fact?

10 MR. O'NEILL: Not the engineer, no.

11 MS. GAAL: Is it, by any chance,  
12 anyone who's doing the repair work?

13 MR. O'NEILL: Yes, exactly.

14 MS. GAAL: So the employee who is  
15 doing the repair work is also the person doing the  
16 inspections to see if the repair work complies  
17 with the remediation plan?

18 MR. O'NEILL: No. They're doing --  
19 they're looking to see what needs to be done as  
20 the representative of the engineer. Now, if there  
21 are additional things such as missing piers, no  
22 shims, incorrect shims, because directly addressed  
23 in the agreement was basically sill plate  
24 anchorage and truss bracing. The other things  
25 that were existing problems were to be looked at

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1 on a case-by-case basis, so to speak, and by  
2 reaching Hovnanian's agent's representative and  
3 that ends up being the employee of the builder.

4 MS. GAAL: Okay. Have you seen any  
5 of this addressed on a case-by-case basis?

6 MR. O'NEILL: Initially I would  
7 bring it up when I go down to inspect a sill plate  
8 and there were some things that had to be done and  
9 it waffles back and forth insofar as what I should  
10 be looking at, what I shouldn't be looking at. At  
11 periods I'm too picky.

12 MS. GAAL: Who says you're too  
13 picky?

14 MR. O'NEILL: Well, DCA.

15 MS. GAAL: DCA says you're too  
16 picky?

17 MR. O'NEILL: Yes.

18 MS. GAAL: Did they ask you to back  
19 off?

20 MR. O'NEILL: Periodically, yes.

21 MS. GAAL: And the sub or the  
22 individual who's doing the work, that contractor  
23 you mentioned, did he also work on the job  
24 initially?

25 MR. O'NEILL: Well, no, he was not

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1 part of the building process, no.

2 MS. GAAL: Now, the DCA sent  
3 inspectors down, by the way?

4 MR. O'NEILL: Yes.

5 MS. GAAL: And did they inspect your  
6 inspections? What did they do?

7 MR. O'NEILL: Yes, they're coming  
8 down and they're inspecting periodically with me  
9 or behind me depending on the case. A lot of  
10 times we now go in together and they'll take half  
11 of it and I will take half of it. They'll  
12 actually take the inspection because they've  
13 inspected behind me so many times that they don't  
14 expect to see anything that I don't see.

15 MS. GAAL: It sounds to me a moment  
16 ago like the DCA was indicating you were a little  
17 too picky?

18 MR. O'NEILL: Well, it depends on  
19 when you asked what.

20 MS. GAAL: What do you mean by that?

21 MR. O'NEILL: Well, it's changed  
22 back and forth so many times. I think in  
23 deference to the DCA, they made an agreement with  
24 the builder, they want to try to get certain  
25 repairs done. Any builder has a corporation in a

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1 particular building community. It's a separate  
2 corporation. Any builder can bankrupt that  
3 corporation and walk away and do nothing. So DCA  
4 did get an agreement and did get a certain amount  
5 of work to be done by the builder to correct  
6 problems that were there rather than having the  
7 builder just walk away and having no corrections  
8 done. But in contrast to that, there were other  
9 things that could be done.

10 MS. GAAL: Now, when you found those  
11 other problems that you mentioned earlier, did the  
12 builder correct those when you would point them  
13 out?

14 MR. O'NEILL: Sometimes they did and  
15 then sometimes they would call their home office  
16 and the home office would call DCA and DCA would  
17 either say we'll have to look into it or right now  
18 we're not addressing that or depending on the  
19 situation or the timing. We also asked for  
20 periodic meetings with the builder which I think  
21 we had one or two.

22 MS. GAAL: And over what period of  
23 time?

24 MR. O'NEILL: We had two meetings in  
25 a period of a month, I think it was, and that was

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1 the end of that.

2 MS. GAAL: And when was that  
3 approximately, when did this start?

4 MR. O'NEILL: A year and a half ago.

5 MS. GAAL: Mr. DePalma?

6 MR. DE PALMA: Yes. When the issues  
7 started -- when the repairs started and Ed was  
8 picking up these problems and we were failing the  
9 problems over and over again, I said we have to  
10 get a meeting so that we can convey it to this  
11 guy, that Mr. John Tanuski that he's making these  
12 repairs that he has unskilled people out there.  
13 That's why it was failing over and over again and  
14 they just couldn't understand these truss  
15 profiles. I said he's got to go up there and look  
16 at this work before he calls in to us. This is  
17 additional inspections which our town which is a  
18 busy town and we want to do these inspections, but  
19 these are additional inspections. We don't want  
20 to have to do it five or six times.

21 So we did manage to get that meeting  
22 together and after two meetings, I lost my cool at  
23 one meeting and I hollered at Mr. Tanuski and  
24 after that, Chris Aikens who was one of their area  
25 superintendents for Hovnanian. After, we were

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1 left out of the meetings and then the meetings  
2 just stopped.

3 MS. GAAL: So they started leaving  
4 you out of the meetings?

5 MR. DE PALMA: Yes, Ed and I were  
6 left out and then the meetings stopped. We just  
7 had another meeting because things weren't  
8 going -- I had a problem with the fact, and so  
9 does Ed, with the fact that we have an employee of  
10 HovSons who is a representative of the engineering  
11 company and one of the issues in these houses is  
12 they have some missed piers, as Mr. Baldino  
13 indicated, or some shimming problems and they're  
14 supposed to go down there and measure the piers to  
15 make sure the span is set at the place it's  
16 supposed to be, the piers are set at the right  
17 spacing. That's part of what the engineer's  
18 representative is supposed to be doing.

19 So DCA came in and found that they  
20 weren't doing that. Ed had mentioned to them that  
21 they weren't doing that because he had picked up  
22 some over-spanning. So the DCA looks at it and  
23 says well, have Ed measure each one of these  
24 spans. Well, there's a considerable amount of  
25 piers in some of these houses and some of the

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1 models have a lot of piers which allows them to  
2 use small --

3 MS. GAAL: Let me just get this  
4 right. The DCA told you to have Ed go out and  
5 measure the piers in maybe 500 homes or a number  
6 of homes?

7 MR. DE PALMA: Exactly. While he  
8 was down in the crawl space making his inspections  
9 as far as the foundation anchors went, as far as  
10 the shims went, have Ed make these inspections in  
11 the piers. This is just --

12 MS. GAAL: Is he in the water while  
13 he's doing the inspections?

14 MR. DE PALMA: No. Most of them are  
15 dry. If we find water now, we won't go in them.

16 MS. GAAL: You refuse to go in?

17 MR. DE PALMA: Yes. Because I want  
18 the water situation corrected. That is another  
19 issue. That's in the Court of Appeals' hands.  
20 That's another issue. If you want me to go back  
21 to it, I will.

22 MS. GAAL: Well, I think it's an  
23 issue. The water is still there?

24 MR. DE PALMA: It's definitely an  
25 issue. When Ed picked up the first couple, I went

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1 out and did look at a few of them. There's  
2 definitely drainage -- crawl space drainage  
3 systems that were put in improperly and they were  
4 installed without permits. It was done after the  
5 house was completed. But the fact remains that  
6 you can't do work in the State of New Jersey, work  
7 that requires a permit you can't do without a  
8 permit, so I issued violations to Hovnanian and I  
9 also stated in the violations that if, indeed, we  
10 find more of these homes that are wet and have  
11 these improper drainage systems in them, these  
12 also have to be addressed.

13 So the proper channel, according to  
14 the UCC, is either to fix the water or they take  
15 it to the appeal board and that's where we are at  
16 now. They've postponed it and postponed it and  
17 now that appeal is coming up finally the 2nd of  
18 December.

19 MS. GAAL: And you mentioned you had  
20 a meeting recently? I think you said that. When  
21 was that recent meeting?

22 MR. DE PALMA: We had a meeting just  
23 before I left on vacation, probably three weeks  
24 ago, and Mrs. Adele Hovnanian was there herself, a  
25 representative from DCA, Tom Locca, who is the man

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1       who was doing the repairs with a crew and he's  
2       also French and Perillo's representative. So we  
3       had this meeting. And during that meeting Adele  
4       had discussed with me what do you think actually  
5       happened with this development? And I said I had  
6       indicated before, maybe not in this particular  
7       meeting, but these big builders, they're business  
8       people. They don't have a clue about building a  
9       house. They depend heavily on their  
10      superintendents out on the job sites. That's how  
11      things were allowed to happen that happened as Mr.  
12      Wadja testified to. The builder is just a  
13      businessman. He cares about are we making money  
14      or aren't we? If we aren't, what do we have to do  
15      to make money? That's where that major hassle  
16      comes up that John referred to. If a certain  
17      something is coming up, we want to know and they  
18      put the pressure on the superintendent.

19                So I told her, I said at this last  
20      meeting the problem is you lost control. You had  
21      bad supervision, you kept changing superintendents  
22      on the job site. They changed constantly. I said  
23      you had superintendents that didn't know what they  
24      were doing and the job was terribly run. Things  
25      were not done properly. Besides, the inspection

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1 team that was in there did drop the ball and the  
2 inspections didn't go properly and it just  
3 became -- I agree with the residents of Holiday  
4 City that they have basically an inferior product  
5 and that's a result of what happened.

6 MS. GAAL: You said a few moments  
7 ago and you mentioned a couple of times your  
8 concern about the engineer's representative being  
9 the person hired to do the work. Have you raised  
10 that with anyone either from DCA or the builder or  
11 anywhere, have you brought that up?

12 MR. DE PALMA: Well, we very seldom  
13 talk to the builder and we've never talked -- I  
14 shouldn't say never. That is a wrong statement.  
15 We did talk to an engineer a few times. We  
16 initiated the first meetings. I asked for an  
17 engineer from French and Perillo to be present so  
18 he could explain the truss bracing profiles to  
19 John Tanuski who was doing repairs at that time.  
20 I asked for John Tanuski to be present, John  
21 Dotoli was present, Chris Aikens who was the area  
22 supervisor was present.

23 MS. GAAL: Did you bring up this  
24 issue?

25 MR. DE PALMA: Yes.

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1 MS. GAAL: And what were you told?

2 MR. DE PALMA: Initially, when we  
3 brought up issues about the fact that I thought it  
4 was wrong, they said well, the representative  
5 could be whoever they select. I still think it's  
6 wrong, but that's what we have.

7 MS. GAAL: And why do you think it's  
8 wrong?

9 MR. DE PALMA: I think it's like the  
10 fox watching the chickens in a hen house. I mean  
11 you have the guy that's making the repairs looking  
12 to see what repairs have to be done and he's paid  
13 by Hovnanian. And this is something we didn't  
14 discuss, but most superintendents on the job site,  
15 the more money they save, the bigger the bonus and  
16 that wasn't discussed or asked but that's a fact.

17 MS. GAAL: So where are we at right  
18 now?

19 MR. DE PALMA: Where are we at right  
20 now?

21 MS. GAAL: Yes.

22 MR. DE PALMA: Right now, according  
23 to the agreement, they had to produce 22 CAs,  
24 repairs, a month.

25 MS. GAAL: What is that?

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1 MR. DE PALMA: Certificate of  
2 approval. They had to do the work that was  
3 required in the crawl space, any repair work that  
4 was done in the attic, Ed has to make the  
5 inspections and then I would issue a CA.

6 MS. GAAL: And if they don't get 22  
7 a month, what was to happen?

8 MR. DE PALMA: There was a penalty.

9 MS. GAAL: How are they doing? Did  
10 they make 22 a month?

11 MR. DE PALMA: They have just now  
12 caught up to that and they had some money  
13 reimbursed, but the penalty was -- it was a  
14 penalty that went into a bank account of  
15 Hovnanian's and once they reached that 22 a month  
16 or the average of 22 a month according to how many  
17 months had passed, they would get that money back.

18 MS. GAAL: So it wasn't a real  
19 penalty?

20 MR. DE PALMA: It was not a fine.  
21 It was just a penalty.

22 MS. GAAL: And it went into a  
23 Hovnanian account so now it's going back to  
24 Hovnanian, is that what you said?

25 MR. DE PALMA: Yes.

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1 MS. GAAL: Were they behind on  
2 meeting that 22 homes a month?

3 MR. DE PALMA: They immediately fell  
4 behind.

5 MS. GAAL: They immediately fell  
6 behind?

7 MR. DE PALMA: Yes, and they made  
8 agreements because of the engineering wasn't right  
9 and this -- Mr. Chris Aikens was a tremendous help  
10 for the Hovnanian Corporation as far as dealing  
11 with DCA.

12 MS. GAAL: Who was he?

13 MR. DE PALMA: He was an area  
14 superintendent or -- he was above the  
15 superintendents.

16 MS. GAAL: Now, you --

17 MR. DE PALMA: I've got to say that  
18 was only for a limited time. That was only for  
19 about three or four months. How long was Chris  
20 Aikens there?

21 MR. O'NEILL: He stayed as a  
22 consultant for them.

23 MR. DE PALMA: I think he still was  
24 a consultant for them.

25 MS. GAAL: But he's no longer in the

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1 same role?

2 MR. O'NEILL: Not as an employee.

3 MS. GAAL: With respect to the  
4 burden on your office, it sounded to me like from  
5 what you're saying that your particular office has  
6 had to do a lot of additional inspections and  
7 spent an awful lot of time on this project.

8 MR. DE PALMA: This is true.

9 MS. GAAL: Did you get any  
10 additional money by way of fines or penalties or  
11 anything from the builder to compensate you for  
12 the people you need to do this job?

13 MR. DE PALMA: That part of the  
14 power of the Construction Office was taken away.  
15 All we have to do is make the inspections. We did  
16 discuss the fact that if they did keep failing the  
17 inspections over and over, we'd give them a  
18 penalty because after the third inspection, they  
19 should get it correct and if we went back the  
20 fourth time and it still failed, there would be a  
21 fine. That's when I don't know if they fired or  
22 dismissed John Tanuski and Tom Locke started doing  
23 repairs.

24 MS. GAAL: What kind of burden has  
25 this been on your office?

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1                   MR. DE PALMA: Luckily, my office,  
2                   because of the issues that had happened prior to,  
3                   is staffed with enough people with building  
4                   licenses to pick up the load. I have been through  
5                   many crawl spaces and attics myself making  
6                   inspections. We also -- all of the inspectors in  
7                   there also possess a building inspection license.

8                   MS. GAAL: Now, I want to just see  
9                   if I understand on the water. That's just  
10                  basically -- I don't want to say stagnant because  
11                  it sounds like a pun, but the water issue is  
12                  pending?

13                  MR. DE PALMA: Yes.

14                  MS. GAAL: You refuse to do  
15                  inspections where there is water in the crawl  
16                  space?

17                  MR. DE PALMA: There was two of them  
18                  out of the ones that I made and I refused to go  
19                  down there because I don't want to get down there  
20                  and crawl around in the water. Get rid of the  
21                  water and call me back. I think the proper thing  
22                  to do is put a drain in but I don't think  
23                  Hovnanian wants to deal with that issue.

24                  MS. GAAL: Mr. Baldino, I'd like  
25                  you to take a look at Exhibit 48. Can you see it,

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1 sir?

2 MR. BALDINO: I see it.

3 MS. GAAL: And what is it?

4 MR. BALDINO: That's water in the  
5 crawl space.

6 MS. GAAL: My notes indicate that  
7 that photograph is from August the 27th of this  
8 year. Is that right? Do you know if that is  
9 approximately the date?

10 MR. BALDINO: Yes, that's  
11 approximately.

12 MS. GAAL: And was it the home of  
13 someone named Al Nanni?

14 MR. BALDINO: Yes.

15 MS. GAAL: 575 Riviera Drive in  
16 Holiday City?

17 MR. BALDINO: Yes.

18 MS. GAAL: Did he or she give you  
19 that picture?

20 MR. BALDINO: Yes.

21 MS. GAAL: And they asked you to  
22 give it to us?

23 MR. BALDINO: Yes.

24 MS. GAAL: Have you ever seen this  
25 yourself?

-PUBLIC HEARING-

1 MR. BALDINO: Yes.

2 MS. GAAL: And is this a picture  
3 that accurately depicts what that crawl space  
4 looks like?

5 MR. BALDINO: Yes. In fact,  
6 today -- he called me yesterday. It's actually  
7 more. He just told me will you let them know I'm  
8 still having water.

9 MS. GAAL: He told you to tell us  
10 it's worse?

11 MR. BALDINO: That's right. He  
12 called me this morning and says I can't make it  
13 because I had a medical appointment and please be  
14 sure to tell the Commission that this is the  
15 situation we now face and to me that -- that to me  
16 represents not only the lackadaisical effort of  
17 the County but also municipalities and the DCA to  
18 come down and correct that problem right away  
19 because that problem is a health issue. That is a  
20 health issue looking you right in the face and no  
21 one, no one said we're going to correct that right  
22 away. What they're doing is what Mr. DePalma  
23 said, delays, constant delays. We can't have  
24 delays. We're older people. We may have  
25 respiratory problems. We don't know. Those

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1 houses have to be inspected for mold, also. And  
2 guess what? I called Mr. Santafante here. He is  
3 the Director of Health and Senior Services and he  
4 told me I'm sorry, there is no law in the State of  
5 New Jersey that covers private houses. We will  
6 cover public, but we won't cover the residents who  
7 pay the taxes here. Could you believe that?  
8 That's the statement I couldn't believe. He said  
9 sorry. You'll have to get that attended to  
10 through legislation and I mentioned these to him  
11 many times, that we have a health issue here and I  
12 tell you if it gets to be somebody gets sick, the  
13 State of New Jersey is going to pay heavily.

14 MS. GAAL: You're saying there's  
15 nothing to cover --

16 MR. BALDINO: No. According to his  
17 office, there is, the Department of Health and  
18 Senior Services. I called him directly. They  
19 oversee, I guess, the health issues, the  
20 environmental issues. Am I correct in assuming  
21 that?

22 MS. GAAL: Yes. I'd like you to  
23 take a look at number 50. Is that another  
24 photograph that you gave us?

25 MR. BALDINO: Yes, it is.

-PUBLIC HEARING-

1 MS. GAAL: And someone wrote on it  
2 builder's version of a French drain?

3 MR. BALDINO: I don't know. It  
4 looks like a patch of land.

5 MS. GAAL: Is this someone's crawl  
6 space?

7 MR. BALDINO: Yes, it is.

8 MS. GAAL: And you can see some of  
9 the black what might be mold along the wall?

10 MR. BALDINO: That's possible. I  
11 can't tell you unless they get somebody who is  
12 authorized to look into this if there is a mold.  
13 These questions, I can't answer. I'm just a  
14 layperson. But you can understand by what I'm  
15 trying to convey here, look at that. I mean what  
16 is it?

17 MS. GAAL: Do you know whose house  
18 this is?

19 MR. BALDINO: Yes, I do.

20 MS. GAAL: Do you want to tell us?

21 MR. BALDINO: Well, I can, but I  
22 mean does it have anything to do with anything?

23 MS. GAAL: No. It's okay.

24 MR. BALDINO: I mean it is. There's  
25 numerous houses like this. This is not the only

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1 one.

2 MS. GAAL: Just so we're clear,  
3 running down the middle of that is what looks like  
4 a little tiny stream almost?

5 MR. BALDINO: Exactly. That's what  
6 they look like exactly. That was supposed to be a  
7 French drain, by the way.

8 MS. GAAL: That is a French drain?

9 MR. BALDINO: That's a French drain  
10 according to HovSons and Company and that kills me  
11 because the DCA said that looks pretty good, too.  
12 And where are they coming from? I don't  
13 understand. They're supposed to have the  
14 knowledge of the situation here and the knowledge  
15 of DCA's -- we don't trust any agency any more,  
16 not with this information we received from like  
17 Mr. Grace, Mr. Connolly. He says in one of his  
18 statements, he says a well-built house will never  
19 have a water problem. I mean take that now.  
20 Consider what I just said. First of all, the  
21 houses weren't well built to begin with and he is  
22 telling me that a well-built house will never have  
23 a water problem. What does that look like? What  
24 does this look like?

25 MS. GAAL: Okay. We hear you.

-PUBLIC HEARING-

1                   Mr. DePalma, do you know anything  
2                   about HovSons donating an ambulance to Monroe  
3                   Township in conjunction with the building of  
4                   Holiday City?

5                   MR. DE PALMA: No, I do not.

6                   MS. GAAL: I think I've covered  
7                   everything I wanted to cover.

8                   COMMISSIONER FLICKER: Mr. Baldino,  
9                   you went through some of this quickly so just help  
10                  me. Am I correct in assuming you got no  
11                  satisfaction whatsoever from DCA until some of the  
12                  elected state officials got involved?

13                  MR. BALDINO: Well, the point is,  
14                  first of all, yes, that first letter we addressed  
15                  to Mr. Grace, I mentioned before, as you can see,  
16                  he didn't have the manpower. Therefore, we had to  
17                  do something. We said if he's not going to help  
18                  us, we have to look to other agencies that can  
19                  help us. So we went to the Township and we  
20                  decided to let the Mayor know we were dissatisfied  
21                  because we pay a hell of a lot of taxes down here.

22                  You don't get representation in this  
23                  State. We have one of the highest taxes in the  
24                  country and yet no representation from the  
25                  officials, county, state or municipal.

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1 COMMISSIONER FLICKER: Let me just  
2 slow you down a little.

3 MR. BALDINO: That's the truth.

4 COMMISSIONER FLICKER: I'm not  
5 disputing it. I'm just trying to get the  
6 chronology straight. So first you went to Mr.  
7 Grace from DCA?

8 MR. BALDINO: He's a part of DCA, I  
9 assume. Regulatory Affairs, I assume, his office?  
10 Have I got that right? Do you know?

11 MS. GAAL: That's correct.

12 COMMISSIONER FLICKER: And he said  
13 they didn't have enough manpower?

14 MR. BALDINO: That's what he said in  
15 his letter. I have the letter right here.

16 MS. GAAL: We believe you. And then  
17 you went back to your Mayor and she was very  
18 helpful?

19 MR. BALDINO: Well, only because we  
20 figured that through the Township we can get  
21 something started because we were residents of  
22 Monroe Township.

23 COMMISSIONER FLICKER: So you got  
24 something started and eventually you got a meeting  
25 you talked about with Assemblyman Geist?

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1 MR. BALDINO: Yes.

2 COMMISSIONER FLICKER: And that  
3 resulted in an agreement between DCA and HovSons?

4 MR. BALDINO: Well, eventually down  
5 the line, that's what it came out to be, but prior  
6 to that, we went to Trenton and for that  
7 particular meeting with Mr. Connolly and I just  
8 want to say something here. I don't know whether  
9 this is true or not, but we attended that meeting  
10 as residents of Monroe Township, citizens of New  
11 Jersey.

12 When I stepped in that room with Mr.  
13 Connolly, Mr. Geist was there, Mr. Smith was  
14 there, Mr. Maul was there, Mr. Wolford was there,  
15 I suggested that we take minutes of this meeting  
16 just as you're taking minutes here. Mr. Connolly  
17 turns around and says no minutes. All the facts  
18 are known. How could you know all the facts? We  
19 didn't even start the meeting. He said there's no  
20 reason to have minutes because we know the  
21 situation. How could they know the situation when  
22 we just approached them?

23 So I just want to bring up to the  
24 Commission that I feel that was a violation of our  
25 rights, Democratic rights. We should have minutes

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1 at that meeting.

2 COMMISSIONER FLICKER: Mr. Baldino,  
3 we're looking at problems with houses. We'll get  
4 to your rights at another meeting. Let me ask Mr.  
5 DePalma and Mr. O'Neill, you, in fact, indicated  
6 that the agreement that DCA struck with HovSons  
7 was essentially, from your perspective, you were  
8 getting something which was better than nothing?  
9 Is that accurate? I think Mr. O'Neill or --

10 MR. DE PALMA: You mean DCA's  
11 agreement?

12 COMMISSIONER FLICKER: Yes. Well,  
13 that you felt DCA was getting the builder to do  
14 something to rectify some of the problems.

15 MR. O'NEILL: I said that and  
16 that's -- I think that in looking at it from DCA's  
17 point of view where the builder could have walked  
18 away, just bankrupt that corporation because every  
19 development is a separate corporation -- that is a  
20 loophole, they can bankrupt it and walk away and  
21 the homeowners would have gotten nothing. They  
22 felt I think that they accomplished something by  
23 getting certain repairs done.

24 Now, the underlying issue was the  
25 water problem that's never really been addressed.

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1 I mean they think they've addressed it by putting  
2 the ad in the paper and giving 10 days for people  
3 to look at it and having a representative of the  
4 engineer go down and say yeah, you have a problem  
5 or no, you don't, but I've been in hundreds and  
6 hundreds of these houses and a lot of them have  
7 water problems. Some of them never were addressed  
8 at all. Some of them had a hole dug by hand and a  
9 pump stuck in the hole and that's supposed to be a  
10 drain without even electricity for the plug to  
11 plug into. So I mean it's atrocious and it's just  
12 a bad situation.

13 COMMISSIONER FLICKER: So the three  
14 areas that I -- I mean life-threatening -- the  
15 trusses, its anchorage, sill plate anchorage, that  
16 was addressed by the agreement, the first two, the  
17 trusses and the --

18 MR. O'NEILL: Yes.

19 COMMISSIONER FLICKER: The water was  
20 not?

21 MR. O'NEILL: No, the water has  
22 never been fully addressed.

23 COMMISSIONER FLICKER: And just one  
24 other issue. The agreement called for 22 houses  
25 per month to be rectified?

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1 MR. BALDINO: That's correct.

2 COMMISSIONER FLICKER: Out of how  
3 many that have problems?

4 MR. O'NEILL: I guess close to 550.

5 COMMISSIONER FLICKER: And that was  
6 considered to be an adequate number?

7 MR. O'NEILL: We didn't have any  
8 part in the agreement.

9 COMMISSIONER FLICKER: Do you know  
10 if the bond for HovSons at Holiday City has been  
11 released by Monroe?

12 MR. O'NEILL: I don't have a clue.

13 MR. DE PALMA: That's an engineering  
14 issue. The bond is for the streets, the curbs,  
15 the sidewalks, the retention bonds, detention  
16 ponds, the buffers, whatever may be required as  
17 far as the drain review process went. We don't --  
18 we've heard that it has. I can tell you that I've  
19 heard it has been released, but I don't know that  
20 for a fact.

21 COMMISSIONER FLICKER: Thank you  
22 very much, gentlemen. Thank you, Mr. Baldino.

23 COMMISSIONER MARINELLO: I'd just  
24 like to address a couple of questions to Mr.  
25 DePalma.

-PUBLIC HEARING-

1                   Mr. DePalma, this particular  
2                   Township had the benefit of hiring someone who had  
3                   appropriate training of trusses after your time in  
4                   Florida. Are we doing enough to educate the  
5                   inspectors out there in the area of truss bracing  
6                   now in your opinion? And I particularly address  
7                   that because it appears that even though you had  
8                   the benefit of that training, the people who you  
9                   worked for at the time weren't listening to it.

10                   In other words, are we doing enough  
11                   to educate the inspectors?

12                   MR. DE PALMA: At the present time,  
13                   the DCA has put -- we do continuous seminars as  
14                   core continuous education units and new seminars  
15                   have come in as far as truss bracing and things of  
16                   that nature. In my opinion, no, I think that  
17                   truss bracing issues should be a little more  
18                   intense. I also have to say that once I started  
19                   in Monroe, myself, Ed -- I asked Ed to set it up  
20                   and he did set it up -- we went to Concord Truss,  
21                   myself, Ed and Angelo Martini who is another  
22                   Building Inspector, we went and toured the plant,  
23                   learned truss profiles, learned the computer, we  
24                   were shown how they figure out uplift trusses, the  
25                   stress on trusses on the computers and got a

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1 better understanding and that's one of the things  
2 we did. Since then, like I said, DCA has  
3 initiated new seminars that include truss bracing  
4 and those sets of issues. Personally, I think  
5 there should be more of it. That's my personal  
6 opinion.

7 COMMISSIONER MARINELLO: So even  
8 though now -- now, there's been some changes in  
9 the way trusses are manufactured, correct?

10 MR. DE PALMA: In the way they're  
11 manufactured?

12 COMMISSIONER MARINELLO: And how  
13 they're brought -- they are pre-fabricated?

14 MR. DE PALMA: Yes, they're -- all  
15 trusses are pre-manufactured and brought to the  
16 job site. As far as changes, I don't think  
17 there's been tremendous changes in the way they're  
18 manufactured. As far as the way the inspections  
19 are made to look for truss bracings and truss  
20 profiles on job sites in order to make sure that  
21 adequate truss bracing according to the  
22 manufacturer is installed on the site by the  
23 contractor, that has changed drastically.

24 COMMISSIONER MARINELLO: When you  
25 were the Plumbing Sub-Code, did you occasionally

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1 fill in for the Building Sub-Code when he was away  
2 and out of town?

3 MR. DE PALMA: Yes, I did.

4 COMMISSIONER MARINELLO: And at the  
5 time that was during the construction of Holiday  
6 City, correct?

7 MR. DE PALMA: Correct.

8 COMMISSIONER MARINELLO: And were  
9 you called upon to review the framing and the  
10 trusses at that time when he was out of town?

11 MR. DE PALMA: I may have but -- I  
12 went out to make framing inspections which include  
13 truss bracing inspections, yes.

14 COMMISSIONER MARINELLO: And were  
15 those the times you would go back to the  
16 Construction Sub-Code Official and tell them about  
17 the problem and they would, in fact, overrule you?

18 MR. DE PALMA: Yes.

19 COMMISSIONER MARINELLO: Did he give  
20 you any reason why he overruled you on those  
21 issues?

22 MR. DE PALMA: No. If you know  
23 Louie DeSalvatore, he doesn't give reasons.

24 COMMISSIONER MARINELLO: The  
25 Building Inspector that was there at the time and

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1 the Construction Code Official, they weren't one  
2 and the same person, correct?

3 MR. DE PALMA: Correct.

4 COMMISSIONER MARINELLO: They're no  
5 longer working for the Township of Monroe, is that  
6 correct?

7 MR. DE PALMA: No. When -- in the  
8 negotiations for me to go back to work for Monroe  
9 Township, it was over a long period of time. It  
10 took about four or five months and one of the  
11 issues we discussed was Lou DeSalvatore was still  
12 the Building Sub-Code Official at the time in the  
13 town and I told the Business Administrator at the  
14 time that I would not work with Lou DeSalvatore.

15 COMMISSIONER MARINELLO: Do you know  
16 if either of these two gentlemen are currently  
17 employed as Sub-Code or Code Officials in any  
18 township in the State of New Jersey as we speak?

19 MR. DE PALMA: Yes, they are. Lou  
20 DeSalvatore has what is called an on site agency.  
21 He contracts inspections from towns and his agency  
22 makes all the inspections in the towns. Some of  
23 the towns he works in, I know he does Bordentown  
24 and I know his agency also does Egg Harbor  
25 Township. And Louis Pilloni works as the

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1 Construction Official in Washington Township.

2 COMMISSIONER MARINELLO: That's all  
3 I have right now. Thank you.

4 COMMISSIONER EDWARDS: Mr. DePalma,  
5 today, if this development were to be proposed and  
6 approved by a planning board and you had the  
7 responsibility to inspect it, would the same  
8 problems have happened?

9 MR. DE PALMA: You have to repeat  
10 that.

11 COMMISSIONER EDWARDS: Today, if  
12 Holiday City was a new approval and it was being  
13 constructed in Monroe Township and your department  
14 at its present structure had the responsibility to  
15 inspect it, would the outcome have been the same,  
16 similar, would there have been any problems with  
17 it?

18 MR. DE PALMA: As Ed indicated, the  
19 ones we inspected when we first came back, we had  
20 kind of changed things, they don't have to be  
21 reinspected. The truss bracing -- they were  
22 looked at by DCA, the truss bracing is adequate,  
23 the foundation is adequate, they're fine and they  
24 have drains.

25 COMMISSIONER EDWARDS: Part of the

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1       problem as I understand it in this particular  
2       development related to some engineering issues  
3       that had to do with the drainage location  
4       elevations -- I think that was testified to not by  
5       you but by the Construction Official previously.  
6       Have those problems been corrected?

7                       MR. DE PALMA:   The major problem as  
8       was indicated by -- I don't know who said it --  
9       one of the people who testified said -- I'm sure  
10      Mr. Baldino said it -- it is in a high water table  
11      area.  The whole area was basically a swamp before  
12      they started that development.  Not the entire  
13      development, but probably 75 percent of it.  And  
14      when it rains and the ground is saturated, the  
15      water has nowhere to go.

16                      COMMISSIONER EDWARDS:  So there are  
17      inherent engineering problems and approvals of  
18      this development based on location that have  
19      nothing to do with the building inspection  
20      process, would I be accurate in saying that?

21                      MR. DE PALMA:  No.  The only thing  
22      that we could have done is what we did after we  
23      started is to have them put drains in all the  
24      homes.  That's it.

25                      COMMISSIONER EDWARDS:  Mr. O'Neill,

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1 Mr. DePalma and Mr. Baldino, I've asked this  
2 question to everyone who has come up before us.  
3 We're here to try to find remedies and solutions  
4 to problems like Holiday City and the one this  
5 morning and others, and we have 58 of them on our  
6 list spanning 11 counties -- 17 counties, excuse  
7 me, so I asked everyone.

8 Do you have any suggestions as to  
9 how we might make recommendations to change the  
10 system to help alleviate some of these problems  
11 and other problems that have to do with ultimately  
12 the homeowners and their receiving the product  
13 that they paid for in an approved fashion or in a  
14 fashion that is predetermined to be satisfactory  
15 to our health and safety codes in the State of New  
16 Jersey?

17 MR. DE PALMA: Yes, I do. The main  
18 ones that I feel should be addressed -- currently  
19 we have a builder's registration in the state and  
20 if you mail in for your builder's registration,  
21 anyone can be a registered builder within two  
22 weeks or maybe a month at most and you can have as  
23 many as you want in as many different names and as  
24 many different corporations as you want. I think  
25 you should have licenses. We only have two

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1 licensed trades in the State and that's electrical  
2 and plumbing. I feel that the builders should be  
3 a licensed individual and also feel there should  
4 be another license generated for the job site  
5 superintendent. If something is wrong, something  
6 could be done that you could use to apply pressure  
7 to them. I also feel that limited inspections or  
8 framing inspections for Building Sub-Codes should  
9 be limited to approximately four a day so they're  
10 not pressured to make more than that. Sometimes  
11 the more hurried you try to go, the more you're  
12 going to miss.

13 Also, we have -- it's been referred  
14 to over and over again -- the UCC, the Uniform  
15 Construction Code, and I believe it's Section 417  
16 which addresses the money that flows into that  
17 department should be used strictly to fund that  
18 department. It's not the way it works today.  
19 Today any monies that go in, they go into the  
20 general budget and once under the general cap,  
21 they can spend -- and a lot of times when you go  
22 and ask for help and say I need another Building  
23 Inspector, I need anything, you're told we don't  
24 have the money, when you know the money is there.  
25 You know it's coming through your office. I think

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1       that it's written as a law the Uniform  
2       Construction Code and that statement is in there  
3       and that should be one of the things that should  
4       be looked at and made possible.  There will always  
5       be extra monies that the Township can, I guess,  
6       funnel into the general budget out of that anyway  
7       and in my particular town there's extra monies  
8       that come out which is not a bad thing.  I think  
9       that's a good thing.

10                   COMMISSIONER EDWARDS:  Do you think  
11       that money should be dedicated to the operation of  
12       your budget?  It makes some sense.  The concept  
13       behind it -- I know the section of the code you're  
14       talking about.  The concept is a user fee.  Well,  
15       let's take it from the builder's perspective.  If  
16       I'm paying a fee and you're doing the inspection,  
17       I should be paying enough of a fee to get the  
18       inspection.  I shouldn't be paying an extra amount  
19       to subsidize a Township because that's a fee for  
20       service as opposed to something that's bought.

21                   Let me pose something on the other  
22       side of that coin.  Let's assume your county  
23       doesn't have a lot of construction going on.  You  
24       still have a requirement to have a competent and  
25       fully staffed inspection department which you may

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1 not be generating enough fees to pay for that  
2 because of the mere lack of building, but when you  
3 do need one, you still need it done just as  
4 accurately, just as competently and by people who  
5 are paid an adequate salary for meeting and  
6 assuming that responsibility.

7 So I'm going to assume you're saying  
8 you should fund every Building Department and  
9 every town level sufficient to making inspections  
10 and if your fee system creates more dollars, it  
11 should go to help increase those budgets for those  
12 communities that have a higher level of activity  
13 and inspection needs. Is that accurate?

14 MR. DE PALMA: That's more specific  
15 than I was putting it. Basically, first of all,  
16 smaller towns that may not have the amount of  
17 construction to, as you say, support the  
18 construction office, then you don't have the  
19 requirement for the men to be there all day.  
20 There are a few ways that that can be met.  
21 Multiple licensed men, part time. Also, there is  
22 no cap on the amount that the fee can be. And  
23 also, then the third -- of course, the third one  
24 you may not recall but it's there, you could have  
25 an agency come in and do the inspections. You are

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1 still required to have a Construction Official.  
2 What I'm saying is the more busy towns need more  
3 people and when the town gets busy, a town such as  
4 Monroe which is really right now experiencing  
5 large growth, you may need more people. That is  
6 the first thing you hear from the town council is  
7 they have a thousand reasons why they shouldn't  
8 hire that person because they have places where  
9 that money has to go and there are monies there  
10 that are available to the department that should  
11 be available to the department. What I'm saying  
12 is the funds that go to the Construction  
13 Department should be either budgeted by rider or  
14 have some other way, maybe even a separate entity  
15 although that's the extreme as far as I'm  
16 concerned and those monies channeled strictly to  
17 the construction project and if you need people,  
18 you can hire them. And if it comes out you have a  
19 large overflow and you realize because of monies,  
20 then maybe you just lower your fees.

21 MR. O'NEILL: This was attempted 12  
22 years ago and the Board of Municipalities --  
23 League of Municipalities fought it and it died.

24 COMMISSIONER EDWARDS: I remember.

25 MR. O'NEILL: So budgeting by rider

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1 would be extremely beneficial to the Construction  
2 Departments so they could do it properly and have  
3 the proper number of people to do the number of  
4 inspections that are required.

5 Also, with the licensing for  
6 builders, superintendents, home remodelers, there  
7 should be requirements and there should be  
8 penalty. If you do -- you have a driver's  
9 license. That is a privilege, not a right. If  
10 you do something wrong, they take away the  
11 license; you can't drive. It is that simple. And  
12 it should be the same thing when you're dealing  
13 with people's homes. So many people get ripped  
14 off. The New Jersey Remodelers Association has  
15 been trying to get a license bill passed for  
16 remodelers for four years and the Better Business  
17 Bureau, the Consumer Affairs Bureau have all been  
18 behind it, but somebody keeps blocking it. They  
19 don't want it to happen because of control. Who  
20 controls the operation? Somebody wants that power  
21 and they block the operation because they're not  
22 sure of being in charge and it's a shame because  
23 people are still getting ripped off right now  
24 while we're sitting here because there's no  
25 legislation or licensing to protect the people and

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1           it's just another portion of the building  
2           industry. So if these people are licensed, there  
3           are requirements for those licenses and there's  
4           penalties. If you do not comply with the rules of  
5           licensing, then you get penalized. It's -- that's  
6           the way you raise your children. You do something  
7           right, you get praise; you do something wrong, you  
8           have to pay the price for it. That's the way to  
9           teach people. So that's something also that  
10          should be taken care of.

11                           COMMISSIONER EDWARDS: Before I ask  
12          Mr. Baldino, I was waiting for you to give the  
13          last piece on that, Mr. DePalma and Mr. O'Neill,  
14          the supervision of building departments and  
15          building inspectors. It's obvious to me that  
16          Monroe Township did not have the best Building  
17          Inspection Department structure and people,  
18          quality of people in place to do it and few people  
19          represent that kind of quality.

20                           How can we better supervise or is  
21          there something we can do to avoid that?

22                           MR. O'NEILL: Yes. DCA, along with  
23          their many responsibilities, I think they do  
24          inspections in numerous towns in the State.  
25          Possibly, instead of doing that, they could have

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1 people go out just as they did to us, come behind  
2 their inspectors and check to see what they're  
3 missing. Now, everybody is human and you can miss  
4 things and even though I'm pretty diligent, I'm  
5 sure I miss things, too. But there's a certain  
6 difference between missing some things and just  
7 not seeing anything.

8 COMMISSIONER EDWARDS: Basically,  
9 you are the supervisor right now in Monroe  
10 Township, is that accurate?

11 MR. O'NEILL: Well, I mean whether  
12 I'm a supervisor or not, you're either that type  
13 of person or not.

14 COMMISSIONER EDWARDS: Right now DCA  
15 does not have that responsibility?

16 MR. O'NEILL: I'm sorry?

17 COMMISSIONER EDWARDS: DCA does not  
18 have the responsibility to supervise or check?

19 MR. O'NEILL: They oversee us, yes,  
20 that is their responsibility. But, once again, as  
21 manpower dictates, they haven't had the  
22 opportunity to go out to the different townships  
23 throughout the State. There's 567 municipalities  
24 in the State and they haven't had the opportunity  
25 or the manpower to go out and spend the day

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1 inspecting behind these building inspectors or  
2 that building inspector or wherever to do that.  
3 You were in school, we got tested. We do have  
4 continuing education credits, but, still, it's  
5 when you're out there, you're actually doing it,  
6 you're on the job and somebody else is coming back  
7 there that's highly trained and they say gee,  
8 well, you missed this, you didn't see this, you  
9 didn't see that and it still falls on the  
10 individual because oh, I missed it and the next  
11 time I missed it, too, but if you're diligent and  
12 you want to do a good job -- I have people all the  
13 time saying to me you're the building inspector,  
14 you can do whatever you want. I tell them no,  
15 you're not going to do what I think; you are going  
16 to do what the Code calls for and if you think I'm  
17 telling you something that is wrong, please tell  
18 me because I'll go back and I'll look it up and if  
19 I'm wrong, I'll tell you because I'm not only  
20 telling you that wrong thing; I'm telling  
21 everybody the same wrong thing and I don't want to  
22 do that. So if I'm telling you something that is  
23 wrong, please say something to me and I'll check  
24 it out and that's the way it should be. We're out  
25 there to protect the people and that's our job and

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1           you either do it right or you do it wrong.

2                           COMMISSIONER EDWARDS:  Mr. Baldino?

3                           MR. BALDINO:  In the letter we just  
4           were sent, I think the Commission must take this  
5           as a serious issue only because I think there  
6           should be a lemon law legislated for houses.  
7           We've got it for cars, but we don't have it for  
8           the individual's home.  That's more important than  
9           any place in the world.  Of course, New Jersey  
10          said your home is a castle, am I correct?  That's  
11          what it is.  Therefore --

12                          COMMISSIONER EDWARDS:  I don't know  
13          that New Jersey says that.

14                          MR. BALDINO:  Well, I picked up a  
15          newspaper and it said your home is your castle.  
16          So I would say that enforcement also by the  
17          agencies -- municipal, local, state -- you have to  
18          really look into that.  They are really not doing  
19          their job as far as I am concerned.  They are not.  
20          All they're doing is looking the other way trying  
21          to find out ways and means to get around certain  
22          issues and we see now that we have the facts  
23          presented here, something has to be done.  I don't  
24          care what's got to be done, but we're, as  
25          individuals of Holiday City, we feel that it's

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1 your obligation as an individual entity of this  
2 State to give us our apportioned rights as  
3 citizens. I want you to look into that to make  
4 sure this legislation gets to the proper people  
5 and something is done because you're talking about  
6 a person's home. You're talking about his home,  
7 his life, his happiness. Don't forget. What does  
8 the State flag say, prosperity, liberty -- you got  
9 liberty but I don't know about prosperity on the  
10 flag. But I'm just saying this is a very serious  
11 issue; not only a health issue but as you can see  
12 from the facts presented here today that some  
13 action has to be taken right now. The residents,  
14 right now they want action. They don't want talk.  
15 They want to see something implemented which will  
16 help us in the long run and future for future  
17 buyers in this State, because if you know that  
18 particular buyer's going to say, you know, that  
19 sprawl problem now, maybe they don't have enough  
20 inspectors because they're building, but you've  
21 got to realize that when you do build, you have  
22 the measures in place to protect the citizens of  
23 the State. We pay the taxes, we demand excellence  
24 in your field. So that's exactly what I think we  
25 should get.

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1 (Applause.)

2 COMMISSIONER EDWARDS: Thank you. I  
3 appreciate that very much and we don't have the  
4 power to enact those things, but we have the power  
5 to put a lot of pressure on. We're going to do  
6 that.

7 MR. BALDINO: Well, you could turn  
8 it over to another agency. That's what we want to  
9 see.

10 (Applause.)

11 CHAIRMAN SCHILLER: I am just going  
12 to have to ask Mr. O'Neill and Mr. DePalma, from  
13 the Community Affairs, the codes and standards,  
14 did you find them helpful or a hindrance or  
15 accessible in this particular situation?

16 MR. O'NEILL: Both, all three,  
17 whatever. Periodically, I mean, as I said in the  
18 beginning, in justice to them, I think they got  
19 what they felt they could get out of the builder  
20 to make repairs to a lot of houses that I think  
21 it's the first time something like that was done  
22 in New Jersey and I think they did what they  
23 thought they could to the benefit of the people.

24 Was it enough? No, I don't think  
25 so. Do I think they could have gotten more? I'm

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1 not really sure. I wouldn't put money on it. So  
2 I think they did the best that they felt they  
3 could do with the circumstances the way they were  
4 and they're limited also because of the way the  
5 laws are with bankruptcy, things of that nature,  
6 the builder didn't just walk away. So --

7 CHAIRMAN SCHILLER: Mr. DePalma?

8 MR. DE PALMA: As Ed indicated, it  
9 was both. One of the situations was when, I know  
10 Ed hit on it a little bit, when we first started  
11 doing the inspections, they first came and asked  
12 Ed to maybe back off a little bit, he was picking  
13 up things that weren't required or weren't  
14 necessary and then after a few weeks' time, they  
15 came back and said, you know, we went behind you  
16 and we found Ed missed this or Ed missed that and  
17 you want him to look or don't you want him to  
18 look, you know?

19 And the whole time my stand on it  
20 was you made the agreement with the Hovnanian  
21 Corporation that they were going to have an  
22 engineering firm go out and look at these 40  
23 houses and then have a representative go out and  
24 look at the problems, the problems would be  
25 corrected and we would inspect the problems as

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1           they were corrected. We weren't initially  
2           supposed to go out there and look at the problems,  
3           but that's what it turned into. So the  
4           representative from the corporation basically  
5           doesn't exist. Whoever was supposed to be out  
6           there looking for problems doesn't exist. This  
7           turned into a catch me if you can.

8                         So initially, yes, they were very  
9           helpful and in some circumstances, yes, they're  
10          helpful even yesterday or the day before. There's  
11          other times where I've said something and I can't  
12          hold it. The water situation is one of them. I  
13          want it addressed differently and they said well,  
14          anybody that didn't -- anyone that did not send  
15          notice that they wanted their crawl space  
16          inspected, they lose and that was basically their  
17          words and Mr. Nanni is one of the homes. That  
18          picture that was up there is one of the homes that  
19          has a violation and is going before the Board of  
20          Appeals. I also have that picture on my desk. I  
21          have asked some of the people to please attend  
22          that meeting, so I just asked them that today.

23                         CHAIRMAN SCHILLER: Mr. Baldino, I  
24          know you have something to say.

25                         MR. BALDINO: Well, as far as I'm

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1 concerned, the DCA with the initial meeting we had  
2 with Mr. Connolly and I guess my residents will  
3 agree because most of the people here attended  
4 that meeting, again, I want to bring out that  
5 situation that no minutes were taken, this was a  
6 clandestine attitude I think was taken, but no  
7 sort of state of emergency, we're going to have a  
8 clandestine operation on home construction. And  
9 as far as the DCA's operation is concerned, Mr.  
10 Connolly told us that he'd be in close contact  
11 with us throughout this ordeal. We haven't heard  
12 from Mr. Connolly. We have to call Mr. Connolly.  
13 We don't even know where they're at half the time.  
14 Sometimes the inspector is with the inspector from  
15 the Township; sometimes he's not. But these  
16 points of trust is what I think you have to take  
17 into accountability.

18 We're -- there is a lack of trust  
19 here somewhere. The county officials and the  
20 State, they seem to bicker between one another. I  
21 think that's the wrong thing to do. Between the  
22 county, municipalities and the State, there's  
23 always a squabble going on and I don't think that  
24 benefits the residents of the State. You have to  
25 have good clear communication between all the

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1 agencies to get the job done and we feel the DCA  
2 did not really feel resident friendly. They were  
3 more concerned about the builder than they are us  
4 and we are the ones paying the money and we're the  
5 ones paying the taxes. So I believe in the future  
6 I think you have to have a mandated situation  
7 where you can have these particular agencies  
8 fulfill their obligations and fulfill their duties  
9 to their top performance. I don't want anything  
10 like maybe, so, if. You've got to have  
11 regulations and got to also -- I just want to  
12 mention one point. These codes we have in the  
13 State of New Jersey, the building codes, they  
14 should be looked into and revised.

15 I just want to make a statement  
16 about Mr. DePalma. He's a very good speaker but  
17 there are certain issues I disagree with and some  
18 of the issues are the code issues of this State.  
19 They have to be looked into. They're going to  
20 have to be more friendly to the individual buyers  
21 of homes than they are to builders because we ran  
22 into a lot of problems here and you can see for  
23 yourself the amount of problems -- this is only  
24 the surface. We're only talking about the surface  
25 here. This is the surface. You have to really

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1 look at the details of every home. So I feel that  
2 the DCA yes, they came to assist us, but they're  
3 like the calvary coming with one horse and one  
4 soldier.

5 CHAIRMAN SCHILLER: I want to thank  
6 you. I think, if nothing else, you certainly have  
7 improved the inspection for Monroe Township and  
8 have been a real asset to this committee and I  
9 thank you very much for your contribution today.

10 We'll take a five minute break.

11 (Recess taken at 3:56 p.m.)

12 (Resumed at 4:05 p.m.)

13 CHAIRMAN SCHILLER: Ladies and  
14 gentlemen, please take your seats.

15 MR. GLASSEN: The Commission calls  
16 Antonio Acevedo.

17 ANTONIO ACEVEDO, sworn.

18 BY MR. GLASSEN:

19 Q. Could you state your name and  
20 address for the record, please?

21 A. Antonio Acevedo, 18 Polly Pigeon  
22 Drive, Manalapan, New Jersey.

23 Q. Mr. Acevedo, when did you purchase  
24 your home?

25 A. In 1996.

## -PUBLIC HEARING-

1 Q. And when did you move in?

2 A. September of '96.

3 Q. And how much did you pay for your  
4 home at the time you purchased it?

5 A. Approximately \$412,000.

6 Q. And what is the name of the  
7 development that you reside in?

8 A. Manalapan Chase.

9 Q. And who was the developer of  
10 Manalapan Chase?

11 A. Colton Homes as well as Syntex  
12 Homes.

13 Q. Was Colton purchased by Syntex?

14 A. From what I understand, yes.

15 Q. How many homes are there in the  
16 Manalapan Chase development?

17 A. I believe there are 52.

18 Q. At the time that you moved into your  
19 home, did you experience problems?

20 A. Yes, I did from the day I moved in.

21 Q. Can you describe those problems to  
22 the Commission, please?

23 A. Crooked walls, plumbing that didn't  
24 work, electricity that didn't function, gaps and  
25 holes in the woodwork and at first I thought they

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1           were all minor cosmetic issues but the closer we  
2           looked at them, I found out that 14 electrical  
3           outlets didn't work, so I started to look further.

4           Q.       Mr. Acevedo, you were involved and  
5           concerned about the construction of your new home,  
6           is that correct?

7           A.       Yes, I was.

8           Q.       So you made periodic visits to the  
9           building?

10          A.       As often as I could.

11          Q.       Well, then, was it represented to  
12          you at the time of your closing that these  
13          problems that you had noticed would be dealt with  
14          after the closing?

15          A.       Yes, it was, but at one point they  
16          asked me not to come back to the site.

17          Q.       Well, specifically with respect to  
18          the closing, did you bring an engineer with you to  
19          the closing?

20          A.       I certainly did and I asked if he  
21          could come through during the walk-through.

22          Q.       So you were trying to protect  
23          yourself as a buyer?

24          A.       Yes, I was, especially when prior to  
25          being asked not to come back to the site I noticed

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1           that my front staircase was approximately three  
2           feet from the front door when the blueprint said  
3           it had to be six, so I thought maybe there might  
4           be a little problem somewhere.

5           Q.        Could you describe to the Commission  
6           your experience during the construction process of  
7           trying to inspect your home?

8           A.        I immediately asked to bring someone  
9           private in to make sure that these problems are  
10          dealt with and at first I was confident that the  
11          builder would take care of them, but, again, when  
12          we got closer to the move-in date, things weren't  
13          being done and that staircase was still there, I  
14          decided it was time before I signed those papers  
15          to have an inspector come in.

16          Q.        Specifically with reference to the  
17          staircase, what was your experience with the  
18          staircase?  Could you describe that?

19          A.        They gave some cock and bull story  
20          about how they got the wrong staircase and they  
21          were going to have to change it.  I did order a  
22          special staircase.  It was a solid oak staircase  
23          so it had to be pre-fabricated somewhere else and  
24          apparently what they did was they used the  
25          measurements from the actual blueprint not knowing

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1 that the house would not reflect the blueprints.

2 The stairs didn't fit.

3 Q. You say the stairs, not referring to  
4 the size of the stairs, did not reflect the  
5 blueprint? What did you mean by that?

6 A. The blueprint shows the amount of  
7 steps, the amount of stairs and what angle they  
8 have to be pitched, how far it is to be from the  
9 front door, et cetera, et cetera. I assume it  
10 says something about height. That I couldn't  
11 know. But being that I'm not the first one to  
12 have purchased an oak staircase, I would have  
13 imagined that they have done this before and the  
14 manufacturer had pre-set numbers with which they  
15 went by.

16 Q. Well, did the staircase not fit into  
17 your home?

18 A. No, it did not.

19 Q. Do you know why?

20 A. I know why, because the house is two  
21 feet short.

22 Q. The house is two feet short?

23 A. Yeah.

24 Q. Explain that to the Commission.

25 A. Well, it's supposed to measure 35

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1 feet from one end to the other and it measures 33.  
2 It's actually 21 inches short.

3 Q. So at the time that you discovered  
4 the problem with the staircase did you realize the  
5 house was too short?

6 A. No. I never did, no.

7 Q. And what was -- what did the builder  
8 explain to you was the problem with the staircase?

9 A. As I mentioned before, they came  
10 back with many, many different excuses. At some  
11 point they got it to almost where it was supposed  
12 to be but I pointed out to them way long before,  
13 before the staircase that the framing was crooked  
14 even to the layman's eye and they said they would  
15 take care of all of that and that I would be  
16 invited to come back during the framing inspection  
17 to verify for myself that it was all taken care of  
18 and that never took place.

19 Q. You were not invited back?

20 A. I was not.

21 Q. So as a result, you attempted to  
22 bring an engineer with you to inspect the house  
23 prior to closing?

24 A. That's correct.

25 Q. And you were prohibited from having

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1 him go through the walk-through with you?

2 A. Yes, I was.

3 Q. Could you explain to the Commission  
4 what they told you?

5 A. Their answer was the house was not  
6 legally mine, that the inspector wasn't covered  
7 under their insurance or some malarkey to that  
8 effect and after we went to closing, all concerns  
9 I had would be dealt with and he could then go  
10 through the house -- in other words, after I  
11 signed the check.

12 Q. After you closed on the property,  
13 did you attempt to get the builder to address your  
14 concerns?

15 A. Yes, I did. During closing I even  
16 gave them a list of things which I had found prior  
17 to that and after we moved in, the list got bigger  
18 and longer.

19 Q. Was there a process that you had to  
20 go through to notify the builder of the problems  
21 that you discovered at the home?

22 A. Yes, there was. We had to go back  
23 and forth at that time during -- to the sales  
24 office, let them know and they would give us a  
25 punch list and they would give me a schedule as to

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1           when the person would be back to fix the problems.  
2           However, when they got -- when the problems became  
3           very, very serious, communication between myself  
4           and the builder got less and less.

5           Q.       And, again, at this point did you  
6           believe that the problems were primarily cosmetic?

7           A.       At about that point I realized they  
8           had to be more than cosmetic.

9           Q.       At some point in this process did  
10          you have contact with the State and the Department  
11          of Community Affairs?

12          A.       Yes, I did. I contacted them  
13          initially not knowing where to go or what agency  
14          was involved with overseeing this type of thing  
15          and I was put in contact with DCA and the consumer  
16          whatever it is.

17          Q.       And what did they tell you?

18          A.       They told me to go back to the  
19          builder and if not, I always had the opportunity  
20          to go through warranty.

21          Q.       Did you pursue your options under  
22          the warranty?

23          A.       Yes, I had no choice but to. The  
24          year was coming to an end quickly and if I was to  
25          get in under that one year deadline to make them

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1 responsible for all that I knew was wrong, I felt  
2 I'd at least get the warranty people involved.  
3 Maybe then they would do something about it.

4 Q. You refer to the one year deadlines.  
5 Could you explain that?

6 A. When you purchase a home, they give  
7 you a bogus pamphlet that says the house is under  
8 warranty, whether it's 10, 15, it could say 40 or  
9 50 years, and that within that time, if anything  
10 goes wrong, Tinkerbell is basically going to come  
11 fix those things for you. So you believe like all  
12 good consumers do that this is some sort of an  
13 organization and their sole purpose is to help the  
14 homeowner and that is more or less an insurance  
15 policy for you when you buy something.

16 Q. And what about the one year -- is  
17 there some time limit to the one year?

18 A. Yes, there is. The one year covers  
19 basically everything from cosmetic to the  
20 structural. After that, I believe it goes to 10  
21 years and under the 10 years, they don't cover  
22 many of the things. Then I think it goes to  
23 plumbing and electrical and after that it all has  
24 to do with structural issues which can be verified  
25 and seen.

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1 Q. Was there a fact finding inspection  
2 conducted at your home to provide information to a  
3 warranty company?

4 A. Yes, there was.

5 Q. And can you describe to the  
6 Commission what the inspector did?

7 A. The inspector basically went through  
8 with my list, looked at everything, made their  
9 decision and got back to me via U.S. Mail.

10 Q. At any time did the warranty company  
11 indicate to you as a result of their inspection  
12 that you had structural problems with your home?

13 A. No. Hindsight being 20-20, they saw  
14 firsthand, if they were any kind of inspector,  
15 that there were little things missing like trusses  
16 and bracing and parts of a flooring system, little  
17 things like that.

18 Q. Did you end up pursuing your rights  
19 to go to binding arbitration?

20 A. I had no choice but to. When they  
21 gave me their decision, basically they covered  
22 very minor cosmetic things which I could have  
23 hired any handyman, you know, \$400 to come in and  
24 do. So my only alternative at that point was to  
25 go to binding arbitration.

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1 Q. And what were the results of going  
2 through binding arbitration?

3 A. Binding arbitration found on all 52  
4 points that I had ruled in my favor; however, they  
5 didn't rule beyond that because they were never  
6 submitted initially. It was a point I didn't  
7 realize at that time.

8 Q. Were you satisfied with the  
9 process that you went through under the  
10 homeowner's warranty program?

11 A. Absolutely not. It's like the most  
12 useless, misguided lie ever perpetuated on any  
13 prospective homeowner.

14 Q. Did you continue to discover  
15 problems with your home after you had completed  
16 the warranty process?

17 A. Yes, I have and to this day we  
18 continue to discover things as they crop up as the  
19 houses become older and the problems become more  
20 evident.

21 Q. Mr. Acevedo, on August the 1st or  
22 thereabouts, did Commission Special Agent Charlie  
23 Kuyl and Mike Foley come to your home and make a  
24 video of the conditions of your home?

25 A. Yes, they did.

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1 MR. GLASSEN: At this time, we would  
2 like you to watch excerpts of that videotape which  
3 is now marked Exhibit 191.

4 If you'd like to comment, feel free  
5 as you're viewing this.

6 (At this time, the videotape was  
7 shown.)

8 BY MR. GLASSEN:

9 Q. Mr. Acevedo, did that exhibit  
10 accurately reflect the condition of your house  
11 some six or seven years after you moved in?

12 A. Yes, it did and looking at it now, a  
13 lot more has been uncovered since then and some  
14 that I just forgot to mention during the taping.

15 Q. How much additional expense has this  
16 house cost you?

17 A. Without exaggeration, it has cost me  
18 close to if not a hundred thousand dollars, to rip  
19 out tiles, to rip out bathrooms, to reinforce  
20 things and just to fix the house, not to mention  
21 the drainage -- I had to put an entire drainage  
22 system throughout the property. The cost was  
23 staggering, just kept on going.

24 Q. And at any point in the process did  
25 you hire an attorney to assist you?

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1           A.       At one time I tried and even the  
2           attorney told me, Tony, you're going to spend so  
3           much money trying to fight with these guys, you're  
4           going to end up paying more to me to be your  
5           attorney to not get any results for years,  
6           possibly, when it's probably just cheaper for you  
7           to just take the money and fix the problems  
8           yourself and don't think that the builders don't  
9           know that.

10          Q.       Do you still have unresolved issues  
11          in your home?

12          A.       Yes, I do, to this day as does  
13          everyone else in the community big and small.  
14          I've got neighbors that the entire facade of the  
15          house has been torn down. Does the town do  
16          anything? If I were to do that to my home, I  
17          would have a time limit, that has to be done by  
18          such and such a date. This builder with the  
19          town's telling them to do it and the DCA behind  
20          them saying you must fix tore the house down, left  
21          it halfway done and has not come back to fix it.  
22          Instead they lie and they say these people don't  
23          want us in the house. Does that make any sense to  
24          you? They tear down the house and they say we're  
25          going out to dinner, you can't come today?

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1 MR. GLASSEN: Thank you, Mr.  
2 Acevedo.

3 CHAIRMAN SCHILLER: When you say  
4 that, you're absolutely right. It has been  
5 consistent and prevalent and certainly is a  
6 pervasive way of allowing builders to abuse some  
7 homeowners and we appreciate your sharing on the  
8 depth of that frustration with us and hopefully  
9 we'll be able to accomplish something to benefit  
10 of all of you, not just you but all the people in  
11 New Jersey.

12 Sometimes I know it's frustrating  
13 sitting out there wondering what it all means. We  
14 will certainly do the best we can to achieve some  
15 of the many changes that we feel and you have  
16 articulated very well that have to be changed and  
17 while many of you have suffered through it, the  
18 pain of that suffering may have --

19 MR. ACEVEDO: The suffering is not  
20 an issue. The issue is that this is going on  
21 today. I can take you to any building site,  
22 any -- you pick it, I'll take you there. We'll  
23 bring a real engineer, not these Mickey Mouse  
24 engineers that they hire, and we'll guarantee you,  
25 you pick a house, there's going to be violations

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1           there. The law is not adequate.

2                           CHAIRMAN SCHILLER: Well, as one of  
3           the Commissioners mentioned earlier, it is a  
4           system that is broken and has to be fixed and  
5           there is no question about that and without your  
6           input that could not happen, so we are deeply  
7           appreciative of your being here today and taking  
8           the time out to come and I don't know if the  
9           Commissioners have any questions. As you said,  
10          this has been so repetitious that it's  
11          overwhelming in its sheer volume. So it has to be  
12          dealt with.

13                           Thank you very much, Mr. Acevedo.

14                           MR. GLASSEN: The final witnesses  
15          for today are Special Agent Charles Kuyl and Chief  
16          Accountant Joseph Becht.

17                           Beginning with you, Agent Kuyl,  
18          would you state your name?

19                           MR. KUYL: Charles A. Kuyl.

20                           MR. GLASSEN: How are you employed?

21                           MR. KUYL: Employed with the New  
22          Jersey State Commission of Investigation.

23                           MR. GLASSEN: And prior to working  
24          for the SCI, by whom were you employed?

25                           MR. KUYL: Prior to SCI, I served 29

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1 years with the New Jersey State Police, achieved  
2 the rank of Captain. After that, I served as a  
3 confidential aide, Deputy Chief of Investigations  
4 for the former Prosecutor at the Ocean County  
5 Prosecutor's Office and I left there and served as  
6 Chief Investigations and Executive Staff Member to  
7 the State Appointed District Superintendent,  
8 Newark school system prior to coming here.

9 MR. GLASSEN: And were you assigned  
10 to the New Home Construction Issues Investigation?

11 MR. KUYL: Yes, sir.

12 MR. GLASSEN: Chief Accountant  
13 Becht, could you state your name, please?

14 MR. BECHT: Joseph Becht.

15 MR. GLASSEN: And how are you  
16 employed?

17 MR. BECHT: Currently with the State  
18 Commission of Investigation.

19 MR. GLASSEN: And what is your  
20 position with the SCI?

21 MR. BECHT: I am a Chief Accountant.

22 MR. GLASSEN: And prior to working  
23 for the SCI, by whom were you employed?

24 MR. BECHT: I was employed for 20  
25 years by the State of New Jersey, Division of

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1 Criminal Justice and approximately four years with  
2 Prudential Insurance Company as a health care  
3 investigator.

4 MR. GLASSEN: Were you also assigned  
5 to the New Home Construction Issues Investigation?

6 MR. BECHT: Yes.

7 MR. GLASSEN: Special Agent Kuyl, as  
8 part of your assignment, did you investigate a  
9 matter related to Manalapan Chase development?

10 MR. KUYL: Yes, sir.

11 MR. GLASSEN: And in the course of  
12 that investigation, what records did you have  
13 occasion to look at?

14 MR. KUYL: I reviewed a voluminous  
15 amount of records. I reviewed all Notices of  
16 Violation records pertaining to all 52 homes,  
17 construction permits, inspection logs, inspection  
18 technical reports, engineering reports provided by  
19 the homeowners, and engineering certification  
20 reports from the developer. I reviewed all  
21 homeowner's complaints, Code of Ethics policies,  
22 all correspondences, investigative documents, on  
23 site inspection documents and other relevant  
24 documents prepared by investigators and staff of  
25 the New Jersey Division of Community Affairs

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1 Office of Regulatory Affairs and I reviewed all  
2 the transcripts of testimony that was given at the  
3 Ocean County Construction Appeals Board hearings.

4 MR. GLASSEN: Based on your analysis  
5 of files, records and interviews with homeowners,  
6 did you find numerous code-related problems  
7 occurring at the development?

8 MR. KUYL: Yes, sir. Every home  
9 experienced significant code violations and each  
10 home had workmanship issues.

11 MR. GLASSEN: Did you find that the  
12 homeowners initially had problems getting anyone  
13 to take their complaints seriously?

14 MR. KUYL: Yes, sir. Initially, the  
15 homeowners complained to local officials who  
16 refused to investigate their complaints. Instead  
17 they told them to make warranty claims against the  
18 builder's insurance.

19 MR. GLASSEN: Did the homeowners  
20 eventually have to hire engineers at their own  
21 expense to assess their homes?

22 MR. KUYL: Yes, sir. Not satisfied  
23 with the cooperation given by the Township, the  
24 homeowners were forced to hire engineers to  
25 inspect their homes at their own expense and as a

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1 result of the inspections, they revealed numerous  
2 code violations throughout the homes.

3 MR. GLASSEN: Did the builder's  
4 engineer also examine the homes?

5 MR. KUYL: Yes, sir. The builder's  
6 own engineer identified code violations in all the  
7 homes and corroborated what was reported on by the  
8 contractual engineering that was done by the  
9 homeowners.

10 MR. GLASSEN: So they verified that?

11 MR. KUYL: Yes.

12 MR. GLASSEN: Chief Accountant  
13 Becht, based on what you have learned, should the  
14 deficiencies or problems that were identified have  
15 been detected earlier if the proper inspections  
16 had been conducted?

17 MR. BECHT: Absolutely, the best  
18 time for the inspection is when the home is open.  
19 Problems with the trusses, the roof wasn't  
20 strapped down, the engineer's reports indicated  
21 that a heavy wind would have blown the roofs off.  
22 There were missing bolts. There were missing  
23 lally columns. There were bolts missing from the  
24 lally columns. There were support columns missing  
25 and the trusses that were missing braces, they

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1           were missing struts. It was just a whole plethora  
2           of problems.

3                         MR. GLASSEN: And I believe you said  
4           that because the home was exposed, those  
5           violations could be seen better or could be  
6           inspected at that point in time?

7                         MR. BECHT: As the home is going up,  
8           that's the best time to inspect the home because  
9           everything is open. Once the wallboard is put up,  
10          you don't know what's behind the wallboard. Once  
11          the roof is put on and the insulation is put in,  
12          you can't really see those problems.

13                        MR. GLASSEN: Were COs issued on the  
14          properties?

15                        MR. BECHT: On all 52 homes, yes.

16                        MR. GLASSEN: Did you find that the  
17          inspection reports did not all have proper  
18          signatures?

19                        MR. BECHT: Some of the inspection  
20          reports had improper signatures and some of the  
21          reports had no signatures.

22                        MR. GLASSEN: Agent Kuyl, during the  
23          course of your investigation, was there an arrest  
24          of one of the Manalapan Sub-Code Officials?

25                        MR. KUYL: Yes, sir, there was.

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1 Joseph Cerankowski, a former electrical sub-code  
2 inspector who was working part time was reported  
3 to have been arrested by the Monmouth County  
4 Prosecutor's Office for failing to conduct  
5 electrical inspections and falsifying official  
6 inspection documents.

7 MR. GLASSEN: Can you provide the  
8 Commission with some of the details?

9 MR. KUYL: Yes, sir. Apparently,  
10 Mr. Cerankowski had indicated he had inspected  
11 several homes at Manalapan Chase. One of the  
12 homeowners had complained and indicated he had  
13 never shown up for an inspection and he apparently  
14 filled out the inspection form indicating that he  
15 did indeed inspect the home. Subsequently, a  
16 follow-up investigation revealed similar other  
17 events occurring to other homeowner's houses.

18 MR. GLASSEN: Can you provide the  
19 Commission with some examples of some of the  
20 obvious things that were missed during inspections  
21 of Manalapan Chase?

22 MR. KUYL: Yes, sir. A lot of the  
23 homes, upon flushing the toilet, they leaked  
24 profusely. There was missing insulation that  
25 caused pipes to freeze; there was numerous

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1 electrical outlets that didn't work properly. A  
2 number of windows at Manalapan Chase leaked when  
3 the rain would blow against the windows. As  
4 mentioned earlier, a house is built two feet more  
5 narrow than specified. All houses are not bolted.  
6 There was broken trusses in all the homes, as well  
7 as missing parts included with the trusses, and  
8 trusses definitely were not properly assembled as  
9 specified by the manufacturer's plans.

10 There's also, in addition, missing  
11 squash blocks, missing TJI Joists, unbolted lally  
12 columns, missing beams and support columns to hold  
13 up the houses.

14 MR. GLASSEN: Did the Department of  
15 Community Affairs eventually get involved with the  
16 Manalapan Chase development?

17 MR. KUYL: Yes, they did. After the  
18 homeowners hired their own engineer and had a  
19 public meeting, the DCA became involved.

20 MR. GLASSEN: When they looked at  
21 the development, what did the Department of  
22 Community Affairs find?

23 MR. KUYL: They inspected and  
24 identified numerous code violations at Manalapan  
25 Chase including deficiencies which coincide with

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1 the contractual engineer that was hired by the  
2 homeowners.

3 MR. GLASSEN: Was DCA able to locate  
4 the required documents for their inspections?

5 MR. KUYL: Initially when DCA  
6 requested the truss documents and approved plans  
7 to adequately evaluate the homes, Manalapan  
8 Construction Department was unable to supply DCA  
9 with the required plans and truss documents. They  
10 requested the same required documents from the  
11 builder and found that the documents supplied by  
12 the builder did not adequately depict the home  
13 being evaluated. Neither the town nor the  
14 developer had the proper plans in file for a house  
15 at Manalapan Chase when asked by DCA.

16 MR. GLASSEN: Are such documents  
17 supposed to be on site?

18 MR. KUYL: Yes, sir. There should  
19 be two sets of documents to be filed with the town  
20 prior to construction and one set is to be  
21 maintained by the builder on the site.

22 MR. GLASSEN: Were the plans on file  
23 at the construction office?

24 MR. KUYL: Definitely not.

25 MR. GLASSEN: How did DCA address

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1 the code violations?

2 MR. KUYL: They directed the  
3 Manalapan Construction Office to issue notices of  
4 violations to all affected homes at Manalapan  
5 Chase directing the builder to inspect, identify  
6 the code violations, propose a repair and certify  
7 the repair as complete all within a specific  
8 period of time.

9 MR. GLASSEN: How did this plan  
10 work?

11 MR. KUYL: The developer contracted  
12 the services of an engineering firm to address the  
13 violations and found during DCA's inspection  
14 design plans to address the violation in all 52  
15 homes in the Manalapan Chase development. Once  
16 the engineering evaluation was completed, a report  
17 detailing repairs to each of the homes would have  
18 to be submitted with the permit application to  
19 Manalapan Construction Department to issue  
20 permits.

21 As a result of these inspections by  
22 the engineering firm, they determined that many of  
23 the violations should have been detected by the  
24 inspectors during original construction.

25 MR. GLASSEN: Who contracted with

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1 the engineer for this process?

2 MR. KUYL: The developer/builder was  
3 responsible under the notice of violation.

4 MR. GLASSEN: Did the engineer's  
5 certification state that the home was built to  
6 code or, rather, that the engineering fix had been  
7 completed?

8 MR. KUYL: It noted that the  
9 engineering fix had been completed and a  
10 certificate of approval was issued. Presumably  
11 the engineer fix would bring the home into code  
12 compliance. However, many of these code  
13 violations are hidden because many are covered.  
14 Once a house is built, they are difficult to  
15 detect and discover. That is why it is imperative  
16 that inspections should occur during various  
17 stages of construction.

18 MR. GLASSEN: But there was no  
19 certification that the homes then met code, is  
20 that correct?

21 MR. KUYL: That's right. There was  
22 no certifications from the Manalapan Construction  
23 Code Department indicating that the repairs were  
24 made to code. They relied on the engineering  
25 contract by the developer.

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1 MR. GLASSEN: Chief Accountant  
2 Becht, who is the engineering firm responsible for  
3 inspecting to verify the house is code compliant  
4 after the inspections were made?

5 MR. BECHT: The developer hired the  
6 firm to do the inspection. After the inspection  
7 was done, the same firm certified that the work  
8 was done.

9 MR. GLASSEN: Did we find throughout  
10 the investigation that the confidence of the  
11 homeowner is shaken by this practice?

12 MR. BECHT: Definitely. They  
13 expected the municipality to do the inspection but  
14 instead they were relying on the engineering firm  
15 who was hired by the builder and recommended the  
16 repairs and then inspected the repairs as the one  
17 that was going to issue the certificate of  
18 approval.

19 MR. GLASSEN: Did the Commission  
20 subpoena Richard Hogan, the current Manalapan  
21 Chase Construction Official, into private session  
22 in regard to the homes receiving COs despite  
23 obvious code violations?

24 MR. BECHT: Yes.

25 MR. GLASSEN: What did he say?

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1 MR. BECHT: On the issue, Mr. Hogan  
2 stated, "It doesn't mean that we are certifying  
3 that the structure complies. What the CO is is  
4 the application, the certificate, all right --  
5 that their Affidavit or their certificate --  
6 request for a certificate -- that the builder  
7 takes a responsibility to meet code."

8 MR. GLASSEN: In other words, did  
9 he, in essence, indicate that the Construction  
10 Official is not necessarily responsible for  
11 detecting these violations?

12 MR. BECHT: What I think he's saying  
13 is that the builder is responsible for the home to  
14 meet code.

15 MR. GLASSEN: Was the builder  
16 assessed a fine in this instance?

17 MR. BECHT: Yes, he was.

18 MR. GLASSEN: And did the builder  
19 appeal that fine?

20 MR. BECHT: Yes. The original fine  
21 was approximately 212, \$215,000. He appealed to  
22 the Construction Appeals Board and the fine was  
23 reduced. The hearing officer stated that both the  
24 Construction Department and the builder are  
25 responsible and the fine was downgraded to

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1 approximately \$25,000.

2 MR. GLASSEN: Can you give us some  
3 significant examples not necessarily code-related  
4 that homeowners ended up not getting what they  
5 paid for at this or other developments?

6 MR. BECHT: There was a purchaser in  
7 Manalapan Chase who purchased a surround sound  
8 system for her home. She paid about \$10,000 for  
9 the system and instead of going out -- she said  
10 she could get it cheaper if she went outside but  
11 felt what when the wall was open, it was the best  
12 time to install the system. When she came at the  
13 closing and she's doing the walk-through, she  
14 wanted to listen to the system. When they put it  
15 on, she said to the individual I don't hear  
16 anything and the answer was well, that's the  
17 beauty of the system, you're not supposed to.

18 You have the instances of the  
19 garages that were too short. That wasn't the only  
20 development at Wall Township. There were other  
21 developments where we have very similar pictures  
22 where the stairs were out. You have the  
23 instances, and I think a number of the homes in  
24 Manalapan Chase were short meaning that that  
25 structure was approximately two feet short and

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1 what they did was expand and in one of the homes  
2 only about three inches of the sill is sitting on  
3 the foundation which, you know, it's going to  
4 cause problems down the line.

5 There were other instances where a  
6 homeowner contracted for two car garage and, in  
7 fact, got a three car garage, so she made out on  
8 the deal. But it just shows that they don't pay  
9 attention to the plans.

10 MR. GLASSEN: Special Agent Kuyl,  
11 based on a recent New Jersey Superior Court  
12 ruling, are homeowners throughout New Jersey now  
13 being held responsible for code violations in  
14 their homes?

15 MR. KUYL: Yes, sir. DKM  
16 Residential Properties versus Township of  
17 Montgomery states that, in essence, once a CO was  
18 issued and the title passes, the homeowner is  
19 responsible for the dwelling even if the builder  
20 made mistakes or errors.

21 MR. GLASSEN: Have we seen instances  
22 in the past few weeks where homeowners are now  
23 being issued NOVs rather than the builder for code  
24 violations?

25 MR. KUYL: Yes, sir. If there is a

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1 significant safety and health issue requiring  
2 immediate correction, it would have to be the  
3 responsibility of the homeowner to take care of  
4 it.

5 MR. GLASSEN: Has there been any  
6 action taken against the inspectors who are  
7 responsible for inspecting these properties at  
8 Manalapan Chase and issuing certificates of  
9 occupancy?

10 MR. KUYL: Not yet, sir.

11 MR. GLASSEN: Agent Kuyl, based on  
12 your analysis, what contributed to the problems  
13 here?

14 MR. KUYL: Well, number one, the  
15 homes definitely were not built properly and  
16 conclude that the houses were not inspected  
17 properly and the same was noted during testimony  
18 at the Ocean County Construction Board of Affairs  
19 indicated the same.

20 MR. GLASSEN: And could you comment  
21 on the ramifications to the homeowners of what  
22 occurred at Manalapan Chase?

23 MR. KUYL: Sure. The homeowners  
24 have endured the fear of losing their homes,  
25 number one. They realize that their homes may not

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1 be safe. They personally endured considerable  
2 expenses in making repairs and hiring engineers.  
3 There were numerous invasions of their homes by  
4 inspectors and repairmen during the fix stages  
5 which actually interfered with the use and  
6 enjoyment of the home.

7 MR. GLASSEN: Thank you very much.  
8 No further questions.

9 CHAIRMAN SCHILLER: I want to thank  
10 you, gentlemen, for a sum up analysis and again,  
11 it's just reiterating the same plights, but the  
12 difference is you have provided back-up facts that  
13 the homeowners have been complaining of.

14 So with your testimony, that will  
15 conclude today's testimony and tomorrow will be at  
16 9:30 in the morning in this room and just to  
17 remind everybody that this is ongoing testimony,  
18 so we'll have tomorrow's hearing, then we'll be  
19 resuming again in January. And I want to thank  
20 particularly Denise Housel, our stenographer, for  
21 being so patient and hanging in there. So we'll  
22 see you all tomorrow at 9:30 and I really  
23 appreciate everybody's participation.

24 (Hearing adjourned at 5:03 p.m.)

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C E R T I F I C A T E

I, Denise C. Housel, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness and/or witnesses were sworn by me to testify to the truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

\_\_\_\_\_  
Certified Shorthand Reporter  
XI01029  
Notary Public of New Jersey  
My Commission expires 10-30-07

Dated: \_\_\_\_\_