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2 COMMISSION OF INVESTIGATION

3 PUBLIC HEARING

4 -----
5 IN THE MATTER OF:

6 NEW-HOME CONSTRUCTION
7 ISSUES FR#9-4
8 -----

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14 B E F O R E:

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	I N D E X	
	WITNESS	PAGE
1		
2		
3	KENNETH COOLEY	
4	By Ms. Saros	7
5	RALPH J. MARA	
6	By Ms. Gaal	31
7	ROBERT A. GAESTEL RONALD P. REDY	
8	By Ms. Gaal	56
9	PATRICK J. O'KEEFE	
10	By Mr. Glassen	111
11	EDWARD VANDER BERG STEPHEN JONES ROBERT LA COSTA	
12		
13	By Mr. Glassen	160
14	THOMAS KENYON PAUL POGORZELSKI	
15		
16	By Ms. Saros	198
17	SUSAN BASS LEVIN WILLIAM CONNOLLY	
18	By Ms. Gaal	242
19		
20		
21		
22		
23		
24		
25		

	E X H I B I T S			
	NUMBER	DESCRIPTION	PAGE	
1				
2				
3	NCI #303	Chart: Example	4	
4	NCI #306	Photograph	4	
5	NCI #307	Photograph	4	
6	NCI #308	Photograph	4	
7	NCI #309	Photograph	4	
8	NCI #310	Photograph	4	
9	NCI #311	Photograph	4	
10	NCI #312	Photograph	4	
11	NCI #313	Photograph	4	
12	NCI #314	Photograph	4	
13	NCI #315	Photograph	4	
14	NCI #316	Application for Certificate	4	
15	NCI #318	Chart: Sanctions	4	
16	NCI #319	Chart: Summary	239	

17

18

19

20

21

22

23

24

25

1 (Exhibits NCI #303 and #306 through
2 #316 and #318 marked prior to hearing.)

3 COMMISSIONER SCHILLER: Good morning
4 and welcome to the second day of hearings on the
5 new construction. Before we have our opening
6 statement from Commissioner Mariniello, I would
7 just like to introduce on behalf of the
8 Commission, I would like to acknowledge the
9 presence here of my counterpart from New York, Ms.
10 Dineen Ann Riviezzo, chairman of the New York
11 State Commission of Investigation.

12 The New York state SCI was the
13 nation's prototype state government watchdog and
14 was used as model in the establishment of our own
15 New Jersey SCI more than three decades ago.

16 So we want to welcome her and
17 hopefully we'll be doing some things in the future
18 together that may affect both states. So we
19 welcome you all here, and Commissioner Mariniello.

20 COMMISSIONER MARINIELLO: I thank
21 you, Mr. Chairman. Good morning everyone. If
22 there is one imperative above all that has emerged
23 as part of the Commission's investigation of new
24 home construction and inspection abuse it is this.
25 Responsibility agencies of government at all

1 levels have an obligation at all times to measure
2 up to the public's trust and interest. They need
3 to be aggressive and creative, and they need to
4 deploy resources collectively and cooperatively in
5 ways that produce effective results. The merits
6 of a cooperative approach by the divisions of
7 government in this area cannot be overstated. I
8 say that because the initial citizens complaints
9 that formed the basis of this investigation were
10 referred to the Commission by the offices of the
11 U.S. Attorney for New Jersey.

12 Thanks to recognition by that
13 federal agency of the SCI's unique role as a non
14 prosecutorial factfinder, we have been able to
15 maximize public exposure of a significant consumer
16 crises. That is exactly how the system should
17 work, and we are pleased that personnel from the
18 U.S. Attorneys Office will be joining us this
19 morning to offer their perspective on dealing with
20 the difficult issues before us.

21 You also will be hearing from
22 representatives the New Jersey Builders
23 Association, from municipal construction
24 officials, and from representatives of the New
25 Jersey League of Municipalities who will provide

1 insight into the concerns and challenges of facing
2 local governments and the proper regulation and
3 oversight of this industry.

4 The one agency most directly
5 responsible for regulation and oversight in this
6 area, of course, is the New Jersey Department of
7 Community Affairs. DCA is uniquely positioned
8 with regard to every major issue that has arisen
9 during the course of this investigation.

10 We look forward today to the
11 testimony of senior agency officials, especially
12 in the context of systemic reforms and corrective
13 actions. I would ask that we please call the
14 first witness.

15 MS. SAROS: Kenneth Cooley. Let me
16 state for the record that Bradley A. Little
17 testified before the Commission under oath on July
18 15 of this year. He was scheduled to provide
19 testimony today, but because of serious illness is
20 unable to appear.

21 Consequently, Special Agent
22 Investigative Accountant Cooley will provide the
23 substance of his testimony as it relates to the
24 development known as Manalapan Chase in Manalapan
25 Township, Monmouth County.

1 KENNETH COOLEY, after having been
2 first duly sworn, was examined and testified as
3 follows:

4 EXAMINATION

5 BY MS. SAROS:

6 Q. Sir, state your full name and
7 position, please.

8 A. My name is Kenneth Cooley, I am
9 employed as a Special Agent Investigative
10 Accountant for the State Commission of
11 Investigation.

12 Q. Would you tell us how Bradley Little
13 is currently employed and for how long?

14 A. Mr. Little is currently employed as
15 the Division President of the New Jersey Division
16 of Centex Corporation, and he has been so employed
17 for five and a half years.

18 Q. What was his employment prior to
19 that position?

20 A. Prior to working for Centex he
21 worked for Calton Homes in Manalapan, New Jersey
22 and he was employed as the chief financial officer
23 and had that position for a period of nine and a
24 half years.

25 Q. What is the relationship between

1 those two companies?

2 A. Centex Homes purchased Calton Homes
3 on December 31st, of 1998.

4 Q. Mr. Little is a certified public
5 accountant, is that correct?

6 A. Yes, he is.

7 Q. And does he have any actual
8 construction experience?

9 A. He testified that he had no actual
10 construction experience whatsoever.

11 Q. How many homes are in the
12 development of Manalapan Chase?

13 A. The development consist of fifty-two
14 single family homes.

15 Q. What's the Commission's
16 investigation disclose as to when the homes were
17 constructed, who the builder was, and what the
18 price range was for the homes?

19 A. All of the fifty-two homes were
20 built by Calton Homes prior to the acquisition by
21 Centex. The homes were built during the years
22 1994 through 1997, and our investigation disclosed
23 that the homes sold for prices between three
24 hundred and seventy-five and \$450,000.

25 Q. Did Mr. Little have any involvement

1 in the construction phase?

2 A. No, other than his financial role as
3 chief financial officer he had no hands on
4 experience in the construction phase.

5 Q. According to the Commission's
6 investigation how soon after homeowners began
7 moving into the homes did they begin to experience
8 problems with the construction?

9 A. According to our investigation the
10 homeowners testified that they had problems
11 immediately, and those problems included windows
12 that leaked, toilets that leaked, pipes that
13 froze, electrical outlets that didn't work, water
14 seepage through the exterior stucco fascia on the
15 buildings.

16 And the homeowners endeavored to
17 contact Calton Homes and obtain some assistance in
18 fixing those problems and they were unsuccessful
19 in getting Calton Homes to address their concerns.

20 Q. At some point was a pattern of
21 deficiencies established in all fifty-two homes?

22 A. Yes, there was a pattern.

23 Q. And when did that occur?

24 A. Late 2000 into early 2001.

25 Q. How were those deficiencies

1 discovered?

2 A. There were actually two actions that
3 occurred. As a result of Calton's inattention to
4 their complaints some of the homeowners hired a
5 private engineer to inspect their homes and assess
6 what the damages were, and after those findings
7 were brought to the attention of the Division of
8 Consumer Affairs then the Office of Regulatory
9 Affairs of DCA also did an inspection of the
10 homes.

11 Q. When Mr. Little appeared before the
12 Commission in private session did he acknowledge
13 that there was in fact a systemic problem
14 throughout the development?

15 A. He testified that he did, "realize"
16 that there was a problem throughout the
17 development, and he came to this realization at a
18 meeting that he had attended on August 9th of
19 2001, and that meeting was attended by Calton
20 Homes, by Mr. Little, by DCA, and also by
21 officials of Manalapan Township.

22 Q. What has been marked as Exhibit 139
23 consist of a letter dated September 4, 2001,
24 issued by the construction code department of the
25 Township of Manalapan to Mr. Little as the

1 representative of Calton Homes.

2 Attached to the letter is a notice
3 of violation setting forth a complete list of the
4 property owners, and the construction code
5 violations that were observed during the
6 inspections conducted by the township and the
7 Department of Community Affairs. Under that
8 notice Calton Homes was ordered to repair all
9 fifty-two homes in the development.

10 On the screen are the last two pages
11 of this document, and those pages set forth the
12 types of deficiencies that were found in all of
13 the homes.

14 Agent, would you highlight some of
15 those categories of deficiencies for us?

16 A. Certainly. The listing that you see
17 displayed, the exhibit lists the total of
18 twenty-four deficiencies that were cited in the
19 notice of violation that this is attached to.

20 These deficiencies relate to
21 problems in the attics, in the basements, in the
22 construction of the walls, in the plumbing, and in
23 the electrical facilities, and there are also
24 miscellaneous deficiencies reported.

25 Most of the deficiencies relate to

1 violations, specific violations of BOCA codes, and
2 also of the New Jersey Administrative Code, and
3 each of those sections are cited in the
4 attachment.

5 The deficiencies that are
6 widespread, mainly that in each instance the
7 construction was not in accordance with the
8 existing code, and all of the items that are cited
9 are supported by the actual section of code.

10 Mr. Little was asked about this, and
11 he stated that and I quote, "there were certain
12 truss issues, both roof truss and floor truss
13 issues that they found fairly consistently", and
14 he further stated, and this is a quote, "I believe
15 they all had truss problems."

16 Q. In addition to the defects that were
17 found in all fifty-two homes, did some of the
18 homes also have additional problems?

19 A. Yes, they did. According to our
20 investigation there were workmanship related
21 problems that included some of the things that I
22 mentioned earlier, leaking toilets, electrical
23 outlets that did not work, insulation that was
24 missing, kitchen cabinets that pulled away from
25 the walls, and fireplaces that had no support

1 beneath them.

2 Q. Under the notice of violation was
3 Centex required to remediate the problems?

4 A. Yes, Centex acquired Calton Homes,
5 and even though the construction was completed on
6 all of these fifty-two homes Centex had the
7 residual requirement to adhere to the warranty
8 that was offered by the original builder, Calton
9 Homes.

10 Q. And did Mr. Little as president of
11 the New Jersey division of Centex have any role
12 with respect to the remediation phase?

13 A. Mr. Little as President of the New
14 Jersey division of Centex homes was responsible
15 for all of the operations in the New Jersey
16 division, and yes, the follow-up on any
17 remediation that was required was the
18 responsibility that he had on behalf of Centex.

19 Q. Was Centex also required by the
20 township and by the Department of Community
21 Affairs to have its own engineering firm inspect
22 the homes?

23 A. Yes, they were. They were required
24 to retain an independent engineer to do an
25 inspection.

1 Q. And did its engineering firm inspect
2 each and every home?

3 A. Yes, they did.

4 Q. What did the firm find?

5 A. The firm discovered that the
6 deficiencies cited by DCA, that all of those
7 deficiencies existed, but they found even more
8 defects in some of the homes. They identified the
9 areas that were not code compliant, and that in
10 each instance when those repairs were to be made
11 they would be required to certify that after the
12 repairs were made that each individual home was
13 now code compliant.

14 Q. The notice of violation which was
15 dated September 4, 2001, required that all repairs
16 be completed within 180 days of receipt of the
17 notice. Was Centex able to meet that date?

18 A. No, they were not.

19 Q. How long has it taken Centex to
20 complete the vast majority of repairs?

21 A. The vast majority the repairs were
22 completed by the latter part of the year 2003.
23 However, there is still three homes that require
24 significant repairs that have yet to be done.

25 Q. How much has it cost Centex to

1 complete these repairs?

2 A. Mr. Little testified that Centex had
3 spent over \$2 million on the repairs that have
4 been done to these fifty-two homes. He testified
5 that that money was out-of-pocket expense and
6 differentiated between what the real cost was
7 because the out-of-pocket expense did not include
8 any of the management expense of Centex Homes, in
9 other words the overhead of the builder.

10 To put that in perspective, you have
11 to consider that there was only fifty-two homes in
12 the development, and spending \$2 million amounts
13 to spending an average of more than \$38,000 per
14 home to perform the repairs.

15 Q. Clearly Manalapan Chase was plagued
16 by a pattern of very serious deficiencies from
17 homes not built to code, to very poor workmanship.

18 Was Mr. Little able to explain what
19 happened, what accounted for these results?

20 A. Mr. Little provided the following
21 testimony as an explanation. He said, "obviously
22 someone didn't perform." He further testified,
23 and I quote, "everybody didn't do their job, all
24 of the way through from the subcontractor to the
25 field manager, I have to assume, to the inspector,

1 and those are the people involved in the process."

2 When he was also asked if the
3 process broke down on several levels, he
4 responded, and I quote, "obviously and
5 consistently, as it turns out."

6 Q. Let's turn now to the subcontractors
7 that Calton employed to construct the homes.
8 According to our investigation what percentage of
9 the construction was turned over to
10 subcontractors?

11 A. The entire construction, 100 percent
12 was performed by subcontractors.

13 Q. Did Calton fail to provide proper
14 oversight of those subcontractors, and did that
15 fact contribute to the deficiencies?

16 A. The oversight that was provided
17 apparently did not identify any of the
18 deficiencies. In fact, we received testimony from
19 some of the homeowners during the investigation
20 that they tried to interact with the
21 subcontractors that were performing work on the
22 sites when there were questions that the
23 homeowners had, or things that they observed that
24 were incorrect, and they had a problem because
25 they couldn't find anyone who spoke English.

1 One of the homeowners stated that
2 when they visited the site they observed that the
3 preliminary plumbing that was being done for their
4 heating system was not for the heating system that
5 they had ordered. They had ordered a baseboard
6 heating system and the contractor was installing a
7 hot air heating system, and they tried to
8 communicate thinking that they were doing the
9 right thing to save the builder from additional
10 trouble, and they couldn't find anyone who would
11 understand what they were trying to communicate to
12 them.

13 I think that the fact that no one
14 was able to communicate using the English language
15 was a serious flaw in the process.

16 We were also told by homeowners that
17 when they were present at the site they observed
18 some of the contractors that are working who were
19 drinking beer and drinking hard liquor while they
20 were working.

21 Q. In an effort to perform the
22 remediation did Centex attempt to contact the
23 subcontractors that Calton had used to construct
24 the houses to return to repair those defects?

25 A. Yes, on behalf of Centex Mr. Little

1 himself contacted the primary subcontractors that
2 were involved in the flaws that were discovered.

3 Q. What occurred when he contacted
4 those subcontractors?

5 A. Well, the most significant of those
6 contractors is the framing contractor because many
7 of the problems were, as the notice states, truss
8 problems, and actual construction problems of the
9 framing of the house.

10 Mr. Little testified that when he
11 contacted the framer, and I quote, "they made a
12 meager offer of so many man hours, and it was like
13 eighty man hours or something that was totally
14 inadequate and some low dollar amount, and we knew
15 that wouldn't even come close to being able to
16 repair fifty-two homes."

17 Because of that response, Centex
18 hired other contractors to do the remediation work
19 and then subsequently filed a lawsuit against the
20 framer, and that lawsuit is still pending.

21 The other contractor that was
22 contacted was the contractor who performed the
23 electrical work, and that is a licensed
24 contractor, whereas the framing contractor is not.
25 And in reference to the electric contractor, Mr.

1 Little stated and I quote, "they stepped up to the
2 plate and performed the repairs that were
3 required."

4 Q. Do you think that the fact that
5 framers are not required to be licensed by the
6 state, whereas electricians are licensed had any
7 bearing on that result?

8 A. I certainly think so. I think that
9 anyone who is a licensed professional, that is the
10 backbone of their trade, and the electrical
11 contractor demonstrated that he was not willing to
12 forfeit his license for deficiencies that were
13 cited in his workmanship, so he came through and
14 did the work, whereas the framing contractor
15 walked away.

16 Q. In our investigation we reviewed
17 transcripts of hearings that were conducted before
18 the Ocean County Construction Board of Appeals
19 regarding this development. Representatives from
20 Centex's engineering firm testified that many of
21 the violations could have been observed during the
22 initial construction phase. How were obvious code
23 violations missed then?

24 A. The inspectors and whatever staff
25 that Calton had, simply did not pay careful enough

1 attention to see the defects.

2 Q. And obviously may we conclude that
3 the municipality's inspectors also did not observe
4 any code violations, and therefore did not
5 adequately do their jobs?

6 A. That's correct. The inspectors did
7 not cite any of the violations either.

8 Q. Was Mr. Little able to explain why
9 Calton's on site supervisors did not observe the
10 defects?

11 A. Mr. Little had no explanation why
12 any of the defects weren't found.

13 Q. Also at those board hearings the
14 attorney for Centex testified. How did he
15 summarize what happened at the development?

16 A. The attorney for Centex stated, and
17 I quote, "things weren't done properly, carefully,
18 they weren't carefully constructed, they weren't
19 carefully inspected at the time that this was
20 built."

21 When Mr. Little was asked about that
22 quote when he appeared in private session before
23 the Commission, he testified that the attorney's
24 statement that I just cited was, and I quote, "a
25 fair representation," of what had occurred.

1 Q. According to Mr. Little what
2 measures does Centex have in place to monitor the
3 quality of construction in order to prevent the
4 types of deficiencies that occurred at Manalapan
5 Chase?

6 A. Mr. Little testified that Centex is
7 a much larger builder, building on a nationwide
8 basis, as opposed to Calton which is a small
9 builder. He differentiated that in his opinion a
10 larger builder has the resources and wherewithal
11 to conduct much more on-site supervision.

12 He said that Centex has a field
13 manager on every site, and depending on the size
14 of the site they also might employ an assistant
15 field manager, and these individuals would be on
16 site daily to oversee the activities of the
17 various subcontractors that were used to do the
18 construction.

19 And also, he testified that Centex
20 hired an outside quality control inspector to also
21 oversee the construction. He also stated and I
22 quote, "Centex has training courses, they have
23 quarterly construction operation reviews that are
24 done within the division. Annually they have an
25 independent company come in and perform a

1 construction operations review, and that's
2 compared with very high standards that Centex has,
3 and compared to the other divisions. I believe we
4 were the 13th rank, ranked 13th last year out of
5 all of Centex, and that's the end of that quote.
6 And just to put it in perspective, Centex has
7 fifty-five building divisions.

8 He was also unable to state what, if
9 any, quality control measures Calton had at the
10 time of the construction of Manalapan Chase.

11 He stated, "now there is much more
12 oversight now that Centex is in control," and he
13 called it a "self policing." He added that this
14 is also necessary on the inspection side, that
15 they should also have some self policing
16 mechanism.

17 Q. Apart from what Little stated, did
18 our investigation reveal that Calton Homes had any
19 process in place to insure quality construction?

20 A. No, he was unable to testify that
21 they had any quality control, and I think the
22 pattern of the construction deficiencies makes it
23 obvious that there was no quality control.

24 Q. Does Centex have any policy
25 regarding the giving of gifts or gratuities, or

1 anything of value to local municipal officials?

2 A. Mr. Little testified that that is
3 not a permissible practice.

4 Q. Currently, because our Commission
5 staff established, examined employee expense
6 reports of Centex for the time period of
7 February 1999 through January of 2003, and the
8 predominant reason for the expenses was stated to
9 be meals, and most of those meals were for
10 municipal mayors or engineers.

11 What did Mr. Little state as the
12 reason for those meetings.

13 A. Mr. Little testified, and I quote,
14 "these are probably related to business meetings,
15 generally held in the township relating to getting
16 our project approval process understood so that we
17 perform under the guidelines that the township is
18 looking for, and in most cases it would look like
19 they probably just followed that meeting where
20 maybe people would say, let's go grab a bite to
21 eat." He also stated that it is, "a sort of a
22 goodwill thing."

23 Q. The Commission's review of Centex's
24 expense reports also uncovered several instances
25 where employees made political contributions to

1 local campaigns. In fact, one individual made two
2 \$300 political contributions.

3 Did Centex reimburse its employees
4 for the political contributions that they made?

5 A. Yes, they did.

6 Q. Did Mr. Little have any role in
7 approval those reimbursements?

8 A. Mr. Little approved the
9 reimbursements, the reimbursements were further
10 approved by the senior vice president, who is also
11 the director of forward planning for Centex, and
12 they were further approved by the in-house counsel
13 and by the regional counsel for Centex.

14 Q. Has Centex since changed its policy
15 regarding allowing employees to make political
16 contributions?

17 A. The policy was recently changed.
18 Mr. Little testified that now, and I quote, "all
19 of the donations are made in the name of the
20 company and through a company check."

21 MS. SAROS: Thank you, Mr. Cooley.
22 I have no further questions.

23 BY COMMISSIONER SCHILLER:

24 Q. Special Agent, I am going to lead
25 you to I guess to a question at the end of this,

1 but yesterday when we had testimony from several
2 of the developers, it became very apparent, at
3 least to me, and I think some of the Commissioners
4 that there was a dichotomy between the on-hand
5 supervision on the site and the upper management
6 of the corporations. We saw something similar in
7 Victor, where an accountant or comptroller took
8 over the company and had no real relationship or
9 any knowledge of how to build, and we had Mr.
10 Kornberg, who was the project manager or
11 supervisor on site, who was doing pretty much what
12 he wanted and didn't know it, and yet while Mr.
13 Kornberg was very professional and very good at
14 it, it seemed to me to be a big gap between that
15 type of management, the upper management, and the
16 hands-on project manager.

17 I think we saw that also in with K.
18 Hovnanian and Ms. Hovnanian where the company
19 seems very well run and the people there seemed
20 very competent and astute and sensitive, but when
21 you get down to hiring subcontractors and
22 supervising the on-site things that there is not
23 the follow-through or the professionalism that we
24 see at the higher level.

25 I noticed here that we, again, have

1 Mr. Little is a person who has no contracting
2 experience, even though he is the head of a large
3 division of Centex, and even though it seems to me
4 from what you recited in his testimony was that
5 they are bringing in people to do supervision and
6 quality control which Calton didn't have, it seems
7 to be a pattern.

8 Does it seem to also follow through
9 that was also the pattern here at Manalapan, that
10 the upper management, while very well meaning and
11 very professional people seemed not to be really
12 in touch with what's going on on the site?

13 A. Our investigation disclosed that
14 there was no real on-site supervision on the part
15 of anyone in upper management.

16 Mr. Little testified that he had no
17 experience whatsoever in construction, and he had
18 little recollection of what, if any, procedures
19 were in place to provide the supervision that
20 would have been required to prevent the
21 construction flaws that occurred.

22 Q. So that would be pretty consistent
23 to what we have already seen from yesterday's
24 testimony?

25 A. I believe this would be the icing on

1 the cake.

2 BY COMMISSIONER FLICKER:

3 Q. Yesterday we also heard from upper
4 management, they felt in the case of Mr. Riggs
5 from K. Hovnanian and the Hadir Hovnanian, who was
6 trading under Hovsons and Menk, they seemed to
7 paint a picture of at least satisfied homeowners
8 when the repairs were done, at least that's the
9 picture that they tried to give us.

10 I think Mr. Little when he testified
11 tried to paint something of the same picture,
12 didn't he?

13 A. Yes, he did, but considering the
14 fact that in the case of Manalapan Chase, Calton
15 Homes was located across the street from the
16 development, so the disconnect is even more
17 obvious following up on what the Chair had asked
18 me, but the attention to customer satisfaction
19 doesn't seem to be in existence during the time
20 that Calton was building these homes.

21 Q. Would it be fair to say that based
22 upon the investigation by this Commission that the
23 homeowners of Manalapan Chase today are anything
24 but satisfied with most of the response that they
25 got from Calton and then Centex?

1 A. Our investigation disclosed that
2 Calton did no -- made no attempt to satisfy the
3 customer until the customers hired private
4 engineers and brought in the DCA to cite the
5 findings, and to present it to them in a fashion
6 but that they had no choice to react to those
7 findings.

8 Q. Let me just go a little bit beyond
9 your testimony and ask you, based upon your
10 familiarity with the entire investigation, would
11 it also be fair to say that the homeowners in, I
12 think Holiday City at Monroe, and some of the K.
13 Hovnanian developments that we investigated, are
14 anything but pleased with responses from the
15 management teams in those respective building
16 companies?

17 A. Well, I think it carries through,
18 and I think we have heard testimony that actions
19 seem to occur when the pressure mounts, as opposed
20 to when the problem is discovered.

21 Q. So in spite of what one might have
22 thought was fairly rosy pictures painted by the
23 corporate executives yesterday, the homeowners
24 were anything but happy campers at the end of
25 their dealings? I can't even say at end of their

1 dealings, in their continued dealings with the
2 home builders?

3 A. I think that's very fair. I think
4 in fact in the case of Calton there is still three
5 homes that require substantial repairs and they
6 were built over seven years ago.

7 COMMISSIONER FLICKER: Thank you
8 very much.

9 COMMISSIONER MARINIELLO: I have
10 more of a comment maybe more for just for the
11 putting on it the record, that I mean it seems to
12 me that we are talking about very large builders
13 that we have had in here yesterday and today and
14 other ones that we have investigated, and it's not
15 lost upon me, and I don't doubt it's lost upon any
16 of the other Commissioners, that this nonfeasance
17 or misfeasance that these companies had a
18 responsibility for to supervise these properties,
19 all of a sudden after we bring them in and want to
20 talk to them about these problems they all now
21 have quality control programs.

22 It is nice to come here and tell us
23 all about that, but I would like to see where they
24 are going to be two years from now when the SCI
25 isn't calling them to the mat, if these quality

1 control programs are still going to be in place,
2 and if they are really going to be reviewing it
3 the way they say they are.

4 But I just wanted to say for the
5 record, that it is nice that they come in and tell
6 us this, but we are aware that some of these
7 changes didn't occur until we started to
8 investigate it, and I hope that those words that
9 they provided us through the testimony here
10 yesterday, and Mr. Little's testimony in private
11 session don't ring hallow in couple of years.
12 That's all I have, Mr. Chair.

13 COMMISSIONER SCHILLER: Thank you
14 very much, Special Agent. We'll be calling Mr.
15 Mara, the First Assistant United States Attorney
16 for New Jersey as the next witness, and I just
17 want to while Mr. Mara is coming up, I would like
18 to just mention that Commissioner Edwards is stuck
19 in traffic on I think I one of the highways coming
20 down here, and that is the reason for his absent
21 chair, but he will be coming in shortly.

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1 RALPH J. MARA, JR., was examined and
2 testified as follows:

3 EXAMINATION

4 BY MS. GAAL:

5 Q. Good morning.

6 A. Good morning everyone. Thank you
7 for inviting my office to appear before you today.

8 Q. Before you begin, I would just like
9 to state for the record for the Commissioners that
10 throughout the three rounds of hearings we have
11 had, as well as our investigation, the United
12 States Attorneys Office for New Jersey has been
13 very cooperative, and in fact United States
14 Attorney Christie had been available throughout
15 the other hearings, his testimony really was most
16 appropriate for the end of the hearing, and as
17 luck would have it he is not available today, and
18 we appreciate your becoming available on short
19 notice, and we are really fortunate to have you
20 here today. So I want to thank you personally
21 thank you for coming and on behalf of the
22 Commission.

23 It is my understanding that you have
24 some remarks for us at the outset, and I think we
25 will start that way.

1 A. Thank you. Yes, I have some remarks
2 focusing on inspection abuses, and then I will be
3 happy to take any questions anybody has.

4 Local building code inspectors are
5 one of the groups of municipal officials that have
6 a lot of contact with the public, obviously, on a
7 daily basis. Unfortunately, that conduct at times
8 has been characterized by extortion, economically
9 harmful construction delays, and approvals of
10 slipshod and poor construction.

11 I have been prosecuting public
12 corruption cases for a long time in my office.
13 One of my most memorable episodes involved a local
14 builder, small builder in Hudson County, a recent
15 immigrant. He reported to the FBI that he was
16 having a very difficult time in his town trying to
17 complete a small project. The local building
18 inspector had arbitrarily delayed his project, and
19 was constantly telling him to talk to different
20 town officials. He finally got fed up when the
21 inspector told him that he had to, "speak with Ben
22 Franklin two times." The builder didn't know this
23 Ben Franklin, he was a recent immigrant, but he
24 was sick of talking to people and wasn't going to
25 talk to Ben Franklin, so he came to the FBI.

1 Well, of course, Ben Franklin is on
2 a \$100 bill, and this was the inspector's subtle
3 way of telling the builder that he wanted a \$200
4 kickback.

5 While the story illustrates
6 obviously extortion conduct, I think it also
7 illustrates something else, the victims in a lot
8 of these cases are some of community's most
9 vulnerable. They are small business owners, they
10 are private homeowners, citizens of modest means,
11 recent immigrants, often with fragile financial
12 circumstances, who cannot afford delays in their
13 projects and can ill afford even a kickback, or a
14 pay-off of hundreds of dollars.

15 One of the cases in my office that
16 really highlights some of these points is a recent
17 one we did called United States v. Refredo Vidal.
18 Freddie Vidal, through his company Comprehensive
19 Inspection Agency was the electrical inspector in
20 five Hudson County communities, Hoboken,
21 Weehawken, West New York, Union City, and
22 Secaucus. He was also code official in Union
23 City.

24 In 2002 he was tried and convicted
25 of extortion and tax charges and sentenced to

1 forty-one months in prison. The Star Ledger
2 described this as a "case of street level graft
3 against average citizens, mostly working-class
4 immigrants."

5 It was common knowledge in those
6 communities, if you wanted to get something done
7 on your project you had to pay Freddie Vidal. So
8 the baker who needed to reopen quickly after a
9 fire had to pay Mr. Vidal \$500. The mechanic who
10 wanted to open his own garage had to pay Mr. Vidal
11 \$200, and a grocery store owner had to pay him
12 \$100.

13 The evidence at trial showed that
14 Vidal would threaten to stop work on some of these
15 jobs if his demands were not met and he would
16 cause delays in the projects to force his victims
17 to pay.

18 At Vidal's sentencing Judge Joel
19 Pisano called him a, "bully who abused his
20 community." I can't leave the Vidal case without
21 mentioning the concept of time. In Vidal's world
22 of electrical and code inspections time was a very
23 flexible and bendable dimension, maybe you have
24 seen some of that at the hearings you have had
25 over the last few days. Vidal held these

1 inspector positions in five of the most densely
2 populated traffic choked towns in New Jersey.
3 Somehow he managed to move with ease, billing at
4 times for over twenty-five inspections in one day
5 in towns crowded with walk-up buildings.

6 It seemed obvious that many of these
7 inspections were not being done at all, or were
8 being performed in a very poor slipshod manner.
9 Not only would such misfeasance perpetrate a fraud
10 on the towns, that paying the inspectors would
11 obviously have a significant effect on home buyers
12 and homeowners who relied on those inspections and
13 relied on these certifications that the work was
14 done properly and now would be stuck with
15 construction that ranged from shoddy to dangerous.

16 By the time these consumers get to
17 my office it's really too late and that's why we
18 forwarded so many of these complaints to you. The
19 FBI and my office do well in extortion cases,
20 there is not a lot we can do with leaky roofs,
21 sinking foundations, porches that are falling off
22 and no heat.

23 Yet our office continues to receive
24 a lot of these complaints. How much of the cause
25 of these problems can be attributed to abuses in

1 the inspection process is difficult to gauge,
2 though in our view inspectors and town officials
3 share significant responsibility. While I spent a
4 lot of time on the Vidal case it is by no means
5 our only recent building code official
6 prosecution.

7 In 2002 we also prosecuted the code
8 inspector in East Orange, a gentleman by the name
9 of Leroy Gelman. He was extorting thousands of
10 dollars from building owners and managers in
11 exchange for his assistance in obtaining
12 certificates of habitability for multi unit
13 dwellings.

14 We tried to think of some
15 recommendations to bring here today and we came up
16 with a few. Maybe some of them you have already
17 heard about or have occurred to you. In our view
18 it would be very helpful to make the inspection
19 process as transparent as possible. This not only
20 helps the citizens and the prosecutors, but also
21 the press, which is often the best watchdog when
22 it comes to abuses. Transparency could include
23 financial disclosure statements for inspectors,
24 certifications of hours spent and communities
25 served by inspectors, and possibly use of the

1 Internet, maybe a registry of inspectors.

2 In the case of Mr. Vidal, for
3 example, the public with such a registry would be
4 able to look up his name and see which towns he
5 held contracts in, how much his billings were, how
6 many hours he purported to put in for these
7 billings, and possibly even we could add to this
8 list any types of gifts or other compensation he
9 received, and I will come to that in more
10 specificity in a minute.

11 There should also be, and this is a
12 blanket statement that's easy to say and I think
13 it is a lot harder to implement, more supervision
14 at the state level. I think you have seen that
15 many of these towns are often overwhelmed by these
16 large projects or you have inspectors like Mr.
17 Vidal that span many different towns, sometimes
18 across county lines. In a small state like New
19 Jersey it probably would be helpful to have some
20 type of statewide supervision of these inspectors.

21 Thirdly, possibly a hotline or an
22 ombudsman who look for irregularities.

23 Again, I think we have told this
24 Commission in communicating with you about these
25 complaints that many of the people that complained

1 to my office complained that they have nowhere
2 else to go, so they have sent their complaints
3 into us and again, on these construction issues we
4 then forward them to you. Possibly if there was a
5 central place where they could go and where this
6 information was gathered it might be a way to head
7 off some of these disasters before they completely
8 bloom.

9 I was really surprised to read about
10 the evidence at these hearings of all types of
11 gifts going to inspectors, holiday gifts, golf
12 outings, parties, dinners. Certainly our office
13 believes these types of gifts should be banned.
14 There is an inherent conflict of interest in
15 giving code officials who are supposed to inspect
16 and scrutinize these projects and represent the
17 public, giving them these types of gifts.

18 It is a form of corruption no matter
19 how you look at it, and even if it is only a small
20 level of corruption it's the start of a corruption
21 that we believe eventually develops into bigger
22 corruption. That's my comments and I will be
23 happy to take any questions.

24 BY COMMISSIONER MARINIELLO:

25 Q. Good morning, Mr. Mara. Thank you

1 for being here, nice to see you again.

2 A. Nice to me you, good morning.

3 Q. A couple of things come to mind
4 listening to you talk this morning. One of them
5 is that one of your recommendations is for some
6 kind of state regulation of these code officials,
7 and many people would say we already have that, at
8 least on the books with the DCA. Maybe there are
9 recommendations that come out of will make that
10 process a little stronger and little more
11 transparent as you mentioned.

12 One of the other items that I have
13 noticed during the testimony that we have had is
14 that it seems that some municipalities when faced
15 with an inspector who either has been grossly
16 negligent or even has committed criminal acts in
17 taking gifts or in many cases taking building
18 material to use on his own property, in fact, in
19 many cases he just has builder come over and put
20 the new material into his home. When the
21 municipality finds out about this it becomes the
22 easier process for them to force the gentleman to
23 resign, or to in some other way move the man on to
24 another job where he may be holding a position in
25 four or five other towns like you have described

1 with Mr. Vidal. And it doesn't serve the citizens
2 of any of those other townships to have this
3 person not prosecuted for the crime that they may
4 have committed.

5 Are there any obligations on the
6 municipal officials that you know of to turn those
7 matters over to the local prosecuting authority or
8 to your office, and if there is, I would suggest
9 that it is just not being done in many cases
10 because it is easier for the municipal officials
11 to wipe their hands of the gentleman than to get
12 involved in a messy criminal act.

13 A. I am not aware of any requirement to
14 do that, aside from what you might call an
15 official's just obligations to the citizens who
16 elect the official.

17 Unfortunately, my observation over
18 the years in doing corruption cases has been that,
19 let's face it, it doesn't even necessarily have to
20 be corrupt from the town officials' point of view,
21 it is just that maybe it is human nature in the
22 sense that if something can be resolved quietly
23 and privately, obviously the tendency is to do
24 that, because any type of scandal at the local
25 level naturally would reflect poorly on the

1 officials who put the inspector in his job.

2 So, I mean, that's one of the things
3 that you deal with. I don't really see as I sit
4 here right now any way to resolve that without
5 imposing some type of obligation on town officials
6 for reporting such malfeasance by inspectors. If
7 they had an on obligation then -- and maybe it had
8 some teeth with some kind of fine or something,
9 maybe you could get more disclosure.

10 Absent something like that, I think
11 you are going to be stuck with a system where a
12 problem person is dismissed quietly and the
13 problem gets passed on to other towns.

14 Q. Also, we have had during the
15 testimony that we have had both privately and
16 publicly, a lot of discussion of undocumented
17 workers being used on construction sites.

18 Have you noticed an increase in that
19 from your departments, from your agency then, and
20 if so, what complications do you see that creating
21 not from the construction end but from the
22 prosecutorial end?

23 A. I must say we don't get -- in what
24 we do we don't get down to take to that level of
25 detail in terms of who is working on a site,

1 whether they are documented or not, and the types
2 of cases we have gotten on immigration issues, and
3 we have had a lot more of those obviously since
4 over the last three years, I don't see any
5 connection to specific industries or trades. So I
6 can't really speak to that issue.

7 COMMISSIONER MARINIELLO: Thank you.

8 BY COMMISSIONER FLICKER:

9 Q. Good morning, Mr. Mara, and I thank
10 you again for joining us. As a state prosecutor
11 for most of my career I think I can say that I
12 handled prosecutions of inspectors, as well as on
13 the other side of the coin a couple of
14 opportunities to prosecute builders who were
15 leaning on the inspectors. So it didn't just go
16 one way. When you have a K. Hovnanian it probably
17 is rare that a local inspector is going to be able
18 to lean on them.

19 However, a large corporation coming
20 into a town, we have seen examples here, and when
21 I prosecuted, they were able to convince a mayor
22 and council to get inspectors who wanted to do
23 their jobs to back off, of course to the detriment
24 of the homeowners.

25 Have you seen any examples of

1 corporations who used their political muscle to
2 make inspectors back down, back off, or to go more
3 lightly on violators?

4 A. I am thinking back. The cases I
5 would say that come to mind are more in the
6 context of public projects, but a similar issue
7 occurs at a very similar dynamic, and that is it
8 is a large project, there is a relatively large
9 builder or other construction company involved,
10 and there is pressure put on the inspectors, and
11 the inspectors that are trying to do their job.
12 We have seen that in many cases, that they are not
13 getting support from the town officials in many of
14 these situations.

15 Those are the ones that come to
16 mind, it is a similar type of issue, but in the
17 building of a public project, rather than a
18 private project, but I see exactly the dynamic
19 that you are talking about, and I think it is very
20 real dynamic, and again, maybe a possible remedy
21 would be to also give those honest and careful
22 inspectors some kind of an outlet, somewhere they
23 could go, whether it is the Department of
24 Community Affairs or somewhere else to say hey, I
25 am getting run over here, and there is not a lot I

1 can do about it by myself.

2 Q. Of course, that creates an issue for
3 the inspectors because they are complaining about
4 the very people who are employing them, and it is
5 tough, you really put the inspector up against the
6 wall when it is the mayor who is saying lay off.
7 That's true in a lot of criminal cases where the
8 victims have a tough road to hoe, but I just
9 wanted to go point out that it goes both ways, and
10 that we have seen some wonderful inspectors and
11 not so wonderful inspectors and some wonderful
12 builders and not so wonderful builders, so there
13 are two sides to the coin.

14 Let me ask one other question. Have
15 you seen instances where approvals for development
16 or construction appeared to have been granted by
17 the municipalities based upon political goodwill
18 or contributions, rather than the best interest of
19 the community?

20 A. I think you just have to read the
21 papers to see that, it strikes me. And probably
22 until pay to play is eliminated in a very very
23 thorough way, I don't think you are going to stop
24 those type of practices that appear to be legal,
25 at least from what you can read in the newspaper.

1 I mean, the ones -- if you are
2 looking beyond that, do we see cases where money
3 is changing hands in envelopes to do those types
4 of -- to get approvals of those types of projects,
5 the answer is yes, I mean we have seen those kinds
6 of cases over the years.

7 Often it's not just the project, it
8 might be, for example, the density of the project,
9 maybe where fifty townhomes would normally be
10 built under the zoning rules, money changes hands
11 and now it is eighty-five or one hundred. We have
12 seen those cases, those are not uncommon types of
13 cases to see.

14 And again, I think the place to
15 start hemming that in is on the pay to play. I
16 know changes are being done right now as we speak
17 in that area and that's a very good thing.

18 I think one of the things you hit on
19 in your prior question, and I guess that's one of
20 the real dilemmas for this Commission, or for
21 anybody trying to do something about this, is that
22 when one of these projects turns into some kind of
23 train wreck, if you notice, and I am sure you
24 have, there is no one to hold accountable.
25 Everybody is pointing their fingers in different

1 directions. The builder gets to say some of these
2 subcontractors, you know, they did the wrong thing
3 and I didn't know about it, the inspectors or the
4 town officials say I am relying on X, or I am
5 relying on Y, and of course the people that get
6 stuck are the people that are buying the homes.

7 And I think the real challenge --
8 and this Commission to me is in a great position
9 to do that because of the broad view you take of
10 both the civil and criminal implications of these
11 things, is to try and figure out a way to maybe
12 impose some accountability, and maybe some of that
13 is making the process more transparent, and maybe
14 some of it is maybe coming up with some kind of
15 certifications or something that the towns have to
16 do about these projects before they are turned
17 over to the private owners. I don't know, but I
18 am sure you are going to be giving them a lot of
19 thought.

20 Q. Well, I think you have hit upon a
21 point that was developed by the Chair with his
22 comment to the last witness, and that is we bring
23 in the corporate executives who have no building
24 experience and they basically can say well, we are
25 doing all of the right things, it is our

1 subcontractors and subcontractors are gone, and
2 code officials were either negligent or ill, or
3 overworked or overwhelmed, or whatever, and it is
4 the homeowner left holding the bag.

5 So it is going to be our task to
6 come up with something, but I just want to say
7 thank you to you for coming in, and thank you to
8 your office for being as aggressive as you are in
9 routing out some of the corruption.

10 A. Thank you.

11 BY COMMISSIONER EDWARDS:

12 Q. I just have one quick area that I
13 would like to explore and probably you can't
14 explore it now, it has been brought up by
15 Commissioner Mariniello, and that is the issue of
16 undocumented aliens and workers.

17 We are looking at various licensing
18 options and other provisions, registries and
19 things of that nature, and in the process, should
20 we be looking, and what do we do, and how do we
21 move the issue of who works for who, the
22 undocumented alien into the system so we move him
23 out of the system, and to what extent can we refer
24 and not refer, what happens if we develop a system
25 of licensing for both contractors and

1 subcontractors who do any kind of residential
2 construction, and a registration of their own
3 employees.

4 Is there a way that we can know that
5 we are dealing with undocumented aliens in that
6 process, and if we are able to ascertain that, is
7 that a reasonable thing to recommend, one. Two,
8 is there a referral place that we can send that
9 information to so that we wind up with it being
10 meaningful and having some kind of a teeth?

11 I know you are not prepared to deal
12 with that, and that's fine with me. I just want
13 you to go back and see if you can think about it
14 and perhaps some of the people in INS can give you
15 some insight in how we might be able to craft a
16 recommendation that deals with that part of the
17 subject matter.

18 A. It strikes me that there probably
19 are people at the INS that could be helpful to you
20 in giving you that information, and certainly I
21 can probably check into that and may be get a
22 contact person for you that maybe able to help you
23 with that.

24 You could probably get some insight
25 also just from immigrant groups, I mean, again, I

1 am speaking now from what I just read in the paper
2 what I observe about immigrant workers that are
3 often day laborers, some of them I am sure are
4 documented, some are not, many -- this is a very
5 valuable work force for the country, and you know,
6 a lot of these people are very good workers, but
7 probably your goal would be twofold in the sense
8 of making sure they are doing quality work on the
9 one hand, and I guess also in the sense protecting
10 the workers themselves from some of the people who
11 may hire them that maybe are not very scrupulous.

12 So that probably is an area that is
13 probably part of this, and I can probably get you
14 some information on contact points and just to
15 find out what kind of information is out there
16 beyond identification documents, which, you know,
17 are fine, but sometimes, well, we have had many
18 cases of false identification documents, and I am
19 sure you have had cases of employers who don't
20 even ask for identification documents, or pay
21 people under the table.

22 Q. What are the requirements for
23 employers to provide proof that the people they
24 hire and pay are documented and there are
25 sanctions, as I understand it, at least from what

1 I read in the paper and see in my travels, that
2 that's far more enforceable today than it ever was
3 before.

4 From my perspective in making a
5 recommendation with reference to that issue we are
6 looking for good workers, we are not trying to
7 exclude people, we are not trying to exclude
8 immigrants, by any raw stretch of the imagination,
9 we are trying to encourage those to become part of
10 the mainstream of our society, and in doing so we
11 also want accountability, which you were talking
12 about before, and we get accountability and
13 ultimately a better product for the homeowner if
14 we gone through that process without expense, so
15 striking a balance and not making a hollow
16 recommendation that will not be valuable to us,
17 nor the public or homeowners, nor to the
18 contractors and builders who do good work and need
19 good employees and we are not trying to be onerous
20 in that regard, so it is important that we get as
21 accurate a recommendation as we can, so if you can
22 put us in touch with anybody or give us any
23 recommendations I think that would be very
24 helpful.

25 A. I will certainly try to do that.

1 Thank you very much.

2 BY COMMISSIONER SCHILLER:

3 Q. Mr. Mara, the six recommendations
4 that I counted that you had, are very much the
5 ones that we are kind of interested in, and
6 realizing many of these things as I think you
7 called them, were a hybrid organization that look
8 at the civil actions and civil returns in terms of
9 supervision as well as referring to criminal
10 activity.

11 I am more concerned about the one
12 recommendation that you made which is more
13 supervision at state level. Have you had much
14 experience -- I know you sent some stuff to us,
15 but we are kind of a pass-by agency, while we are
16 focused on this now, that doesn't mean that we are
17 going to be able to be doing this for the rest of
18 SCI's life, but we are looking to make
19 recommendations that will preserve ongoing
20 supervision or ongoing look at this.

21 Have you had any experience in
22 sending much of the non criminal activity that you
23 perceive in this field as over to like community
24 affairs specifically?

25 A. I don't believe so. I am not

1 positive, I can't say. Probably the chief of our
2 public corruption unit I am sure has been in
3 periodic contact, and I am also aware -- I know I
4 had a case years ago that peripherally involved an
5 inspector, and I believe the Department of
6 Community Affairs had actually lifted some license
7 of his, so they must have some proceedings in
8 certain cases to do that.

9 It doesn't appear to us that there
10 is a lot of oversight there. Maybe that's not
11 that easy to do, I mean, I am throwing this out,
12 and I know Trenton, it is tough to be down here
13 and be aware of what's going on in twenty-one
14 counties, but it just seems that there are these
15 episodes of misfeasance, whatever, nonfeasance,
16 over in the inspection area and it doesn't seem
17 like a lot gets done about it.

18 And again, when you think of New
19 Jersey is a small state and you have got
20 inspectors like Mr. Vidal that cross over into
21 several communities and maybe counties, maybe that
22 really does call for some more centralized
23 supervision at least at some level.

24 Q. That was kind of the impression, I
25 think it was Commissioner Edwards that mentioned

1 it yesterday in terms of Wall Township alone,
2 while they were very nice people, they seemed to
3 be very incompetent in getting things done, there
4 were so many projects going on. There were a
5 number of sites that come to mind where there
6 doesn't seem to be that much supervision. I am
7 just wondering whether your experience in your
8 office was any different than what we are picking
9 up here?

10 A. I just can't recall any direct
11 contact with the Department of Community Affairs
12 on this issue. So probably that means we haven't
13 had much.

14 Q. I think we would probably -- I don't
15 want to speak for everybody on the Commission, but
16 it seems to be an area where we are looking for an
17 agency to presume more supervision and more teeth
18 in their policies there, so they can control
19 these. Again, you are dealing with perhaps a
20 small number of inspectors in terms of the ones of
21 criminality, but there is a large number, as you
22 put it so well, the homeowner is the one that's up
23 on the short end of the stick because of faulty
24 inspections and just taking on a house that's a
25 major investment and not getting what they

1 bargained for.

2 So we appreciate, and I particularly
3 appreciate your gifts, and I would point out to
4 you too while you are talking about eliminating
5 gifts and gratuities, which we all feel strongly
6 about to the inspectors, it is nice to know that
7 the developers has consistently done away with
8 that to their own people who are not allowed to
9 accept gratuities, because they are afraid that
10 they will be affected in giving out subcontracts
11 and contractors, and they seem to have one shoe on
12 for themselves and have no problem though,
13 however, giving gratuities and gifts to the people
14 who are inspecting them. So I find that kind of
15 intriguing.

16 Appreciate it, Mr. Mara, your office
17 has always been most cordial with us and most
18 helpful in most of your recommendations.

19 A. Thank you. We very much support
20 what the Commission does on these issues, and
21 again, it is because our role is kind of limited
22 and ideally we want to try to prevent a lot of
23 these things before they happen, right, instead of
24 trying to clean them up later.

25 So I think your Commission does a

1 lot in the prevention area that's probably more
2 helpful in the long one.

3 COMMISSIONER SCHILLER: Thank you
4 very much.

5 MS. GAAL: The next witnesses are
6 Robert Gaestel and Ronald Redy.

7 First of all, I would like the two
8 witnesses to stand for a moment and the reporter
9 will place you under oath.

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1 ROBERT A. GAESTEL, Jr., and RONALD
2 P. REDY, after having been first duly sworn, was
3 examined and testified as follows:

4 MS. GAAL: Thank you. You may be
5 seated. The way these microphones work is if your
6 red light isn't on we can't hear you, so when you
7 do speak make sure your light is on.

8 First of all, Counsel would you
9 enter your appearance, please.

10 MR. GILMORE: Yes, Michael Gilmore,
11 from the law firm of Gilmore and Monaghan,
12 attorneys for the Township of Stafford.

13 MS. GAAL: Thank you. Starting with
14 Mr. Gaestel. Mr. Gaestel, and what is your
15 position, what's your current employment?

16 MR. GAESTEL: I am the construction
17 code official for Stafford Township in which we
18 also have an interlocal agreement with Eagleswood
19 Township.

20 MS. GAAL: So you are the
21 construction official at Stafford Township.

22 MR. GAESTEL: That's correct. I am
23 also the building inspector and fire and plumbing
24 inspector.

25 MS. GAAL: Would you tell us what

1 licenses you currently hold?

2 MR. GAESTEL: I hold the
3 construction code official, fire, plumbing, and
4 building subcode official licenses.

5 MS. GAAL: And what is your
6 background and experience before working in
7 Stafford Township?

8 MR. GAESTEL: 1971 I started in the
9 plumbing field and became an inspector in 1987 for
10 Manchester Township. There I have held several
11 positions, I started as a plumbing inspector,
12 plumbing subcode official, building subcode
13 official at one point, and temporary construction
14 code official, and I was there until I assumed
15 employment at Stafford Township in 1998, which I
16 was hired as the construction code official.

17 MS. GAAL: And Mr. Redy, your name
18 please, for the record?

19 MR. REDY: Ronald Redy.

20 MS. GAAL: And what is your current
21 position?

22 MR. REDY: I am the building and
23 fire subcode official of Stafford Township.

24 MS. GAAL: What licenses do you
25 hold, or licenses do you hold?

1 MR. REDY: Building and fire subcode
2 official and construction official.

3 MS. GAAL: Construction official?

4 MR. REDY: Yes.

5 MS. GAAL: And I am going to ask you
6 to please be sure to keep your voice up too. How
7 long have you worked for Stafford?

8 MR. REDY: Since 1998.

9 MS. GAAL: And what was your
10 employment background before you worked for
11 Stafford Township?

12 MR. REDY: I was involved in the
13 construction industry, carpenter, general
14 contracting until 1990. I was then employed by
15 the Dover Township Fire Department as a fire
16 inspector and fire investigator. In 1998 I moved
17 to Stafford Township.

18 MS. GAAL: Thank you. Mr. Gaestel,
19 when did Stafford Township create its own
20 construction office?

21 MR. GAESTEL: They started their own
22 construction office in January 1st, of 1998, and
23 in which four of us were employed at that time.

24 MS. GAAL: Prior to that how was the
25 construction inspections handled?

1 MR. GAESTEL: It was done by a third
2 party called the Ocean County Inspection Bureau.
3 It was a bureau run through the county.

4 MS. GAAL: So it was a county wide
5 bureau?

6 MR. GAESTEL: That's correct. They
7 did several municipalities, and Stafford Township
8 at that time received a certain percentage of the
9 permit fee and the county would get the other
10 percentage.

11 MS. GAAL: So although you used the
12 term third party because it's not a municipal
13 inspection service, in fact it was a county
14 inspection service?

15 MR. GAESTEL: It was a county
16 inspection system, it wasn't a private inspection
17 system.

18 MS. GAAL: Why did Stafford decide
19 to start its own?

20 MR. GAESTEL: Well, I believe there
21 were several reasons. One, was the reason I was
22 that was explained to me was because there were
23 improper inspections and they felt they were
24 receiving a lot of complaints from homeowners
25 about plumbing draining into the crawl space,

1 missing beams, and just various problems that they
2 felt maybe they could do a better job if they had
3 gone in-house, and also I am sure it was a
4 financial part that they would be able to keep
5 more of the revenue rather than sharing it with
6 the county because it is an exploding town.

7 MS. GAAL: Exploding in terms of
8 construction?

9 MR. GAESTEL: In terms of
10 construction, that's correct.

11 MS. GAAL: Now, in regards to new
12 construction, speaking specifically in new
13 construction, have you seen problems with the
14 quality of the construction?

15 MR. GAESTEL: Yes, of course we
16 have. I don't want to paint a broad brush, this
17 is not all builders, we have a lot of good
18 qualified builders. We are finding more of the
19 problem in the large production builder.

20 MS. GAAL: Can you define what you
21 mean or define what a production builder is?

22 MR. GAESTEL: I would say our
23 smaller builder which may be building one hundred
24 homes in town, the quality is substantially
25 different than the builder who may be building

1 three hundred to three hundred fifty homes on a
2 daily basis.

3 MS. GAAL: That's what you call a
4 production builder?

5 MR. GAESTEL: That's what I call a
6 production builder, stamp them out and build, yes.

7 MS. GAAL: Usually doing certain
8 number of models and they keep repeating the
9 models?

10 MR. GAESTEL: That's correct.

11 MS. GAAL: With respect to
12 construction, new construction generally in the
13 state, do you see a reliance upon the use of
14 subcontractors?

15 MR. GAESTEL: Yes, of course.
16 Especially the larger builders will sub out the
17 whole job. I mean, they don't have anybody even
18 swinging a hammer because it becomes supervised
19 positions.

20 MS. GAAL: So they have no work
21 force?

22 MR. GAESTEL: They don't have any
23 work force, everybody is subbed.

24 MS. GAAL: Do subcontractors even
25 sub out the work?

1 MR. GAESTEL: Yes, there has been
2 occasions when they can't keep up with the demand
3 that is imposed on them to produce so many houses,
4 they will even sub their work out to another
5 subcontractor.

6 MS. GAAL: So you have seen subs of
7 subs on construction jobs?

8 MR. GAESTEL: Yes, I have.

9 MS. GAAL: What kind of work force
10 are you seeing on some of the jobs, can you
11 characterize the work force?

12 MR. GAESTEL: Well, I think it is a
13 perfect statement, they are unsupervised and they
14 are unqualified people.

15 MS. GAAL: In your opinion.

16 MR. GAESTEL: In my opinion, yes.
17 And in many cases if the supervisor is not there
18 you can't speak to any of the laborers because
19 they don't understand English, so you need to find
20 a specific person, whether it is the framing
21 supervisor or the final supervisor to have a
22 conversation with them.

23 MS. GAAL: And this is something
24 that you or the folks that you supervise have told
25 you about, I mean, that you are having problems

1 communicating with the people on the work sites.

2 Correct?

3 MR. GAESTEL: Yes, only the
4 supervisor will communicate with me, because he is
5 the only one that's capable. Take a sheathing
6 subcontractor, there is usually one person there
7 that can speak English, it is nothing about
8 whether the person can speak English or not or
9 anything, it is just that we can't convey what we
10 are looking for, it is just a lack of
11 communication.

12 MS. GAAL: So if you are going out
13 there and there is a problem with the way it is
14 being constructed or it's not going to pass
15 inspection, or you see something wrong, am I right
16 in what you are saying is that you can't even find
17 somebody to communicate with?

18 MR. GAESTEL: In most cases you have
19 to find that super. Of course, we put our red
20 sticker up and a list of violations so everybody
21 knows what it is, but, you know, sometimes it
22 needs an explanation, you can't sometimes write
23 everything that's wrong, you want to point out
24 what's wrong, what they should be doing to make
25 the correction.

1 MS. GAAL: And you can't stop them
2 from working even?

3 MR. GAESTEL: No.

4 MS. GAAL: They are just out there
5 working?

6 MR. GAESTEL: You just say no no no,
7 don't do this, no no, don't, this is what happens.

8 MS. GAAL: Mr. Redy, have you
9 recently been involved in inspecting a large
10 development built by a production builder?

11 MR. REDY: Yes, I have.

12 MS. GAAL: And have you seen any
13 lack of supervision there?

14 MR. REDY: Yes, I would say almost a
15 total lack of qualified supervision. In other
16 words, I have actually made the comment that I
17 believe in my opinion that when a house is being
18 constructed that there should be a carpenter
19 there, and in my opinion and on some of these
20 projects there is none.

21 MS. GAAL: There should be a
22 carpenter at all times?

23 MR. REDY: Yes, somebody that
24 understands the basic principles of putting a
25 house together, and it is not there.

1 MS. GAAL: Just talk one at a time.
2 Gone ahead, Mr. Gaestel.

3 MR. GAESTEL: What happens is they
4 buy them a pneumatic gun, they show them how to
5 work a pneumatic gun and bang bang, it is done.

6 MR. GAAL: This is back to Mr. Redy,
7 with the construction that you have recently seen,
8 in your opinion, setting aside the code questions,
9 in your opinion, is the construction up to
10 industry standards?

11 MR. REDY: Absolutely not.

12 MS. GAAL: Can you clarify that a
13 little more, flush it out a little more for me?

14 MR. REDY: Well, basically building
15 principles, basic building principles without
16 getting involved in the intricacies of engineering
17 and architectural design, is that if you want an
18 object to stay there, and if I am going to nail
19 two pieces of wood together they should at least
20 at the initial point be making contact with each
21 other.

22 MS. GAAL: The wood and the nails?

23 MR. REDY: Absolutely. They should
24 be together. We have photographs, we have
25 discussed how bearing points with pieces of lumber

1 that are basically at that point they are being
2 held up by the nails driven through with the
3 pneumatic gun and a half inch off the sill plate.

4 MS. GAAL: And this is something
5 that you are seeing out there in the world of New
6 Jersey today?

7 MR. REDY: Yes. And unfortunately
8 due to the lack of supervision and it seems that
9 some of these -- not to say there is nobody on the
10 job site, there is plenty of bodies running around
11 out there, but they don't have the understanding
12 either, and some of these builders utilize the
13 building department as their supervision and as
14 their punch list --

15 MS. GAAL: I am going to get to
16 that, as your quality control, a punch list?

17 MR. REDY: Yes, certainly.

18 MS. GAAL: Now, taking the other
19 side of the coin with respect to code violations.
20 When you gone out, and this is still to Mr. Redy,
21 with respect to looking at production builders, do
22 you also see what are obvious code violations?

23 MR. REDY: Yes, they are mainly code
24 violations resulting from the lack of workmanship
25 and the lack of knowledge of putting this building

1 together.

2 In other words, we had one
3 particular project where it was just getting
4 underway, we had I believe five or six houses that
5 were at the frame stage, and we issued stop work
6 orders on them for all five or six of them,
7 stopped the project, and basically the violation,
8 all it says is that you must provide a continuous
9 load path from the source to foundation. You
10 can't have these half inch, three-eighths, quarter
11 inch air gaps coming down the whole building as
12 you gone, and we stopped the job.

13 So it was code violations based on
14 engineering principles that there again, pieces of
15 lumber have to contact the masonry and each other
16 as the building goes up.

17 MR. GAESTEL: What Ron was speaking
18 about was an inspection that we had performed that
19 was not a required inspection. We went on this
20 job site as the framing was going up, a lot of
21 these items would not be seen during the sheathing
22 inspection, which would be the next inspection, so
23 in a sense everything comes back to the building
24 department, but we are not there through every
25 phase of the building and if an inspector is

1 required to do that then we need a lot of help.
2 But the builder needs to have some
3 responsibilities for the work he is doing.

4 MS. GAAL: I am going to get ask a
5 few more questions along that line. Mr. Redy, do
6 you have something, or do they have something down
7 in your municipality called student government
8 day?

9 MR. REDY: Yes, they do.

10 MS. GAAL: And do you participate in
11 it?

12 MR. REDY: Yes, we do.

13 MS. GAAL: Would you tell the
14 Commissioners what happened on one of the student
15 government days when you had some sixth graders
16 out there with you?

17 MR. REDY: Yes. Basically we have a
18 student government day and basically the students
19 from the elementary school come down to the
20 departments and they are separated off and each
21 department takes a couple of children for the day
22 and we take them through our process of what our
23 department does.

24 And I had two young fellows, sixth
25 graders, so basically we take them through a

1 routine of what we do in the office, plan review,
2 et cetera, and then I took them out to the field
3 and showed them some homes being constructed and
4 phases of inspection that we do.

5 I started them off were a footing
6 inspection, and we went to the job site, and I
7 explained to them what they were looking at and
8 what each particular item was for, and explained
9 piers and columns and reinforcing and such, and I
10 had the two boys. We took the plans out and we
11 laid them out, and I asked them if they, after
12 explaining what I did to them, if they could
13 inspect this for me and make sure everything
14 looked okay.

15 So they took the plan out and looked
16 at it and they walked around, and I had already
17 seen what was wrong with this particular footing
18 system because these systems are, they are
19 prototype homes so they will have maybe five or
20 six models of this house, so after awhile you get
21 to look and say well, this is the X model, so I
22 know this should be over there. So I already knew
23 what the problem was without even looking at the
24 plan.

25 So the two elementary school

1 children look at the plan, and I see them looking
2 towards this area and they talk back and forth
3 amongst themselves to each other, and then they
4 looked over to me and I said how did we make out,
5 did they pass or fail, and they said they failed.
6 I said why, because that column footing is
7 supposed to be over there and that one there is
8 supposed to be over there. And I had them make
9 out the not approved sticker and we left it on the
10 job site.

11 So these two sixth grade elementary
12 school children which just had about a five-minute
13 introduction to the building industry failed this
14 job. They did better than the job supers did.

15 MS. GAAL: Now, in connection with
16 our interviewing you gentlemen in preparation for
17 this hearing you forwarded us many many
18 photographs. Is that correct?

19 MR. GAESTEL: That's correct.

20 MS. GAAL: Do you take cameras out
21 when you look at jobs?

22 MR. GAESTEL: Yes. All of my staff
23 work with equipment. What's great about the
24 municipality I work for, each employee, each
25 inspector has telescopic mirrors, they have

1 binoculars, they have any tools that they may
2 need, pliers, screwdrivers, they have levels, and
3 they have cameras, they have gas detectors. The
4 municipality I work for works very well with me
5 and let's me buy the equipment I need to do my
6 job, they do allow me to buy the books, each one
7 of my inspectors has a full staff of books because
8 it is cheaper to buy a book than to deal with a
9 lawsuit. So in that respect yes, they do have
10 them.

11 MS. GAAL: Why do they have, for
12 example, cameras, how do they help you out?

13 MR. GAESTEL: Well, one, to protect
14 us. We say that something is supposed to be
15 there, if we have a feeling it is going to be
16 removed we will take a photo of it, because they
17 might have done something for an inspection to
18 approve it and get by and it might come out later.

19 And that's one of the problems with
20 inspections, we can't be there all the time.
21 Things do get removed. Sometimes my other
22 inspectors will meet in the morning and say this
23 is the problem that we are focusing on today and
24 put it on the computer and we will review it
25 together, because I do have a staff and I know a

1 lot of people frown against it, but it's the best
2 tool working is I have the inspectors with
3 multiple licenses.

4 MS. GAAL: Now, let's hold on a
5 second. On the tools that you have, is there any
6 requirement, does the state or DCA, or anyone
7 require say cameras or periscopes or anything
8 else?

9 MR. GAESTEL: No, there is no one
10 that requires that. I do know municipalities that
11 get only one book that just stays there in their
12 office.

13 MS. GAAL: Why do your fellow
14 inspectors need mirrors at the end of sticks or
15 periscopes or whatever, do why do they need those
16 kind of things?

17 MR. GAESTEL: Because one, they are
18 tools of our trades and it is encouraging them to
19 do their inspection. I don't want any excuses why
20 they couldn't do it.

21 MS. GAAL: Is it hard to do some
22 inspections?

23 MR. GAESTEL: Some inspections are
24 impossible to do.

25 MS. GAAL: Which ones?

1 MR. GAESTEL: Framing. I mean, are
2 we supposed to crawl across an attic to check
3 every roof truss. We can look up but are you
4 getting the full inspection of it, no, it is
5 sometimes a gusset plate falls off and does the
6 builder renail it? You can't see that from
7 standing around.

8 So we try to help in any way we can,
9 we do sheathing inspectors with binoculars the
10 best you can because we can't climb the roofs. I
11 know my climbing roof days are over and I don't
12 think anybody expects me to go up on the roof and
13 see if it is properly nailed, but they know that
14 we are looking and hopefully that will encourage
15 the builder to do it properly.

16 MS. GAAL: So you are out there with
17 binoculars trying to see if the nails are up
18 there?

19 MR. GAESTEL: The best we can.

20 MS. GAAL: Mr. Redy, I could see you
21 had something to add.

22 MR. REDY: I just wanted to
23 elaborate on the roof truss system. What happens
24 is that the expectation that the building
25 inspector is going to find everything that's done

1 wrong with this house is not reasonable.

2 The key is the responsibility of the
3 person constructing this house, actually the guy
4 with the hammer in his hand, accountable to a
5 degree, obviously everybody is not going to be,
6 but in other words, a lot of the problems we come
7 across it is obvious, it is not a hidden code
8 violation, I am not going and searching through
9 the books so I can leave this guy a red sticker,
10 because we are in the grey area somewhere.

11 MS. GAAL: This is basic stuff.

12 MR. REDY: Basic black and white,
13 especially trusses, and they are critical, they
14 don't understand these are critical engineered
15 products, and they put those things up four, five,
16 six inches out of plumb, they will pull them back
17 into shape, they are bowed and twisted, they are
18 pulling the gusset plates out of these things as
19 they gone, as they are erecting them, they are
20 damaging the webs as they gone.

21 Nobody stops and says okay, wait a
22 minute, this thing is damaged, I have to fix it, I
23 don't know how, well, okay we are going to have to
24 get somebody involved, but they don't take that
25 step.

1 Everything that goes along on there
2 is up to the building inspector, did he see it.
3 Now am I going to go up into the roof system and
4 crawl across the trusses looking at every single
5 gusset plate, there is fifty trusses up there and
6 each one of them probably have twenty gusset
7 plates on them, and all it takes is for one of
8 those to be pulled out of there and you could have
9 a serious structural problem.

10 MS. GAAL: So are you saying the
11 whole system relies on the quality and integrity
12 of the builder?

13 MR. REDY: Absolutely, but not
14 completely. The inspector has his function there,
15 but the inspector is not the guy or the girl with
16 the tools in their hands fabricating that product,
17 the quality control of the product.

18 MS. GAAL: You couldn't possibly see
19 it all, or do it all.

20 MR. REDY: No, absolutely not. In
21 other words, everything has a quality control of
22 some sort on it, you know, this shirt maybe has
23 inspected by number nineteen on it, somebody is
24 looking at it, and then the government steps in to
25 set their standards. The company needs a minimum

1 standard, and then you have the government
2 standard, you have your codes and regulations.

3 MS. GAAL: And then you are just out
4 to spot check on a large degree, check for the
5 code to safety.

6 MR. REDY: I wouldn't even say spot
7 check, you know, look at it thoroughly, but in the
8 scope of our responsibility. The scope of my
9 responsibility has gone, you know, expanded, and I
10 was looking yesterday, you know, at editorials in
11 the newspaper about the hearings again, and one of
12 them that municipal inspectors are often
13 unqualified, overworked, and susceptible to bribes
14 from developers.

15 Obviously I am not going to answer
16 across the board, but it is out there, I
17 understand that there are problems from all
18 aspects of this, but you know, it's somebody's
19 opinion, of course, okay, but often unqualified,
20 we have a very qualified department, overworked,
21 very busy, I give an honest day's work every day I
22 show up.

23 One of the reasons I am overworked
24 is because I am doing their job too. I am doing
25 the job of a building supervisor out there and I

1 am trying to be a building inspector all at the
2 same time and everybody knows it is very difficult
3 to do two jobs at one time.

4 COMMISSIONER SCHILLER: Just a
5 second. Mr. Gaestel, I noticed that you are
6 nodding. Is it because you are in total agreement
7 with it?

8 MR. GAESTEL: Total agreement, and I
9 had a thought but I lost it, I'm sorry.

10 MS. GAAL: I have got a few more
11 questions, it may come back. Do you find that you
12 are called out to do inspections when the building
13 is not ready for the inspection?

14 MR. REDY: Yes, I do.

15 MS. GAAL: Is that a common
16 occurrence?

17 MR. REDY: Yes.

18 MS. GAAL: Tell us a little bit
19 about that, what that means and what do you think
20 is going on there?

21 MR. REDY: Well, it is twofold. The
22 first being that it is not even ready, in other
23 words, they are hoping they get finished before
24 the inspector shows up, the second being is that
25 if we gone out and give them the correction list

1 of things to repair and we gone back and you give
2 them a list of eight things, and maybe they have
3 done four, so obviously it is not ready, we didn't
4 get to that.

5 So you come back the next day, and
6 maybe they did another one, and you come back the
7 day after that, perhaps they did another.

8 This one here -- I have a copy of a
9 particular inspection record which this is not the
10 only one like this. Understand that per the
11 regulations, the Uniform Construction Code has its
12 required inspections for a single family house, so
13 I go out on a footing inspection, a foundation
14 inspection, a sheathing inspection, a framing
15 inspection, insulation, and a final, and we do as
16 part of the framing we do an open deck inspection.

17 So, by the time I get to the
18 insulation inspection, if everything is being done
19 properly I have been at that house five times.
20 This is a particular example of a house, sixteen
21 inspections to get to the insulation inspection.
22 I have been back to the house sixteen times.

23 So even in reality, when I am
24 finished inspecting this house and I walk out of
25 there and I put an approval sticker on the window

1 very unwillingly and not feeling very comfortable
2 about it, you have a product that's been put
3 together, taken apart probably a few times, it's
4 not new.

5 MS. GAAL: It is a repair.

6 MR. REDY: It is a repaired home
7 already before it even has a certificate of
8 occupancy this thing has been pried at, knocked
9 with sledgehammers, chiseled and jackhammered, you
10 know it, to get to this, it is used and broken.

11 So even when it gets a certificate
12 of occupancy, are there potential problems still
13 in this house? Obviously.

14 MS. GAAL: Do you find that you are
15 almost or maybe you are, serving as clerk of the
16 works?

17 MR. REDY: Yes.

18 MS. GAAL: In other words, you find
19 yourselves as inspectors serving as quality
20 control for the builder?

21 MR. REDY: Yes.

22 MR. GAESTEL: There was a point
23 where we met in our office and I said there are so
24 many violations here, we are going to be left here
25 when these people leave, whether the Department of

1 Community Affairs agrees with us or not we will
2 have to be the quality control, because the
3 homeowner's ultimately going to come back to us,
4 now with the new regulations that after a CO is
5 issued I have no rights to that house any more, is
6 a major detriment.

7 At least in the past I could gone
8 back to that builder and say hey, you are missing
9 something that that room, this is a violation, get
10 in there and fix it, even though you have been
11 gone for years.

12 MS. GAAL: You are talking about the
13 DKM case?

14 MR. GAESTEL: Yes.

15 MS. GAAL: Did you have something to
16 add, Mr. Redy?

17 MR. REDY: Yes, just to elaborate on
18 what Mr. Gaestel is saying, our construction
19 permit application, on the bottom of
20 identification on there it has responsible person
21 in charge of work.

22 Now, anybody can put their name
23 there, just pick a name, put it there, give us a
24 phone number, somebody we can call and talk to,
25 but truly they are not responsible, there is no

1 accountability to who is that person?

2 MS. GAAL: And if a problem is found
3 after the fact and something had a code violation,
4 who does the system hold accountable to that? You
5 guys, right?

6 MR. GAESTEL: Of course, we are
7 always -- everything is our fault, but in some
8 cases it is and in some cases it isn't, but we
9 have no recourse to going to back and making that
10 correction.

11 MR. REDY: So in essence that is a
12 responsible person in charge of work, and then if
13 there is a problem after the CO, in essence it
14 should say the building inspector and the
15 homeowner, those are the two people that have the
16 problems at the end after the builder has a CO he
17 is gone.

18 MS. GAAL: Do you find problems in
19 the electrical and plumbing subcodes areas, or the
20 other trades?

21 MR. GAESTEL: No, they are
22 substantially -- I mean, it's not even any
23 comparison. This same house where Ronnie had to
24 go back to I don't know how many times it was,
25 sixteen times, it had a rough electric passed, it

1 had the final electric passed and rough plumbing
2 and water and sewer passed, passed, passed. These
3 are licensed individuals that are accountable to
4 something, they have something to lose, they lose
5 their license they lose their livelihood.

6 MS. GAAL: Generally speaking that's
7 a theme that we have seen throughout our
8 investigation, and I was just wondering if you see
9 the same thing in Stafford in your experience?

10 MR. GAESTEL: I certainly do. There
11 are poor quality licensed individuals, but it is
12 never gross negligence. Everybody fails an
13 inspection, I make mistakes, so does the licensed
14 contractor or even the unlicensed contractor, but
15 the mistakes are minimum, they are corrected on
16 the next time you gone back, not the third or
17 fourth time. There is accountability there.

18 MR. REDY: I didn't want to lose the
19 thought, as you were asking Mr. Gaestel questions
20 earlier about subcontractors and down the line,
21 and I know in this particular instance here we
22 were down on framing of the home, you had the
23 framing contractor and I was down to third level
24 piecework on the frame, he gave it to a
25 pieceworker or subcontractor who gave it to

1 another guy, who gave it to another guy.

2 MS. GAAL: So we have a sub of a sub
3 of a sub of a sub.

4 MR. REDY: Yes.

5 MS. GAAL: If you missed the
6 problems, you actually have licenses on the line.
7 Am I right?

8 MR. REDY: Absolutely, yes.

9 MS. GAAL: With respect to the fact
10 that you have to go out and repeatedly go out, do
11 you get any additional money, is any money coming
12 from the builder when you have to go out sixteen
13 times?

14 MR. GAESTEL: No, none whatsoever,
15 there is no additional fee. The only time we
16 could do something is if it is in writing if they
17 were to fax saying that they requested an
18 inspection and it is not ready that's a false
19 written statement which I can fine them.

20 But to call on the phone and say
21 something is ready, and for me to get out there, I
22 have no way of retaliating or punishing that
23 individual for wasting my time that could have
24 been served by a builder who is ready waiting for
25 my inspector to do that for the inspection so he

1 can get his approval.

2 So the good builders do suffer by
3 these builders that take advantage or just keep
4 ramming the numbers in, you know, into the
5 building department.

6 MS. GAAL: Do you encounter periods
7 of time when the production builders seem to have
8 more pressure, more projects coming through along
9 the lines of what you have been talking about?
10 Any time of the year, any --

11 MR. GAESTEL: Yes, a lot of them
12 have quarters that they need to meet, so end of
13 the year from here on is a major push until
14 January 1st and then we get, you know, it is a
15 drive, they have got numbers that they need to
16 make -- some of these people try to get -- they
17 are stockholders and some are trying to get there
18 and they have numbers, that's all they see is
19 numbers, I need X amount of COs by the end of the
20 year.

21 MS. GAAL: You as inspectors and
22 code officials have been given the DCA framing
23 checklist, I assume?

24 MR. GAESTEL: Yes.

25 MS. GAAL: Do the builders use it?

1 MR. GAESTEL: I don't know for a
2 fact that they do or don't.

3 MS. GAAL: Would it be helpful if
4 they did?

5 MR. GAESTEL: Certainly.

6 MR. REDY: It would be a start.

7 MS. GAAL: It would be a start.
8 That's what I wanted to ask you, it should be
9 utilized by them?

10 MR. GAESTEL: Yes, it should be.

11 MS. GAAL: Before I ask you to take
12 a look at a couple of photographs, is there
13 anything that you can do if you have got a builder
14 that you know does shoddy work, is there anything
15 you can do about that, can you prohibit him from
16 coming in on the next job?

17 MR. GAESTEL: No, there is nothing I
18 can do. We need to make that inspection in three
19 days, we treat them with the same as any other
20 builder and we try to stick -- we just persevere,
21 that's all you can do is persevere. Money is
22 nothing, I can fine them and fine them, but if
23 they lose a day's inspection that's when they get
24 hurt.

25 All we can do is be persistent and

1 you literally walk out exhausted, because you are
2 looking and looking, and you know no matter how
3 many times you have gone through that building it
4 is never right, and it never will be the building
5 it should be, and I have to approve it and walk
6 out and I just listed ten items, did I get them
7 all, I don't know. I hope them I did, but all I
8 can do on is to the best of my ability and give an
9 honest effort and that's what we do, day-to-day.

10 MS. GAAL: Can you do anything about
11 the quality of workmanship?

12 MR. GAESTEL: No, workmanship is not
13 a code item, and quite frankly it is always a
14 difficult item. What I think is workmanship and
15 then what the builder might not, what I would
16 expect my house to look like someone else would
17 have a different expectation, so that's always
18 been a problem, it is something that will never be
19 fixed.

20 MS. GAAL: Do you find yourself also
21 having to dealing with the homeowners afterwards?

22 MR. GAESTEL: Of course, and some of
23 them -- we do get letters from homeowners having
24 problems with their homes, and generally we will
25 meet with them and a lot of them are workmanship

1 items.

2 Sometimes the homeowners don't
3 realize when you give them the plan and show them
4 that it is built to the plan and sometimes there
5 is legitimate problems, you know. Sometimes it is
6 we have plans, you know, twenty pages, they have
7 so many options on it, you have got to dig through
8 and find the option that goes with this particular
9 house, match it on the foundation plan.

10 You know, options on plans is a very
11 big problem, they want a five foot extension here,
12 two foot extension here, a fourth bedroom up here,
13 this house, the same house will have an extended
14 nook over here, conservatory over there, and you
15 are just literally going through plans trying to
16 figure out what are we building here.

17 And so it is difficult in that
18 situation, and DCA is addressing those problems of
19 prototypes which I think is going to help our
20 industry a lot, and as far as regulatory and DCA,
21 they are a very helpful agency. We call down
22 there and we have questions and that question is
23 answered that day or the next day. I think they
24 have been very cooperative with at least me and
25 when they get a complaint they are down with in my

1 office going through my stuff and I better have
2 the answers.

3 MS. GAAL: I would like you to take
4 a look at a couple of pictures for me. First,
5 Exhibit 306. I don't know which one of you is
6 most able to answer, one of you can just tell us,
7 these are some of the pictures that you provided
8 to us, what's depicted here?

9 MR. REDY: Yes, this is a
10 photograph, this is basically a townhouse project,
11 and what you are looking at here, the green wall
12 there, is a two hour rated firewall separating the
13 dwelling units, and what we found in there is
14 during the erection of these -- basically if you
15 look at the metal channel to the left of the first
16 two by four there, that basically what you have is
17 there is two layers there of one inch gypsum
18 board, it's put into that H channel, and up at the
19 top plates there is clips which fasten this wall
20 to this two by four wall, and the same thing on
21 the other side, okay, of the next dwelling unit.
22 That's what holds this wall up.

23 What they did is while they were
24 constructing this -- now, obviously this wall
25 being a firewall there is no penetrations or

1 anything allowed between this side and the other
2 side.

3 If you notice the darker green area
4 there, that's where they removed -- they had
5 pieces of gypsum board and woods to hold this wall
6 up during construction what they had done is if
7 you can see where the wide areas are, that's where
8 the nails were coming through from the other unit
9 into this unit to hold that wall vertical.

10 MS. GAAL: So they punctuated or
11 perforated the firewall?

12 MR. REDY: Yes, every sixteen inches
13 down that firewall for its entire length, and you
14 know, probably four or five times vertically, and
15 they did this through eighty some odd units.

16 So basically this is just to show
17 the lack of knowledge of the people fabricating
18 this and the importance of that item right there.
19 You may look at this picture and say well, it is a
20 hole in the sheet rock, no, it is a hole every
21 sixteen inches along the length of that wall times
22 probably four times its height through a two hour
23 firewall.

24 MS. GAAL: And you are asked to do
25 an inspection and it's left that way?

1 MR. REDY: Yes, this is after we
2 called it out and they removed it, they pulled
3 these pieces of wood and such out, and we told
4 them -- but that's how they were going to leave
5 it.

6 Now we've got to take the next step,
7 now we need some type of repair from this, from
8 the product manufacturer, this is a listed
9 assembly, whether is gypsum assembly or
10 Underwriters Laboratory, we have a number on this
11 wall and you have to meet it.

12 So now they have to come back with
13 repairs for every little hole they put in this
14 thing as they went along.

15 MS. GAAL: Let me have the next
16 exhibit, 307. Maybe you could sort of summarize
17 what you have got here?

18 MR. REDY: Yes. This was just a
19 general picture of -- if you look, and this was
20 just a typical picture of truss erection. If you
21 look at the web member right there, okay, if you
22 look at the bow in that, and the diagonal brace
23 that's holding it as such?

24 Now basically what they did, this
25 truss -- the picture doesn't accurately depict it,

1 but these trusses are leaning to the right out of
2 plumb, so as they gone along and nail these braces
3 up this is the bowing condition you have within
4 these trusses, okay, that are out of level, you
5 are allowed quarter inch out of plumb, and you are
6 allowed only a two hundredths of a member's length
7 for it to deflect off to the side, and what
8 happens here is you erect these like this, they
9 are under stress, and this is continual throughout
10 the whole length of the building, so obviously the
11 erection, people erecting these things do not have
12 the basic knowledge, and it's an engineered
13 product and they are very critical, and they gone
14 along, and unfortunately without me taking other
15 people out there to give you perspective of out of
16 plumb, you have the time element involved for me
17 to get up there and string lines to show you how
18 critical this is, but it is typical across these
19 projects.

20 MS. GAAL: Number 308. What is this
21 one showing?

22 MR. REDY: This right here is, if
23 you look that right there, if you can spot the
24 black and white thing?

25 MS. GAAL: I can.

1 MR. REDY: That is a sharpie pen
2 which is stuck underneath. I placed that there
3 just for perspective, that's not what they are
4 trying to hold it up with, but I placed that under
5 there for perspective. In other words, that's how
6 much that truss is off of the bearing wall, the
7 exterior wall. It is hanging in mid air by a half
8 an inch.

9 MS. GAAL: And again, you were
10 called in to do inspections and this is what you
11 find?

12 MR. REDY: This is what I found.

13 MS. GAAL: So from your perspective
14 the builder has asked you to come in and do the
15 inspection, one would expect at least they have
16 done a pre-inspection and they feel the place is
17 ready to inspect?

18 MR. REDY: Right. And right or
19 wrong, there again, the basic assumptions, and I
20 believe that's where a lot of building inspectors
21 and inspectors probably get themselves in trouble,
22 is there is an assumption that when I place a
23 truss on the exterior wall of a plate and fasten
24 it is down, that it is sitting on top of the wall,
25 and it is not.

1 MS. GAAL: 309, please.

2 MR. REDY: This was a townhouse
3 condominium project again, this is that two hour
4 fire wall. Now obviously, and this is something
5 that they really truly have to look at across the
6 industry. This right here, these walls basically
7 gone up as the building is being framed, so this
8 is gypsum board wall is basically exposed to the
9 elements and moisture, so if they get a lot of bad
10 weather, rain, snow, sleet, whatever it may be,
11 this is the problem you end up with.

12 MR. GAESTEL: That's actually mold
13 you are looking at.

14 MS. GAAL: That's mold?

15 MR. REDY: Yes, that's correct. It
16 would be hard to prevent, there are now different
17 products with different products on the exterior
18 of these walls that will somewhat prevent this,
19 but the point about this photo being is, I
20 believe, I don't know if I am correct or not, but
21 this was basically on a frame inspection they are
22 looking at now after I walk out of there with an
23 approval to put insulation in this building, so I
24 don't believe the next step obviously it wasn't
25 going to be if I am doing a framing inspection

1 they are looking to put insulation in here, that's
2 how they are going to leave it.

3 MS. GAAL: Next picture is 310.

4 MR. REDY: That's your basic
5 building 101, that pieces of lumber should contact
6 each other. This is already a problem -- and this
7 is consistent, you know, throughout the structure
8 on this, throughout the interior, going up to the
9 second floor, started up these quarter,
10 three-eighths of an inch throughout the whole
11 building, what's this house, is it going to fall
12 down? No. Is the sheet rock going to be crack,
13 are you going to have a mess in a few years?
14 Absolutely.

15 Hopefully for the consumer it
16 happens in the first year, because that's the only
17 time the homeowners warranty is going to help them
18 out with this right here and it's probably not
19 going to show up right away, if it happens in year
20 two, Happy Harry homeowner is on his own.

21 MS. GAAL: Exhibit 311. What's this
22 one show?

23 MR. REDY: This one is basically
24 truss erection. If you notice here this is where
25 we are talking two hundredths of an inch

1 tolerance. Still trying to -- we are trying to
2 get what happened here. These I believe had
3 tipped during the erection and proper bracing.

4 When we get on to the job site,
5 actually we were called by somebody who happened
6 to see this and said I think you should take a
7 look at this building, and we went out and when I
8 got there it -- actually, I came back later, this
9 was prior to myself having a camera with me. The
10 contractors were up on the top of this trying to
11 take this whole -- they had a come-along attached
12 to the existing building and they are trying to
13 pull this whole roof system back over again.

14 In their efforts before I stopped
15 them what happened, again, is we were talking
16 about these gusset plates on all these connection
17 points, they were popping them off throughout the
18 whole roof system.

19 MS. GAAL: Was this a public
20 building?

21 MR. REDY: Yes, it was.

22 MR. GAESTEL: Of course, the hope
23 was we get these straightened up before the
24 building department gets there and nobody knows
25 any different. This is the problem.

1 Instead of taking the trusses down,
2 he knows they are bad and shot, and starting all
3 over, but it is a big financial loss, but one he
4 created. But you know, here that could have been
5 sheeted and now it is up to us to figure out and
6 look at this and --

7 MR. REDY: To try to find it,
8 correct. So this in essence was an addition on a
9 school building which subsequently we placed a
10 stop order on.

11 MR. GAESTEL: Of course the trusses
12 were all removed and new ones installed.

13 MR. REDY: They replaced the roof,
14 all of the trusses.

15 MS. GAAL: 312, please. What does
16 this show?

17 MR. REDY: This is a hanger on a
18 floor joist, this is an engineered floor joist,
19 composite joist, a lot of people you hear the term
20 TJI, that's a manufacturer.

21 Basically they install these hangers
22 that should be contacting the top cord of the
23 floor joist, it prevents or provides lateral
24 stability for the top of this to prevent the joist
25 from tipping back and forth this way. It doesn't

1 look that critical, it is in essence, but the
2 point of this photograph is that today, okay, I
3 could take you out to homes being built and framed
4 after them being written this violation about I
5 don't know how many times, and I will show you
6 them installing them like that this afternoon
7 probably.

8 MS. GAAL: What is that right there,
9 is that an adhesive?

10 MR. REDY: Yes, that's an adhesive
11 and believe it or not that's an enhancement which
12 I am really surprised that they do here because
13 it's not going to help them. It is basically for
14 floors squeaking, any time you have a wood product
15 against a metal product it is susceptible to
16 getting a floor squeak, so this is actually an
17 enhancement, not a requirement.

18 MS. GAAL: Next picture, 313. I am
19 not going to show five hundred, I just have a
20 couple more.

21 MR. REDY: This is on the exterior
22 of a house, this is a townhome actually. This is
23 the end floor truss here.

24 MR. GAESTEL: This is standing in
25 the basement looking up.

1 MR. REDY: This is the basement
2 looking up. This is the sheathing of the house.
3 This bolt right here, and almost every other bolt
4 along the back of the house is the bolt for the
5 ledger board for the deck on the rear of the
6 house.

7 So it is basically through half inch
8 particle board. It should be embedded either --
9 you know, in solid lumber. This across the whole
10 back of the house I would say probably one out of
11 every ten lags that they placed in here missed
12 solid material.

13 MS. GAAL: That's holding up the
14 deck?

15 MR. REDY: Holds the deck to the
16 house, and normally -- I am sure you have all read
17 the newspapers of deck collapses, that's the weak
18 point, and that's where they gone down, and the
19 point being that the person installing this bolt,
20 I don't know if anybody -- I am sure a lot of
21 folks in this room have screwed a screw into a
22 piece of wood, and you can tell the difference
23 between when it is going all the way to its depth
24 into a piece of wood and when it is not, and
25 this literally -- a lot of these bolts we could

1 stand on the outside of this building and you
2 could grab the head of that lag bolt and turn it
3 with your fingers.

4 So the person installing that in
5 there with the wrench had to know that there was a
6 problem there, they didn't fix it.

7 MR. GAESTEL: You have to understand
8 one thing. These basements some of them were
9 finished off, so as an inspector you walk outside
10 and look under the deck and see I got two bolts
11 here and two bolts here, you assumed they are
12 screwed into something. We were lucky that we
13 went to a basement that was not finished off and
14 saw this.

15 MS. GAAL: Otherwise you would miss
16 it?

17 MR. GAESTAL: Otherwise I would miss
18 it. You could never tell, standing outside,
19 that's real nice, two bolts here, and in fact
20 whether they are not screwed in anything. This is
21 where the builder is responsible for that.

22 MS. GAAL: 314.

23 MR. REDY: That's just another
24 picture of the lack of bearing on the trusses.

25 MS. GAAL: The spaces.

1 MR. REDY: Yes, that's correct.

2 MS. GAAL: And last picture I have
3 for you is 315.

4 MR. REDY: That's the same thing,
5 that's the sharpie.

6 MS. GAAL: Same picture or different
7 one?

8 MR. REDY: That's a different
9 picture, just showing the space that is underneath
10 the truss and the bearing plate.

11 MS. GAAL: Okay. I think I have
12 covered all of questions I have, and obviously I
13 could question you gentlemen for a long time, and
14 before I turn you over to the Commissioners to see
15 if they have any questions, I just want to thank
16 you for coming in.

17 I know you gentlemen have taken
18 these hearings to heart, and I know you came
19 forward on your own essentially voluntarily, and I
20 think you should be congratulated for it and you
21 are very good spokesmen for your peers.

22 MR. GAESTEL: Thank you very much
23 for having us.

24 COMMISSIONER EDWARDS: I don't have
25 any questions for you. I could probably ask you

1 questions for a week about a lot of the issues. I
2 appreciate very much your representing the quality
3 of inspectors that are out there working very
4 hard.

5 We spend a lot of time highlighting
6 those inspectors that don't do a good job and we
7 all know, believe me, that there are a lot of good
8 people out there who work very hard to protect the
9 public the best they are able to and you have been
10 very very helpful to me, particularly on the issue
11 of licensing, and licensing of subcontractors and
12 convincing me about the value of that particular
13 part of the process, and the difference between
14 your inspections of plumbers and electricians that
15 are licensed and those that are not. So I don't
16 have any more questions.

17 I would just like to take the
18 opportunity to thank you for what you have done
19 for us, thank you.

20 COMMISSIONER FLICKER: I also want
21 to thank you for coming in. I have two quick
22 questions. Do you think if we were able to impose
23 some type of penalty on builders who called for
24 your inspections when they weren't ready, it would
25 do any good?

1 MR. GAESTEL: Yes, it would
2 certainly be a big help. Of course, the
3 definition of not ready, it would have to look
4 into it. One of problems was if I failed this
5 house here, you would think that the builder would
6 gone to the next three houses that he called in
7 and fix those violations.

8 In my mind, if I failed you here for
9 these three and you allowed me to go over there
10 and inspect those other three houses with the same
11 violations, to me those houses are not ready, even
12 though they may be completed but they are not
13 ready for inspection, so that's where a lot of
14 problem comes into.

15 MR. REDY: There again, on that line
16 there, drawing the line of when are you calling us
17 to inspect and when are you calling us to give you
18 a punch-out list of your house to give to your
19 contractor.

20 That's the critical aspect of, you
21 know, that not ready bit, is are you presenting a
22 product that's ready to be inspected, or are you
23 looking for that list of things to do from us.
24 Big difference.

25 COMMISSIONER FLICKER: One other

1 quick question. Would it be of value to you or
2 significant time saving to have specific site
3 plans, not just prototype plans, so specific plans
4 for the homes when you gone to inspect?

5 MR. GAESTEL: Well, I am thinking
6 you know, I have to store all this stuff someplace
7 too which is another place municipalities seem to
8 face, because we need to carry these records, the
9 plans we have to carry for the life -- they have
10 to be carried forever, basically. It would be a
11 big help if, we would have so many plans --

12 MR. REDY: No, I believe what it is,
13 the prototype plans are a problem, because of the
14 prototype, the builders we encounter it, and they
15 will put something out and they will go saw
16 cutting foundations because it was supposed to
17 have something else on it will also.

18 They potentially could for each
19 individual house, because in this day and age of
20 CAD it's not like somebody sitting there drawing
21 this all out now, with CAD they cut and paste this
22 house and yes, for that house it wouldn't need to
23 be a full architectural, but a structural plan of
24 the home to be with that particular house, with
25 its options.

1 This is difficult and that's where
2 you start to miss things, that's where you bump
3 the house out two feet in the back doesn't look a
4 lot, but maybe that beam just went from five and a
5 quarter inches thick to seven inches thick, and
6 those are the critical things that could be missed
7 very easily with the prototype plans, just too
8 confusing.

9 COMMISSIONER FLICKER: Gentlemen,
10 thank you so much.

11 COMMISSIONER MARINIELLO: Mr. Redy,
12 are the sixth graders now working as project
13 managers?

14 MR. REDY: Sir, they could probably
15 get a job if they applied for it.

16 COMMISSIONER MARINIELLO: They may
17 be over qualified. Mr. Gaestel, you wanted to say
18 something earlier about how your office likes to
19 employ subcode officials who have more than one
20 license, and I wanted you to have an opportunity
21 to say what you were going say earlier.

22 MR. GAESTEL: Thank you very much.
23 It is a very useful tool, I believe in getting our
24 inspections done in a timely fashion. I do hear
25 horror stories of builders having to wait weeks

1 for inspections which I think is -- I can't
2 understand that, but one of the things I do, my
3 inspectors, I require them to get an additional
4 licenses except for the one I hire for.

5 When you use that license you have
6 got to be very careful. I have a fellow who's got
7 his fire license. Now, I am not going to put him
8 into a hospital to do a fire sprinkler, but I will
9 send him to do a furnace inspections which allows
10 my subcode official to do the more important work.

11 So in that aspect I think it is very
12 good to have multiple licenses and use it
13 properly. Like I said, if he's got a second level
14 license I am not going to stick him in -- even
15 though the law says I could, I would not stick him
16 in a building he should not be inspecting. But in
17 that way it is a very useful to have a multi
18 license, and sometimes they can take care of an
19 area and do that area and do the inspections
20 without driving all over town. That was my
21 thought on that. Thank you.

22 COMMISSIONER MARINIELLO: Thank you
23 both for your testimony today. Mr. Chair.

24 COMMISSIONER SCHILLER: Just
25 quickly. I too am impressed with the sixth

1 graders of Stafford Township. Do you actually
2 have a program for that, if you do, can I get a
3 copy of it, because I intend to talk to our
4 building inspector on doing the same thing in
5 Jersey City. It might improve our level of
6 inspections.

7 MR. REDY: There again, that was
8 only within the first half hour of having them,
9 you know.

10 COMMISSIONER SCHILLER: We were
11 talking about the multi license inspectors. I
12 also wanted to know, do either of you gentlemen
13 work for other municipalities, or is this the only
14 municipality you work for?

15 MR. GAESTEL: I work for another
16 municipality also.

17 COMMISSIONER SCHILLER: Only because
18 it is so common, I was wondering whether or not
19 you have a feeling on it? Sometimes I see
20 inspectors who are full-time construction
21 officials there and then you will get a note that
22 they do a construction for -- they are an official
23 in another town for an hour at lunchtime.

24 MR. GAESTEL: That's correct, yes,
25 sir. I do that after work. I do inspection of

1 other towns after work, and it never -- Stafford
2 Township is my main salary, my main goal, but
3 anyway, I do my time there, I leave there and I do
4 other inspections for other municipalities.

5 COMMISSIONER SCHILLER: Do you have
6 any feelings on that, Mr. Redy?

7 MR. REDY: I can see the concern,
8 and I have seen the instances of it where it is
9 happening is during the course of the workday
10 where even if you say he is doing it at lunchtime,
11 you know, I don't truly believe, in other words an
12 honest day's work, honest day's pay, and if one
13 municipality is paying you money, you take it from
14 them, you can't take it from everything.

15 I don't see a problem with an
16 inspector like Bob does. I was for awhile until I
17 moved, I was doing part-time inspection for
18 Berkley Township, and the only reason I was doing
19 that is the construction official he was a friend
20 of mine, and basically I was living in Seaside
21 Park at the time and it was for Berkley, and they
22 have South Seaside Park, is just a few blocks of
23 beach community down there and for him during the
24 day, especially during the summer months to take
25 one of his inspectors off the mainland and take

1 him off over there and he is looking at a footing
2 inspection and doesn't get back for two and a half
3 hours, it being right down the street from me I
4 took the position for awhile, I would go home, it
5 is on my way home, stop and go down two nights a
6 week, spend a couple of hours down there or
7 whatever it took, it may have just been a footing
8 inspection, one or two inspections and then go
9 back.

10 But I don't see any potential
11 problem or conflict in that type of a condition,
12 multiple positions during a seven or eight hour
13 workday, certainly. How do you do it?

14 COMMISSIONER SCHILLER: That was my
15 impression as I heard the testimony and I wanted
16 to hear your opinions.

17 I would echo Commissioner Edwards'
18 remarks about I am impressed and it is nice to
19 have you guys here, and as we said Mr. Mariniello,
20 we don't want to paint everybody with the same
21 brush, you are a credit to your profession, and I
22 call it a profession. So, thank you.

23 MR. REDY: I certainly thank you for
24 the opportunity to testify today. I watched the
25 hearings go by the last time, spoke to Bob and

1 said listen, we have to go up there and attend
2 these.

3 Fortunately it came about to us that
4 we were invited to come and we couldn't deny
5 ourselves the opportunity to speak on -- I feel on
6 the behalf of the righteous inspectors and the
7 righteous departments out there that are trying to
8 do their job, and I felt we had a responsibility
9 to them to present our side and our obstacles and
10 how difficult it is in certain instances for us to
11 overcome the hurdles and get the product out
12 there, and ultimately it's about safety and health
13 and welfare of the public, and the consumer, and
14 we need to really rope it in from all avenues
15 whether it is -- my worse nightmare is a bad
16 inspector, bad building department versus bad
17 builder. You put two and two together on this one
18 from both angles, and you have a serious problem.

19 Our department is trying to control
20 this, we got a grip on it, we are holding on to
21 it, we are not letting go. They don't beat us to
22 attrition, and we are just doing our job. But it
23 does, as you folks are well aware now, looking at
24 it from all avenues, there is a lot to be done to
25 bring it -- I don't say a perfect system, but

1 definitely enhance it and give the people the
2 protection they deserve.

3 COMMISSIONER SCHILLER: I am sure we
4 are going to ask you for other recommendations
5 too, so counsel will be in touch with you. We
6 will take a ten bring minute break and come back
7 at twelve o'clock.

8 (11:55 a.m.)

9 (12:07 p.m.)

10 COMMISSIONER SCHILLER: Please be
11 seated. Mr. Glassen, would you call then next
12 witness.

13 MR. GLASSEN: Yes. Mr. O'Keefe.
14 Patrick J. O'Keefe, executive vice president and
15 chief executive officer, New Jersey Builders
16 Association.

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1 PATRICK J. O'KEEFE, after having
2 been first duly sworn, was examined and testified
3 as follows:

4 EXAMINATION

5 BY MR. GLASSEN:

6 Q. Thank you, Mr. O'Keefe, for
7 accepting our invitation to appear before the
8 Commission this morning.

9 Would you like to make a few
10 introductory remarks to the Commission.

11 A. If I may, and recognizing the time
12 constraints under which the Commission is
13 operating.

14 Mr. Chairman, thank you for this
15 opportunity to be here. When you opened these
16 hearings just about a year ago you made the point,
17 and you have come back to it repeatedly, that you
18 would be looking for construction input from the
19 building industry.

20 I personally have had the
21 opportunity to meet with the Commission staff
22 repeatedly over the past several years, not always
23 I guess in the context of this investigation. I
24 have found your staff to be highly professional,
25 very rigorous in their questioning, and therefore

1 I have to report on behalf of the entire home
2 building industry of New Jersey we find the
3 conclusions that are in front of you to be deeply
4 disturbing, and I think extraordinarily
5 disappointing, particularly for those of us who
6 have advocated on behalf housing over the years.

7 The thing that I keep coming back to
8 and I know it must be at the heart of the
9 questioning of the Commission, and I hope in our
10 exchange this morning we can get to it, is why it
11 took these hearings and the investigation of the
12 Commission to make this case. Why prior to your
13 hearings weren't the sirens going off, why weren't
14 the red lights flashing, and I say that from our
15 side, the private side of the equation, as well as
16 on the public side.

17 I hope going forward responding to
18 the point that Commissioner Mariniello said before
19 that we can come up with systemic reforms, we can
20 come up with ways to make sure that my
21 industry, those who regulate it and inspect it can
22 do a far better job than I think has been on the
23 record before you. Thank you.

24 BY MR. GLEESSEN:

25 Q. Mr. O'Keefe, for the benefit the

1 Commission, could you describe New Jersey Builders
2 Association, its function, goals, who it serves?

3 A. NJBA has been in existence since the
4 1940s. We represent the building industry
5 generally. Predominantly our members are involved
6 in residential construction, low rise
7 construction. We include both builders and those
8 who support the building industry, consulting
9 professionals, suppliers, et cetera.

10 Our role is actually threefold,
11 representation of the industry before all of the
12 instruments of government, education of the
13 members on all of the different topics with which
14 companies have to be familiar, and lastly,
15 continuing information on developments affecting
16 the industry.

17 We have in the neighborhood -- it
18 fluctuates, but we have in the neighborhood of
19 seventeen to eighteen hundred member companies at
20 any given time over the course of a year.

21 Q. Speaking of the membership, what are
22 the requirements for membership, how does one
23 become a member of the Association?

24 A. Generally any company can apply for
25 membership. We have two categories, builders and

1 associates. With respect to the builder members,
2 we do require that they be registered with the
3 state and participating in a warranty program,
4 which is a condition of registration in any event.
5 The members join through one of our five local
6 chapters, and like so many things, as long as they
7 pay their dues we continue to serve them and
8 provide them the education and other access that
9 we do.

10 Q. About how big of a staff do you have
11 at the Association?

12 A. We have twenty employees.

13 Q. Could you describe the variously or
14 generally the functions of those employees?

15 A. Really divide them into two
16 categories. One would be the technical staff,
17 experts in environmental science, land use
18 planning, building codes, representatives who are
19 in front of a legislature and the agency as
20 lobbyists.

21 On the other side we have the
22 administrative and education and member services
23 functions, largely the people that are responsible
24 for planning and running our conventions,
25 seminars, membership meetings, and the

1 communications programs, public information.

2 Q. What I would like to do is take this
3 questioning in the direction of the role of the
4 Association, describe generally what the
5 Association does, what you believe the appropriate
6 role of the Association is and has been and may be
7 in the future with respect to some of the specific
8 issues that we have been covering, particularly
9 with respect to the registration process to become
10 a builder, let's start with that. You mentioned
11 that all your members have to be registered.

12 Does the Association have any
13 particular position with respect to the
14 registration process and its effectiveness.

15 A. Under New Jersey law a builder is
16 very very broadly defined, and in order to build
17 in New Jersey you do have to register with the
18 Department of Community Affairs. The New Home
19 Warranty and Builders Registration Act endows the
20 Department of Community Affairs with extensive
21 authority with respect to what it will require as
22 a condition of application, and then going forward
23 it endows the department with the ability to
24 supervision and police the system, to the point
25 where the department is authorized, in fact

1 encouraged, to pursue complaints filed by
2 interested parties, and as appropriate conduct
3 evidentiary hearings, and after affording anybody
4 who is in front of it the opportunity to be heard,
5 can suspend, revoke or deny registration which
6 effectively would put that person out of the
7 building industry in New Jersey.

8 Q. We have seen throughout the course
9 of the investigation and these hearings situations
10 where builders have been registered and come back
11 and re-registered under other names or perhaps
12 used entities as a front to register after they
13 have been suspended on occasion.

14 Do you see the agency having the
15 authority to deal with that under existing law?

16 A. I think in both cases the statute is
17 very clear. If somebody misrepresents on the
18 application or registration that's a violation,
19 and the registration is null and void and they go
20 from there.

21 I think they would also have the
22 basis for pursuing criminal charges, although I am
23 not an attorney and don't say it with any
24 confidence.

25 With respect to people registering

1 under different companies, the registration, as I
2 recall it, requires that you list the principals,
3 the individuals. So effectively as long as there
4 is a computer system that can cross represent
5 those or cross compare, rather, those who have
6 registered previously with those now applying,
7 that should be weeded out.

8 Q. You spoke in terms of one of the
9 roles of the Association being training of your
10 membership.

11 Could you explain or go a little bit
12 further in detail and explain to the Commission
13 what the Association does in that regard.

14 A. Throughout the year, but with a
15 great deal of concentration at our annual
16 convention, we conduct formal and informal
17 education programs. Informal being if there is a
18 general membership meeting at one of our five
19 locals we'll have one or another of our technical
20 staff go into talk about issues. But we regularly
21 conduct formal seminars.

22 An example would be a couple of
23 years ago when it became apparent to the
24 Department of Community Affairs that truss
25 installation was a problem across the field, we

1 didn't know the degree to which it was, but there
2 were growing recognition of problems, the
3 department came up with a framing checklist that
4 was referred to earlier this morning.

5 We conducted extensive training
6 around the state, I would guess several hundred,
7 maybe five hundred or more people participated in
8 that training on the checklist. As part of that
9 process we went out to the members repeatedly, and
10 reminded them of the fact that this had turned up
11 as a quality problem and that they needed to
12 attend to it.

13 We do that in a number of instances,
14 there is legislation which right now would require
15 the registration of home improvement contractors,
16 including builders who from time to time may be
17 doing a major renovation of a house. We have
18 repeatedly alerted our members to the
19 responsibilities they have under that, encouraged
20 them to get in early and timely register with
21 consumer affairs in that case.

22 Q. I guess that was an instance where
23 the association became aware of a problem with
24 truss installations. Is that correct?

25 A. That's correct.

1 Q. And how is it that you became aware
2 of that?

3 A. That particular instance I think was
4 in part because there were press accounts about a
5 subdivision in which that had turned up, and
6 simultaneously in conversation with
7 representatives of the Department of Community
8 Affairs they made it known to us that they were
9 concerned that that may not have been, and in fact
10 they had reason to believe it was not an isolated
11 instance.

12 They went forward, they developed
13 their procedures for enhanced inspection, and we
14 consulted with them on that to make sure that our
15 people would be able to understand and go forward,
16 and then it resulted in the training and
17 subsequent implementation.

18 Q. As an Association do you have any
19 formal or informal method of communicating with
20 DCA or the Building Officials Association to sort
21 of identify these problems as they develop and
22 address them in that manner?

23 A. At the formal level we have within
24 the state association a codes committee, largely
25 responsible for codes, technology, and the

1 construction related matters. Both the Department
2 of Community Affairs and BOANJ are invited, and do
3 in fact have liaisons to that committee, so that
4 our discussions are going on with those within our
5 ranks that are most knowledgeable and in that
6 context we are able context we are able to examine
7 what we perceive from the three different
8 perspectives the ongoing evolution of our
9 industry.

10 On an informal basis from time to
11 time where we get reports that a municipal
12 building department may be siphoning an
13 extraordinary amount of money out of the building
14 department, we will alert the department to that,
15 and we do that only where we think that person
16 that brought it to us is credible, you try to
17 filter that, I think that has given us some degree
18 of credibility that when we raise it there is
19 reason for concern.

20 Very often we will get calls from
21 members too that say they want us to file a
22 complaint about one thing or another and we will
23 talk it through with a member because the fact is
24 they may be aggravated, the issue over which they
25 are aggravated may be a grey area, and we make the

1 case to them that to take it to the department is
2 in fact to put a cloud potentially over somebody
3 else's head on something is not a life or death
4 matter.

5 On other occasions we may if we
6 begin to sense that there is a problem out there,
7 we may alert the department, they may want to
8 think about looking into a given municipality, but
9 we have to be careful because we are hearing it in
10 an untried way and we have to recognize that our
11 members at the point that they are contacting us
12 feel aggrieved, are very often aggravated.

13 Q. He have looked at a number of
14 developments throughout the state that have
15 significant construction related defects. In some
16 instances virtually entire developments have been
17 affected.

18 Is there any point at which the
19 Association becomes aware or can get involved in
20 this, or can you give the Commission some
21 explanation as to how that type of thing can
22 happen from your unique vantage point, from your
23 Association's unique vantage point?

24 A. We don't have any special access to
25 information that allows us to know what's going on

1 in individual projects around the state. So very
2 often other than seeing something in the press or
3 certainly over the last eleven months that the
4 Commission has been having its hearings, we are
5 unaware of those type of problems.

6 I think one of the things that is
7 striking this morning, and it goes back over some
8 of the earlier hearings in the Commission, is that
9 the impression -- maybe I am drawing a wrong
10 inference, but it seemed to be that there was
11 somehow an expectation that the managers of
12 corporate builders or builders generally were able
13 to distinguish themselves from their
14 subcontractors.

15 From my vantage point that is a non
16 relevant distinction. It is the builder that's
17 building the housing, and if the senior executives
18 of a given company do not have building experience
19 that's probably irrelevant.

20 What is relevant is whether or not
21 their management structure and their systems,
22 whether they are building ten units a year or
23 fifteen hundred units a year, put the right people
24 in the right place, and I don't think the
25 customers or the inspectors should look to us to

1 say oh, that's a subcontractor. They should look
2 to us to say whether or not it was done to code,
3 it was done to expectation, and in the end it
4 meets the purchaser's needs or the renter's needs.

5 Some of these subdivisions that we
6 have heard about and the case that was talked
7 about this morning, certainly cry out for the
8 question why weren't the sirens going off. Why --
9 and this is not to lay blame, the first line of
10 defense as the two earlier witnesses said, to any
11 injury to the customer is our own quality control.
12 Let's not ignore that. The enforcement code
13 official is not there to find our mistakes, that
14 individual is there to assure that it complies
15 with code.

16 But when you have those kinds of
17 patterns, why was that job not shut down? An
18 enforcement official can issue a stop work order,
19 an enforcement official can report to DCA that
20 this builder has a pattern of code violations of
21 negligence, and under the statute the DCA on both
22 the standards can revoke the registration.

23 Q. Would the Association, or is there
24 any law or regulation that would prohibit the
25 Association from becoming involved if it were in

1 itself to become aware of a situation like that,
2 or how would the Association deal with that?

3 A. We would have to be careful to
4 insert ourselves into that process, as a matter of
5 law we have no standing.

6 As a matter of institutional impetus
7 we exist to represent one side of that
8 conversation. As a matter of corporate law, we
9 have to be very careful in terms of potentially
10 violating restrictions on restraint of trade. We
11 are a trade association.

12 If I were sitting here as any of the
13 several Commissioners of DCA with whom I have
14 worked, going back, generally I remember
15 Commissioner Renner, I gone back that far, I would
16 probably have different answers and we could
17 speculate on how things might be different, but I
18 run a trade association and I am cognizant of that
19 fact.

20 Q. With respect to the certificate of
21 occupancy, does the Association -- or I would like
22 to inquire of what your views are, with respect to
23 what that represents in the process?

24 Does it signify that the house is
25 free of code violations, or how is that viewed by

1 the association within your membership? Could you
2 provide the Commission some insight on the
3 certificate of occupancy?

4 A. The CO is issued by the licensed
5 enforcement official and in essence it
6 covers -- that issuance says four things. Number
7 one, that the construction in its totality at that
8 point, meets all of the terms of the permit, and
9 satisfies any conditions that may have attended
10 that permit. It certifies that all of the
11 required inspections, including any inspections
12 that the enforcement community decides may be
13 warranted, have been completed and that the
14 construction complies with the code. And at that
15 point it issues, and really what it says is that
16 the unit is habitable, it is code compliant, all
17 of its safety systems are in place and operating.
18 That's what the CO says.

19 Q. On behalf of the Association, or
20 from your position as executive vice president,
21 would you have any recommendations as to how the
22 state can address significant workmanship issues
23 in the construction of new homes?

24 A. Workmanship is a loose term, and in
25 any other areas, if I buy a car and I pay for a

1 lesser car I guess I expect a lesser car. But
2 when I buy it I don't -- I certainly expect that
3 it is going to be a quality automobile.

4 When you buy a home in New Jersey
5 you have I think the expectation it is going to be
6 a quality home, and I would like to think that
7 those I represent are going to deliver that
8 quality home.

9 So workmanship gets into an area
10 where under the warranty law in the first year
11 there is the ability to bring, to file a claim,
12 being because workmanship doesn't meet standards,
13 it is a judgment issue. It is dissimilar from the
14 code in that regard, that the code is really
15 prescriptive, it states that the nails shall be at
16 a given distance, and that the wires will be at a
17 certain gauge, things such as that.

18 So workmanship, I think the way we
19 would come at it is when the home buyer moves into
20 the unit, and inevitably there are things like
21 nail pops, that in that first year they have every
22 expectation that those types of cosmetic problems
23 will be corrected. If it is a matter of the
24 structural integrity of the unit, both on a two
25 year and then on a ten year basis, there are hard

1 standards to determine whether or not that
2 construction is performing to the expectations of
3 an objective set of standards.

4 Q. Earlier in answer to one of my
5 questions I think you touched upon the issue of
6 fees and on occasion you may hear from a builder
7 about fees being diverted from a department.

8 Could you expand on that a little
9 bit for the Commission on the issues of funding
10 for the inspection departments and that type of
11 thing.

12 A. As I said before, we have to wonder
13 why these systems the alarm bells weren't going
14 off. One of the reasons I think we have to worry
15 about that, or wonder about that is builder on
16 behalf the eventual buyer is paying a substantial
17 amount of fees throughout the process to
18 municipal, county, state entities, for certain
19 activities. These are essentially I best
20 characterized as user fees.

21 This builder comes to the public
22 sector, says as a condition of doing business I
23 require certain reviews by your level of
24 government, and it is my responsibility as a cost
25 of doing business to pay the cost of those fees.

1 The statutes are very very clear,
2 the Uniform Construction Code Act itself and the
3 regulations implementing it, that the fees should
4 be established at the municipal level, because
5 that's where your question went and they should be
6 managed so that the building department is
7 adequately financed to meet its current and
8 anticipated work loads.

9 So that the inspectors, as the
10 earlier witnesses said, have the equipment, have
11 the code books, have the staffing level necessary
12 to respond to the demands that are going to be
13 made on that department in a timely fashion,
14 because the code not only talks about the
15 establishment of the fees, it talks about the
16 timeliness of the inspections.

17 One doesn't have to read too many
18 newspaper articles to see complaints about
19 governing bodies talking about problems they are
20 having in their town because of the amount
21 construction has slowed down.

22 I am talking here directly from
23 press accounts that I recall reading. West
24 Windsor Township which was in the late 80s and
25 early 90s producing a fair amount of houses every

1 year saw a slow down a couple of years ago and
2 they complained to the press about the fact that
3 well, the fees for the building department weren't
4 coming in. Well, to the governing body that's
5 irrelevant, those fees should have been sufficient
6 to run that department, not as a profit center for
7 the municipality.

8 Several years ago, I get embarrassed
9 when I look at how many years ago, the NJBA went
10 to the legislature and asked for legislation
11 requiring dedication by rider, effectively saying
12 that when the fees come into the town the
13 governing body by ordinance says these fees should
14 be used only for the building department.

15 That was eventually diluted, and in
16 regulation, and in fact when you look to
17 government services, one of the entities in DCA,
18 you find that they do not require a direct audit
19 of the building department, it can be part of the
20 consolidated audit of the municipality, and
21 thereby money being fungible, the movement of
22 money back and forth doesn't take much ingenuity.

23 Q. Does the Association ever -- I
24 believe I think in one of your earlier answers you
25 eluded to the fact that the Association sometimes

1 hears a complaint about a inspection or inspector
2 or a problem in a development.

3 How does the Association -- or do
4 you ever hear of complaints about individual
5 inspections or situations like that, and how does
6 the Association address those?

7 A. This being America do any of us go a
8 day without hearing a complaint about somebody
9 somewhere, and sometimes some of them may even be
10 justified. So yes, we do hear complaints.

11 And I think the staff and the
12 leadership of the Association is astute enough to
13 know that sometimes people just have to vent, and
14 we will talk them through it. And we will also
15 make the point to them that in any given
16 situation, while they may be right on a particular
17 question, is it worth proving that you are right
18 to alienate or incur ill will from the human being
19 that's on the other side of that conversation.

20 I had a member one time who under
21 the State's Uniform Site Improvement Code, and you
22 have received testimony earlier about site
23 improvements, the on-site construction, who as a
24 civil engineer knew the engineering standards
25 probably far better than the people who at Rutgers

1 had written the standards, and was being told by
2 the municipal engineer that the road had to be at
3 a course level deeper than what he knew to be the
4 case. Not so much that in that particular
5 subdivision the difference between them was of
6 monumental cost, but as somebody said earlier
7 today, a little bit, is a little bit and it really
8 should not matter, and the individual decided to
9 take it forward, prevailed in the complaint, and
10 then had one heck of a time getting off the
11 performance bonds later on.

12 Q. Kind of along those lines, as an
13 attorney and I know with doctors and architects,
14 and they have disciplinary boards who do some self
15 policing. Is there a role for the association to
16 play in policing its own membership in some of
17 these issues?

18 I know you referenced earlier DCA
19 has a lot of power in that area. During the
20 course of our investigation and your reading the
21 headlines, has that occurred to you to pursue?

22 A. The statutes pre-empt it, to begin
23 with. Secondly, to do that as I think is true in
24 some of the regulated professions, requires that
25 you have the ability to collect the information,

1 distill it, and be able to act on it in a matter
2 that will be procedurally rigorous and protective
3 of all of the parties that are involved.

4 Over the years I have thought about
5 that, and we have discussed within our own
6 deliberations, year in and year out, about the
7 issue of licensing, and whether or not in fact
8 there should be builder licensing, whether there
9 should be licensing of quality control companies
10 that would be pulled into the fray, subcontractor
11 licensing that was referenced earlier.

12 We come away from those
13 conversations, or let me not speak for the
14 Association, I come away with it with an
15 ambivalence that's in part practical and in part a
16 recognition of the difficulty of putting it in
17 place as the area of activity becomes less
18 definitive in terms of engineering standards, for
19 example, or legal standards or other objective
20 criteria.

21 Q. I suppose what I am getting at by
22 asking that question and the Commission is
23 obviously interested in any recommendations that
24 the Association may have upon our investigation,
25 and I would like to afford you an opportunity to

1 share those with us at this time.

2 A. As we said in a letter to the
3 Chairman in January, I think at some point, and we
4 know you are in the investigative mode and you
5 will issue a report, at some point when we shift
6 to the policy discussion I think the Commission
7 has demonstrated that this entire area of housing
8 cries out for attention in New Jersey.

9 I have talked myself hoarse about a
10 housing crises, and it's not the crises that you
11 confront here, but I do think it is all of one
12 piece. The way in which the public sector
13 generally -- and we have to be careful here
14 because there are an awful lot of very very
15 dedicated people serving at every level, some in
16 volunteer capacities at planning boards, et
17 cetera.

18 But when the application for
19 development in New Jersey goes forward, it is not
20 viewed in terms of a question of how are we going
21 to provide people with places to live. At each
22 level it is asked what can we extract from this
23 applicant, and I don't mean that in a nefarious
24 sense, it is can we reduce the density, and get
25 more open space, can we get contributions to our

1 fire and safety departments, et cetera, and we are
2 familiar with that, we are all familiar with that.

3 I think what is singularly lacking
4 in New Jersey is any sense of a commitment to
5 housing. We have, NJBA, for years, called for the
6 creation of a department of housing.

7 Housing right now is contained
8 within a department which has very very important
9 responsibilities with respect to the governance
10 and oversight of municipal government. I could
11 outline for you the way in which a housing
12 department would first and foremost consolidate in
13 one place the administration of the many pieces of
14 legislation that are implicated in your hearings,
15 that it would in fact in so doing allow us to then
16 regionalize the way in which these systems are
17 administered, and I think intuitively the
18 Department of Community Affairs, and I am not
19 speaking please, about the current Commissioner or
20 any of her predecessors, going all the way back to
21 1985, intuitively and institutionally that
22 department thinks in home rule terms. And
23 therefore is in a mode of thinking where it
24 doesn't look at the housing phenomena and the way
25 in which we approve and construct, inspect,

1 certify, and then maintain our systems is a
2 coherent whole that deserves the same priority as
3 say agricultural, one of life's other necessities.

4 We have a warranty program, which I
5 have heard concerns here. The warranty program in
6 New Jersey is unique. We are the only state in
7 the union that has a statewide mandatory warranty.
8 The history of that program is one where our state
9 government went in and took eleven and a half
10 million dollars out of the trust funds of the
11 warranty to fund a deficit, not in the current
12 administration, in a prior administration. It was
13 the NJBA that went to the legislature and asked
14 that they replevin issue that money and the
15 executive vetoed that replenishment. We then
16 passed legislation, not we, but in working with
17 those who are in this state house, we then went
18 and created a warranty trust advisory, a Board of
19 Trustees to oversee the warranty program, composed
20 of fifth different constituencies, builders being
21 one of them and home buyers being another and
22 insurers. That law has been on the books going
23 back to the prior administration so at least three
24 plus years. That board has only met twice, that
25 board doesn't only oversee the fiscal soundness of

1 the warranty program, it is charged with the
2 responsibility of looking at the procedures for
3 processing the claims, the standards by which
4 claims should be set. It is ignored, not because
5 a Commissioner says oh, I don't care about that.
6 A Commissioner has on his or her plate day in and
7 day out pressing matters that are determined to be
8 a priority.

9 And I go back, why weren't the
10 sirens blaring. Why did it take, to the
11 embarrassment of all of us in this industry, this
12 Commission to raise these questions. And I dare
13 say it is because, A, of institutional lack at the
14 state level, and B, because housing in New Jersey
15 really isn't a priority. All too often going back
16 to what we were talking about in terms of
17 diverting money from building departments, it is
18 seen as a cash cow. You get the money in there,
19 you put it somewhere else and then blame the
20 enforcement official because he or she isn't
21 timely doing the inspections, blame the builder
22 because they are complaining about not getting
23 those inspections timely, when in fact by paying
24 the fee and under the regulation the inspector
25 should have been there within three days of making

1 the call for the footing and foundation or
2 whatever the other inspections are.

3 And so I think when your
4 recommendations come out, tinkering around the
5 margins is not the way we are going to do this.
6 We have, going back to the mid 1970s, put together
7 an array of programs that is unique in the nation.
8 I think what you are finding and the place that
9 you come back to repeatedly is that systemic
10 failure.

11 As we go forward let's emphasis the
12 systemic part, there is a system there, poorly
13 managed, perhaps not given the priority it
14 requires. That situation would lead where
15 building code officials doing their jobs as the
16 two people in front of you testified, that they
17 are going back repeatedly on the same job and not
18 fining that builder.

19 First of all, it is clearly
20 authorized, they could have shut that job down,
21 and frankly, they could have reported it to DCA,
22 and DCA could have taken that complaint and seen a
23 pattern of code violation and revoked the
24 registration. That's been on the books since
25 1977.

1 I have asked some people, I have
2 been doing this since 1985, I know of no case
3 where a builder registration in New Jersey was
4 revoked, and if it occurred and I am not aware of
5 it, then whatever deterrent effect that may have
6 achieved by that act has been lost, if in fact it
7 occurred.

8 MR. GLASSEN: Thank you, Mr.
9 O'Keefe.

10 BY COMMISSIONER FLICKER:

11 Q. Mr. O'Keefe, thank you so much for
12 coming in and forcefully and eloquently presenting
13 the builders' side that you just gave us.

14 Would you forward to us, if you
15 haven't already, your recommendation for a
16 department of housing, how it would work, what its
17 priorities would be, so that we can consider that
18 when we get to our recommendations?

19 A. Yes, ma'am.

20 Q. Do I also gather from your
21 statements that your organization has long been in
22 favor of funding by rider?

23 A. Yes.

24 Q. And you still maintain that
25 position?

1 A. I think that we not only maintain
2 it, our Association hears the place pay to play,
3 and what we think is pay to pay to pay. We post
4 escrows, and those escrows are to be used by the
5 public sector as a use fee to cover the costs of a
6 public engineer reviewing the private engineer's
7 work, of all of the other reviews that go in the
8 process.

9 Those escrows were at best opaque
10 for years and years. We tried in various ways to
11 get some degree of escrow accountability. Barring
12 that, we at least got a law passed that requires
13 an escrow accounting, so that now an applicant can
14 get from the municipal department a statement of
15 the charges that have been leveled against the
16 escrow account.

17 Now, to my knowledge the division of
18 government services, local government services
19 doesn't go in an audit those escrow accounts, just
20 like the codes department doesn't periodically go
21 in and do functional audits of the building
22 departments.

23 There was testimony in front of the
24 Commission last year in which the witness
25 apparently was issuing fraudulent COs in his own

1 name. If there were an inspector general, which I
2 would make a part of the department of housing,
3 periodically that inspector general operating as
4 they do at the federal level would randomly gone
5 out and check the public systems. Having
6 administered programs at that level, believe me
7 the chilling effect of knowing that somebody may
8 show up one day as your investigators do, but on a
9 regular basis, properly funded, to look at what's
10 going on, would help police the system.

11 Having those funds that we pay
12 deposited into -- the place earlier this morning,
13 transparent accounts, would help police the
14 system. This is a system in place since 1977.
15 These are not hard things to work through.

16 Some of us have been in front of the
17 legislature to contend not only with
18 representatives of state government, but even
19 representatives of state government, state and
20 local government entities alike saying no, you
21 don't need that, instead of them being there
22 saying this is what we should be doing.

23 COMMISSIONER FLICKER: Thank you,
24 Mr. O'Keefe.

25 BY COMMISSIONER MARINIELLO:

1 Q. I only have one question, Mr.
2 O'Keefe. Did the Association take the position or
3 has it taken a position in the past on the DKM
4 case?

5 A. We are in front of the Supreme
6 Court, since they didn't have a longwinded
7 Irishman I am sure the presentation went much more
8 rapidly, literally this morning on the issue of
9 DKM, yes.

10 Q. Did they file a brief?

11 A. Yes, we are amicus, yes.

12 Q. I don't have anything further.

13 A. I can lay it out for you what our
14 position is, but that's your call.

15 Q. Sure, go ahead.

16 A. We took the position consistent with
17 the lower court ruling, that the CO should be
18 final with respect to the construction process,
19 and that the CO properly goes to the owner of the
20 property. I think outside of that case, what we
21 would say is that the CO need not only be
22 distributed to the owner of the property, the NOV
23 that issues after the CO, if there is an NOV where
24 a code violation is found, there is a question as
25 to whether or not the enforcement official who is

1 issuing that NOV has either demonstrated some
2 problem in that review, or it may have been a
3 mistake, we don't know.

4 But why when that NOV issues on a
5 house that's under warranty, still within the
6 period before the statute of repose takes it out,
7 why wouldn't that NOV also be sent, for example,
8 to the Department of Community Affairs, who either
9 directly or by way of the building department
10 would make sure that the warranty program gets it,
11 that if in fact it does trigger a warranty
12 response the insurer should be aware of that and
13 if in fact there are a pattern or is a pattern of
14 NOV issuing, then again, the department could
15 either go after the registered builder, which it
16 should, and or after the enforcement department of
17 that municipality may be the case.

18 So that the customer, the home buyer
19 still has recourse, either by way of civil action
20 or by way of the warranty for that violation.

21 Q. The home buyer, though, is the one
22 who is issued the NOV, and they had no
23 responsibility for the mistake in the first place,
24 nor do they have any responsibility to check it
25 during the inspection period, yet they are the one

1 who has the NOV and they are the one who is
2 subject under the current law to a fine or to pay
3 for the correction.

4 A. You are absolutely right that the
5 homeowner, whether or not the NOV issues, the
6 homeowner is in the home that they purchased, and
7 as not only shelter, but as the encapsulation of
8 the American dream.

9 This is not about the homeowner, and
10 in fact the fine could either by change in law or
11 even perhaps in change of regulation, I would want
12 to look to an expert, the fine could then flow to
13 the warranty program, if it is a warranty, the
14 fine could be covered in a civil action. The
15 state regulations provide that if, for example,
16 the homeowner has to move out of the home, that
17 there is provision for alternative living expenses
18 under the warranty program.

19 So I don't at all disagree with you,
20 but I think in terms of establishing finality,
21 that the CO now says -- and by the way the
22 Department of Community Affairs adopted
23 regulations on this for reasons that were a matter
24 of public administration, but that says that the
25 unit is no longer in the construction place, and

1 there are various remedies, but one of those
2 remedies should be if an NOV issues during that
3 period of warranty coverage, the ten year period,
4 then that NOV should go to the department and also
5 go to warranty company.

6 We also have to be careful that not
7 every NOV is going to issue even on a home that's
8 relatively new, due to something that was done
9 under new construction. It may in fact be an
10 after the fact adjustment, I don't want to use
11 that as an out, but not all NOV's are related to a
12 problem that occurred during new construction.

13 Q. Were you present yesterday at all
14 for the testimony of some of the home builders who
15 were here?

16 A. No, sir, I was not.

17 Q. Would it surprise you if I told that
18 you some of the home builders, including the
19 representative of K. Hovnanian, expressed the
20 opinion that they would have no objection if the
21 law was amended to provide for COs to be issued
22 directly to the builders, obviously a flipping of
23 the DKM decision, that they would have no
24 objection to that, if that was the case?

25 A. We are a very diverse organization

1 and virtually nothing in terms of differences of
2 opinion would surprise me. I think we have to
3 think through whether what we are moving toward is
4 more of a leasehold arrangement, or whether in
5 fact what we are looking at is a fee simple
6 ownership where the owner then moves against the
7 causal entity for restitution and repair.

8 Not within the purview of this
9 Commission, but there is a case in front the U.S.
10 Supreme Court, depending on how it comes out the
11 entire United States may move to a leasehold
12 arrangement, but that's neither here nor there,
13 you may be just going down a path that taking this
14 law will bring us to anyhow.

15 COMMISSIONER MARINIELLO: Thank you.

16 BY COMMISSIONER EDWARDS:

17 Q. Mr. O'Keefe, I too have been around
18 for most of the creation of the existing housing
19 requirements in the state, other than the last few
20 years in which particularly the Board of Trustees
21 and home warranty program, et cetera, the
22 construction code, maybe even a couple
23 Commissioners beyond of the ones that you have
24 been involved in.

25 You have called for two interesting

1 proposals, one, the department of housing, and
2 second that is of significance is audits, audits
3 and operational audits. The issue of audits and
4 operational audits don't exist in New Jersey at
5 any level to any service at any time for any
6 citizen. It's not a problem that is unique to the
7 housing and the building inspection system and
8 what audits would prove, and operational audits
9 would prove of the escrow accounts and abuses of
10 the escrow accounts and or fees would be
11 interesting and significant, I think, as it would
12 be in many areas. I couldn't agree with you more.

13 The offer of a department of housing
14 is interesting to me because on the one hand you
15 indicate all of the appropriate, or most of the
16 appropriate regulations are in place but if they
17 are only enforced or used properly. Your answer
18 to their being used properly is another
19 bureaucracy called a department of housing which
20 would operate exactly the same way as the existing
21 department of housing without the bias of home
22 rule, but there would be no funding, the dollars
23 wouldn't be available the issues in DCA are
24 focused dollars, one person running a home
25 warranty program for all of new construction in

1 New Jersey is absolutely inadequate, the level of
2 resources being dedicated are inadequate to do
3 most of the enforcements you are talking about,
4 including registration enforcement registration,
5 registration and you recall it, is a licensing.

6 So I am very interested in how you
7 would take in the same governmental structure,
8 take those components out of the DCA and maybe
9 consumer affairs or for alterations and additions
10 and put it into all a department of housing which
11 would fundamentally change anything in the
12 existing governmental structure without the issues
13 that have come up during this hearing. And I am
14 not against the department of housing, if it has
15 the need for focus which it may have, with every
16 citizen in New Jersey living in a house the
17 department of housing may have its own right more
18 standing than any department we have, but that's
19 not solving the problems that are before us, that
20 is reemphasizing that issue.

21 We still have to deal with the issue
22 of what registration means, how does it get
23 enforced, do we call it registration or licensing?

24 The quality of subcontractors and
25 people on jobs around the state, particularly in

1 the area of new construction, production housing,
2 and the way production housing is managed,
3 adequately or inadequately. The victims of that,
4 of a production housing company, if it builds a
5 beautiful house is a success, but that one that
6 doesn't is a failure, but not a failure for the
7 builder, but a failure for everything the
8 individual who bought that house has in the world.

9 The builder doesn't have everything,
10 production builder doesn't have everything they
11 own in that person's house in that development,
12 but that citizen does. And the system isn't
13 protecting that citizen. They are left to the
14 mercy of the bad builder and the good builder, and
15 a lot of times they can't negotiate a contract,
16 they are fixed and not changeable. They can't
17 inspect the house during the process, they are
18 prohibited from being on the property in the
19 production facility.

20 There are significant problems
21 within the confines of the builder industry that
22 have been laid out by the hearings that we have
23 had, and I am looking for some meaningful
24 responses to how we fix the system and I will even
25 buy your department of housing as a worthy and

1 necessary issue to be debated politically, but it
2 will be put into twenty departments of state
3 government and no different than the department of
4 community affairs if it is not funded or
5 structured, doesn't have the proper structure
6 within it.

7 So what you call tinkering around
8 the edges is necessary to make it work. Twice I
9 have been involved in trying to fix a system of
10 government that wasn't functioning. The first
11 time as attorney general in motor vehicles. I
12 came back and this administration, we took another
13 shot at it and set up a separate Commission with
14 dedicated revenues and resources to it, which is
15 over the years I found that works.

16 I am looking for the builders, the
17 collective wisdom of your office and years of
18 experience in this area to deal with what you call
19 tinkering around the edges with real solutions in
20 a comprehensive way that may work and hearing from
21 that from you.

22 I think it is absolutely vital to
23 the success of this Commissions' recommendations
24 that we get that level of input. We are open
25 minded about all of the solutions on behalf of

1 everybody, but we do have to think of that
2 homeowner and we have three, four thousand of
3 them, this isn't one or two isolated who have had
4 inadequate construction of new homes in the state.

5 The warranty program hasn't
6 protected them, the courts haven't protected them,
7 DCA hasn't protected them, the building inspectors
8 haven't protected them, the builders haven't
9 protected them, and their entire lives have
10 been -- and everything they own probably has been
11 wrapped up in this one asset.

12 If I were to take a large production
13 builder, I will let him go unnamed, and take all
14 of their assets and say they are going to be
15 destroyed tomorrow, they would have a different
16 opinion about the outcome of things, as opposed to
17 the cavalier way they tend to treat one homeowner,
18 well, it's a bad development, we learned a lot
19 from that, but we've got to go on to the next one
20 and try to do it better.

21 From our perspective that's not a
22 good enough answer, and I would assume from your
23 perspective that's not a good enough answer. So I
24 would very much like to get a much more
25 comprehensive set of recommendations from you that

1 deal with -- and it can be in a department of
2 housing, that do the tinkering that's necessary to
3 fix the system so that it produces for those
4 homeowners today and in a changing housing market
5 that is rapidly changing, and construction that is
6 rapidly changing, testified to yesterday by the
7 production builders per se that right now
8 production building is going to about 25 percent
9 of housing of new home construction in this
10 country, and that has grown from 12 percent five
11 years ago and maybe four percent fifteen years
12 ago. It will be 50 percent within five or ten
13 more years.

14 So these are not things that I think
15 we need to take lightly. We are kind of pressed
16 for time so I am not going -- I don't want you to
17 elaborate on those right now, I know your Irish is
18 capable of doing that and doing it very
19 eloquently, as you have always represented the
20 industry, but we are very interested in hearing
21 your very educated thoughts on that process and as
22 quickly as you could get them to us would be very
23 helpful.

24 A. Thank you, Commissioner, and just
25 one point, and please don't take my comment about

1 tinkering around the edges to suggest that is
2 where I think the Commission is going.

3 But we, I think we all take to heart
4 what you have just said, and people can quibble
5 over the term registration or licensing, but I
6 dare say were you sitting there as Commissioner of
7 DCA today, looking at what was written into the
8 Act in 1977, you would recognize that the
9 Department's authority to suspend or revoke
10 registration is a authority that would be very
11 threatening whether you are a production builder
12 or a single lot builder, that given where we are
13 now I don't know that we need necessarily new
14 legislation on that particular aspect, what we
15 probably need, and this is why I go to the
16 department, and I don't mean this critical of the
17 extant credit department except to say that it has
18 got other priorities.

19 The laws that have been put on the
20 books get us substantial latitude, and I will try
21 to give you the recommendations that we can. I
22 think as your hearings have demonstrated and our
23 collective experience over all of the years that
24 you and I and others have been around us, these
25 are multiple systems. We have the MLUL, PREFDA,

1 codes, uniform site, on and on and some, and the
2 warranty system, so to suggest the warranty system
3 is broken. I think it just hasn't been attended
4 to.

5 There are probably questions as to
6 adequacy and forms of insurance but it is a unique
7 experiment and after twenty-seven years we say it
8 doesn't work, then it doesn't work, but I don't
9 know that it hasn't always been well tried. I
10 will try to get you what I can, but in the
11 day-to-day events of an association, we are both
12 dealing with proposals to keep adding and adding
13 and adding without anybody looking until you at
14 the systems that are in place and why they are not
15 dealing with the problems that you have
16 discovered.

17 So I will get you what I can in the
18 time available to do so, I know you are on a tight
19 schedule not only today but with respect to the
20 issuance of the report.

21 BY COMMISSIONER SCHILLER:

22 Q. Mr. O'Keefe, just a couple of quick
23 ones. The need for what you said the warranty
24 program and how we can remedy some of these things
25 and you eluded to the legislation that we have on

1 new cars how you can go back and have, I guess we
2 call it the lemon law. Is your Association in
3 favor of a lemon law for homeowners?

4 A. In reading the transcripts, I didn't
5 re-read them for this appearance, but as your
6 hearings went forward one of the things that
7 struck me, and you may have more insight into this
8 therefore than I. One of the witnesses talked
9 about the fact that there was an offer to buy back
10 the unit, and the questioning didn't pursue. What
11 happened in that particular situation.

12 And you know, again, you have
13 limited time so I can't fault that. The idea of a
14 lemon law is probably one of the things that we
15 come to grips with in terms of where are we in the
16 cycle. My guess is that that unit didn't gone
17 back because we are in an appreciating cycle. If
18 we were in --

19 Q. Not to cut you off. I am just
20 asking you a very simple question, I thought,
21 which is, is the builder association in favor of a
22 lemon law for homeowners?

23 A. We have not taken a position on it
24 one way or another, and I apologize for rambling,
25 Mr. Chairman.

1 Q. The second part of that, would your
2 Association entertain the support for a program
3 that would require a bond to be posted when a home
4 is built, and so that the bond would not be
5 released until the period of time when we were
6 sure the home was built properly?

7 A. In lieu of the warranty?

8 Q. Not in lieu of the warranty, but in
9 addition to the warranty, because it would be for
10 a much shorter period of time.

11 A. I am not sure --

12 Q. Well, we bond for infrastructure and
13 other things that the municipalities require of
14 you. I am wondering why as an individual we don't
15 bond for the building itself, and the homeowner is
16 the person that's going to be owning it, and I
17 think you said before it's not about the homeowner
18 because basically the builder is off the hook now
19 that DKM came out once the CO is issued.

20 So everything is really about the
21 homeowner, and we have to protect the homeowner
22 here, we are talking about all of these
23 protections and enforcement, it is talking about
24 protection of the homeowner. If the builders
25 built what they were supposed to build there

1 wouldn't be a need for all of that. Really those
2 are the least common denominators that we are
3 talking about.

4 So I am looking to what would your
5 Association that represents the builder be willing
6 to say hey, we can support this because we know
7 our members build the proper product that they are
8 selling to the consumer?

9 A. I can't imagine how such a bond
10 would operate, and would guess that if we had a
11 more rigorous operation of the warranty program
12 the premiums would rise or fall. Time and again
13 in monitoring the hearings, what strikes me is why
14 the warranty program wasn't stepping in, and I
15 know you have taken -- I just don't know why
16 that's not working.

17 Q. If you were here and monitoring the
18 hearings you would hear that the convoluted worry
19 of the warranties is inability to determine some
20 of these violations that would be claimed under
21 the warranty that aren't covered for a long enough
22 period of time.

23 I mean, 75 percent I believe of the
24 warranty program is controlled by the builders
25 themselves, because they are in a private program,

1 the public sector claims are processed more
2 readily, but there are a large numbers of these
3 things that are easily answerable, but it does not
4 satisfy the homeowners in the State of New Jersey
5 I think to say they have a homeowners warranty
6 program that can take care of their needs. I
7 think that's been obvious from all of testimony
8 that we have had, and I think if you talked to
9 homeowners you would find that out too.

10 A. Mr. Chairman, I do not have a
11 position on that. I would seriously question
12 whether economically such an instrument could be
13 created. I am not sure what you envision there.
14 So if we are talking about bonding for the total
15 value of the house --

16 Q. It wouldn't be dissimilar to bonding
17 for the infrastructure where it is reduced as the
18 house is built.

19 You saw the pictures today, you were
20 here for that part, where you saw this house was
21 being built and the tract was being built, the
22 deficiencies were there all of which the homeowner
23 doesn't know.

24 We expect the building inspectors to
25 bring it to the attention and stop it, when it

1 really should be the quality, just as you
2 mentioned in the car dealership, it could be the
3 quality of the builder of the car that could be
4 concerned about the consumer.

5 Saturn Auto, I think you can send
6 the car back and they will give you another one if
7 there is a problem, automatically.

8 The lemon law in the car industry I
9 think has worked very effectively with treble
10 damages and other basically sanctions on the
11 person producing the product, so I am just
12 wondering why the good builders wouldn't support
13 something like that.

14 I think there is a lot of good
15 builders out there and why should they not support
16 that and not worry about what happens with bad
17 builders, and eventually the market will take care
18 of itself.

19 A. Mr. Chairman, as I say, it's not
20 something I considered or heard about before this,
21 and I certainly would take it under circumstance.

22 Q. The only other thing I have is I was
23 surprised when Commissioner Mariniello asked you
24 what was the position of the Association on DKM
25 and you said basically you are in favor of it, and

1 yet two of your significant -- I presume they are,
2 are they members of your association, K.
3 Hovnanian?

4 A. I would rather, Mr. Chairman,
5 membership in the Association is something that we
6 don't discuss for obvious reasons. If the
7 Commission would like to get our membership roster
8 I am sure our counsels can work out an exchange of
9 that information.

10 Q. I didn't know that it was not a
11 public record of who belonged to your Association?

12 A. Yes, there is.

13 Q. There is not a public record of who
14 belongs to your Association?

15 A. Not that I am aware of.

16 COMMISSIONER SCHILLER: No further
17 questions. Thank you, Mr. O'Keefe.

18 Please call the next witness. We'll
19 try to end up at 1:30 for the break for lunch and
20 then we will take the other witnesses after that.

21 MR. GLASSEN: Would Mr. Vander Berg,
22 Mr. Jones and Mr. LaCosta please come forward.

23

24

25

1 EDWARD VANDER BERG, STEPHEN JONES,
2 AND ROBERT LA COSTA, after having been first duly
3 sworn, was examined and testified as follows:

4 MR. GLASSEN: Good afternoon,
5 gentlemen. Thank you for accepting the invitation
6 of the Commission to come and appear.

7 Beginning with my left, could you
8 introduce yourselves to the Commission and please
9 state your position within the Building Officials
10 Association of New Jersey and what licenses you
11 hold.

12 MR. LA COSTA: My name is Robert
13 LaCosta, construction official Township of Scotch
14 Plains. I hold a construction officials license,
15 building subcode, and building inspector, as well
16 as mechanical license.

17 MR. GLASSEN: What is your position
18 within the association.

19 MR. LA COSTA: I am the legislative
20 chairman.

21 MR. GLASSEN: Mr. Vander Berg?

22 MR. VANDER BERG: Edward Vander
23 Berg, I work for Wantage Township. I am the
24 president of the Building Officials Association.
25 I also am a licensed construction official,

1 building subcode, plumbing subcode, fire subcode,
2 fire official, and state housing.

3 MR. GLASSEN: And Mr. Jones.

4 MR. JONES: Stephen Jones, I am the
5 construction official for the Borough of Madison
6 and Florham Park, and I am the vice president of
7 the Building Officials Association.

8 EXAMINATION

9 BY MR. GLASSEN:

10 Q. For the purposes of the questioning
11 I would suggest, Mr. Vander Berg, as the president
12 of the Association if you would be comfortable
13 taking first crack at the question and if your
14 colleagues have anything to add that would
15 probably more efficiently.

16 Could you describe for the
17 Commission the Building Officials Association of
18 New Jersey, its function and who it is comprised
19 of and what it does?

20 A. Yes. Basically we have ten
21 chapters throughout the state, Passaic, Bergen,
22 Central Jersey, Essex County, Middlesex, Monmouth
23 County, Morris County, Sussex, Warren, Tri-County,
24 UCC of South Jersey, and Union County, as chapters
25 of the Building Officials Association of New

1 Jersey.

2 And our mission is basically not for
3 profit organization that recognizes the necessity
4 of code enforcement officials and their service to
5 the public safety, through code standards,
6 exchange of ideas, legislation, professional and
7 ethics standards.

8 Q. How long has the association been
9 around?

10 A. Our history goes back to in the
11 1920s.

12 Q. And on behalf of the Association
13 what I would like you to do is generally explain
14 to me what the Association does in terms of
15 education of its members with respect to issues in
16 the construction code industry, how do you assist
17 your memberships?

18 A. Basically we have meetings, and our
19 first format is to meet across the state on common
20 issues. So our chapters have generally one
21 meeting a month on their own, and then eight
22 months out of the year, or almost ten months out
23 of the year we travel and the executive board goes
24 from chapter to chapter to meet with all of
25 chapter representatives and the general body of

1 the membership.

2 Our elections are held in November
3 at the League of Municipalities, and our officers
4 are in a position for two years, and we spend
5 about -- it takes about ten years to go through
6 the executive board to become president.

7 Q. Does your Association hire any
8 professional staff?

9 A. No. We did one time, we tried to
10 hire a lobbyist and we did not have success with
11 that.

12 Q. Do you have any administrative
13 assistants or secretaries that assist you?

14 A. No.

15 Q. So your membership pretty much
16 serves each other?

17 A. Yes, we serve each other. We are
18 not-for-profit, and we participate within our own
19 confines of our own organization.

20 Q. As an association do you have a
21 role in the development of or contributing to the
22 debate about construction code improvements?

23 A. We are participating in what is now
24 the ICC Code Council and code change hearings. We
25 are active when we were with BOCA and any other

1 code institutions, we are members of that
2 organization and we have voting power for code
3 changes.

4 Q. And do you have any input into
5 activities of the Department of Community Affairs,
6 do you meet with the Builders Association, that
7 type of thing?

8 A. We have a liaison with the Builders
9 Association on common issues that have code
10 compliance for safety issues. We are very close
11 and active on the stair geometry change and we had
12 an opinion, and they had an opinion, and
13 internationally or nationally they changed the
14 code that had a great impact on the state of New
15 Jersey. We worked similarly in those issues
16 around code issues.

17 Q. Earlier I think you were here when
18 I asked the representative from the Builders
19 Association that the Commission has noted that
20 there's been a subject of significant deficiencies
21 in developments across the state and asked him to
22 comment upon them.

23 In your opinion where does the
24 process designed to prevent these problems break
25 down?

1 A. Well, you would have to go back to
2 the history. When the Uniform Construction Code
3 was first established and took it away from home
4 rule, local municipalities, and brought it back to
5 a state mandate for all municipalities to comply
6 in so doing that -- I lost my train of thought.

7 Q. Where does the process break down in
8 these numbers of deficiencies that we are seeing
9 in these houses?

10 A. Going back to the home rule issue,
11 it was basically the funding of the departments.
12 It was mandated structure for the regulations that
13 said that the departments were to be funded
14 properly and that the money that was collected was
15 to be used for code enforcement solely for that
16 purpose, and in that process the fees started to
17 be getting collected and the way the finance part
18 of local government works where the budgets at the
19 end of each January are cleared for new budget,
20 any monies that would be available to continue
21 running a building department over more than one
22 year is put back into the general fund.

23 So funding over a long term period
24 is what is the critical issue. The provision was
25 not made to mandate the municipalities to comply

1 with that part of the state statute.

2 Q. As an Association have you taken a
3 position on those funding issues?

4 A. Yes.

5 Q. Could you explain to the commission
6 what that is and what you have done to promote
7 that?

8 A. One of them, which we were
9 unsuccessful is the lobbyist, we tried doubling
10 into the legislation, and we are actually building
11 inspectors and not really lobbyists, so that was a
12 failure.

13 We then, through members of our own
14 executive board have put together our own
15 legislative committees to try following
16 legislation, to make recommendations to be
17 available for the political side to have input
18 where we could give our expertise on any bills or
19 legislation that may be coming forward.

20 We have also tried to introduce, we
21 were supportive, we supported the dedicated by
22 rider. Being that did not go forward either
23 because of the League of Municipalities and some
24 other issues that were closer to home with other
25 parts of government, we they be tried to come up

1 with a cash management plan where we would have
2 the regulations go over a two year cycle as far as
3 the money, so that to give you a little history.
4 The building permits are good for one year, and if
5 somebody comes in to a building department and
6 takes out a permit in December, those funds are
7 removed to the general fund from the building
8 department on December 31st.

9 So then the following year your
10 activities would be based on the funds you have
11 for that existing year, from January to December,
12 and local government does not want to take they
13 consider the burden of adding additional staff to
14 cover that because that fund is no longer
15 available, they have disappeared and gotten into
16 the general fund.

17 So there's been a tug of war between
18 what we need to satisfy our requirements under the
19 Uniform Construction Code, and what the
20 requirements should be that local municipalities
21 to comply with that need. It is very easy for
22 them to balance the budget on the monies that's
23 collected as a user tax for the building
24 department, so it's very easy for those funds to
25 disappear on December 31.

1 Q. So what you're suggesting is the
2 primary problem facing construction departments
3 and inspection process is one of funding?

4 A. Correct.

5 Q. Are there any other problems faced
6 by inspectors that prevent them from doing their
7 jobs properly?

8 MR. JONES: One of it -- just a
9 follow-up for Ed. One of the issues is not only
10 funding but the staffing that goes along with the
11 projects that are put forward. The municipalities
12 where you are dealing with large either townhomes
13 or single families developments, again, if your
14 funding is gone at the end of the year, but you
15 are making all of the inspections at the following
16 year, unless you make arrangements in your budget
17 and get it approved through your municipality to
18 hire additional staffing, you are always going to
19 be behind as far as the inspections are concerned.
20 That's one of the things we are constantly
21 involved in, in an active municipality.

22 MR. VANDER BERG: If I may add to
23 that, what happens is in a government process of
24 the funding of the budget, you are doing your
25 proposed budget going into November, December, it

1 is being enacted in January or February, and
2 approved by the Department of Community Affairs
3 sometime generally in April, and then the funds
4 are no longer on a temporary budget but on a
5 permanent budget.

6 Once you hit that hypothetical
7 April, and the budget is approved, very few
8 municipalities will put on any additional staff,
9 even if the building department is being overrun
10 by a large builder.

11 So I am trying to explain it in a
12 technical sense from a layman's point, the funding
13 issue and how the cycle works between the budget
14 process January to December and where the money is
15 transferred out of existing accounts and go into
16 the general fund is what has a major impact on
17 working building departments.

18 Q. Does this problem develop in
19 communities where large developments are
20 occurring, is that where the problem exist, or the
21 older more stable communities?

22 A. It is a percentage base to a given
23 establishment. If you are working on the previous
24 year's budgets as anticipated funds, and the next
25 years funds that are actually going to come in, if

1 you did not have the growth and the expansion of
2 that percentage, maybe thirty homes on a sixty
3 home building, you know, you increase the
4 percentage base. Your building department was set
5 up to operate the previous year as anticipated
6 revenue. If the timing of the new stress on the
7 building department comes in after the budget has
8 already been started, that process has started
9 then there is no provisions to add the additional
10 staff for the increased load.

11 So it could be as significant as a
12 100 percent increase, going from fifty homes being
13 built in your community a year to one hundred
14 homes.

15 Q. I believe the prior witness talked
16 about home rule and there has been some discussion
17 before the Commission about regionalization of
18 inspections.

19 Does the Association have a view on
20 that based upon the experience of that its
21 membership.

22 A. Well, from a personal standpoint I
23 have experienced, I have been in three regional
24 building departments that tried regionalization
25 after there was supposedly an incentive, and very

1 few of them work out. Politics gets in the local
2 municipality, who is paying for what, and what's
3 the division of the work load creates a big
4 hassle, so we have been very unsuccessful in
5 having regional building departments.

6 In the process that was outlined by
7 the Department of Community Affairs and the
8 regulations enforced by the Department of
9 Community Affairs but as outlined in the UCC is
10 not adequate to handle real life scenarios.

11 Q. You say you were involved in three
12 separate efforts to regionalize?

13 A. Yes, I was involved in one which was
14 Harvest in Franklin and in Hamburg, and involved
15 in a regionalization with Wantage and Hamburg and
16 Sussex and with Sussex and Wantage, so over that's
17 over a period of five years, six years.

18 Q. What are the differences by the
19 municipalities in their approach? I think you
20 mentioned politics and regulations being some of
21 the differences in trying to manage it. Could you
22 be a little bit more specific for the Commission?

23 A. Well, to answer the other part of
24 your question too, the first one is that our
25 Association's really not in favor of

1 regionalizations only because they haven't had a
2 proven track record of working. We feel the
3 building departments should operate for the
4 municipality that they are geared by and that the
5 municipality should take the responsibility for
6 their own community.

7 The funding, again, has been the
8 issue. How much percentage of work can you do for
9 one town over the other town, the amount of
10 permits collected. Most of the time with the
11 regionalizations they are around community borders
12 versus territorial borders, so you have the center
13 of the hub where the town has a little mini city
14 in the middle of it and then outskirts of the
15 area. One is always needing more service than the
16 other and one doesn't want to pay more than the
17 other.

18 Q. And that gets back to the other
19 point that you had that the municipalities are
20 taking the building permit fees at the end of the
21 year?

22 A. Correct. And those interlocals what
23 we wound up doing because there wasn't a dedicated
24 fee by rider mandate, those fees would then go
25 back to each municipality.

1 So in the way they designed those,
2 the people would come in, write a check for the
3 neighboring town that was doing the enforcement,
4 those fees would be returned to the town of
5 jurisdiction and then they would be sent a bill on
6 how much it cost to run the building department.

7 Q. The commission has seen instances
8 where inspectors are working in multiple
9 jurisdictions. Does the Association have a
10 position on that, or what is the experience of
11 your membership with respect to that issue?

12 A. Well, we find that it is easy for
13 towns that do not very heavy work load to do cost
14 effective and hire somebody to do the minimal
15 inspections that they do have because not every
16 town can have a full-time building department.

17 Some areas there are some problems
18 with that, DCA has done a fairly good job of going
19 around and checking those areas. I know that
20 regulatory affairs is actively pursuing that
21 again, or ongoing with a little more aggression.

22 Other than that, our position as the
23 Association is we feel that there is a need for
24 some part-time work, but where you are supposed to
25 be is where you need to be, you should not be

1 sharing the time with another municipality.

2 Q. Earlier this morning I think you
3 were here when the two inspectors from Stafford
4 Township testified, and they spoke about the
5 additional inspections that are required of them,
6 multiple inspections and projects not being ready
7 to be inspected.

8 Has your Association or the
9 membership of your Association experienced that?

10 A. Yes, that's a big problem. The
11 anticipation of trying to get work done before the
12 inspector shows up, a lot of the time even though
13 the regulations require that the work is done
14 before you call for the inspections, the
15 regulations basically say that you need
16 twenty-four hour notice and then three days to do
17 it.

18 Most of the time when the contractor
19 calls they anticipate that you are going to be out
20 the same day as when they call, and they are also
21 trying to complete the job based on the fact that
22 when they think you came the last time. If you
23 get there at three o'clock in the afternoon they
24 are still working on stuff that they believe would
25 be ready by the time you show up.

1 If you happen to have a shorter
2 schedule and show up at two o'clock they are not
3 going to be ready.

4 Q. Would fees for these additional
5 inspections that you are required, or additional
6 trips for inspections, I guess you wouldn't even
7 do the inspections, to create a punch list or to
8 advise the builder how to complete the project,
9 would that ease some of your budgetary burdens?

10 A. It may, but then the problem is you
11 take away the effectiveness of the enforcement.
12 Because then it appears that you are having a
13 problem in order to create more fees, and I don't
14 know any building department that really wants to
15 run their building on notices of violations and
16 collect of fees, penalties. That's not the right
17 way to build a community and to get trust in what
18 you are doing.

19 So I don't know, I don't have any
20 answer for that. I know that charging for repeat
21 inspections is not a good practice.

22 Q. What impact has the DKM decision
23 had on inspectors? Are you going out and fining
24 homeowners now, does the Association have a
25 position?

1 A. We agree with the court on how to
2 handle it based on the laws the way they are
3 written from our layman's terms. We believe that
4 the court had to make that decision. We believe
5 that there needs to be another method to replace
6 what we did have prior, where we noticed the
7 contractors for the deficiency.

8 The testimony that was brought
9 forward earlier is adequate that the homeowner
10 does not have any input, the owner is buyer
11 beware, and all of a sudden they get a notice from
12 the building department that they have a problem,
13 that we have been instructed would be transferred
14 to the builder through the owner.

15 So we are no longer allowed to
16 notice the contractor, everything goes to the
17 proper owner. We cannot direct a contractor,
18 which we had done in the past, to go back on
19 somebody else's property and fix a violation,
20 because they do not really have the right to be on
21 the property. So from those technical ends it
22 created some hardship.

23 Q. With respect to the Association, do
24 you have any method for disciplining your own
25 membership for ethical problems, or situations

1 that you run into them, or do you participate in
2 that process?

3 A. We haven't had the necessity to pull
4 anybody's membership, that has not happened. We
5 do participate with the Department of Community
6 Affairs by having members of our association sit
7 on a peer review. We do refer items that we hear
8 to regulatory affairs, for them to investigate
9 being that they are the licensing agency. So we
10 put it all back on to DCA for enforcement of that
11 type of issues.

12 Q. As you are aware, the commission
13 has found instances where gifts and gratuities
14 have been given to inspectors. Does the
15 association have a position on that?

16 A. We don't agree with any of the gifts
17 or any of that stuff coming. It's not part of our
18 ethical standards, almost all of the
19 municipalities that I know of, or all of the
20 municipalities I know of have a conflict of
21 interest and have ordinances and employee policies
22 that prohibit any of that activity.

23 So besides being a part of the DCA
24 requirements, we have a conflict of interest
25 statutes that are enforced with the Department of

1 Community Affairs. It is also by most employers
2 not permitted.

3 MR. GLASSEN: Thank you. Mr.
4 Chairman.

5 COMMISSIONER SCHILLER: I just have
6 a couple of quick questions. I think you did say
7 you were here on for Stafford Township inspectors.

8 I was just wondering, they came
9 across as did some of the inspectors yesterday
10 saying they are really being used as supervisory
11 inspections for the builder, for the production
12 builder in particular.

13 Starting with you, Mr. LaCosta, so
14 you have to give us some kind of an answer here,
15 what is your reaction to that.

16 MR. LACOSTA: I tend to agree with
17 them because a lot of times with the major
18 developers you do have to go out and do the same
19 inspection more than once in order to obtain
20 compliance.

21 A lot of times you will see that
22 they have a super on the job and he may be there
23 three or four months, you establish a
24 relationship, you know, a repertoire of what you
25 expect from them at that time of the inspection,

1 for whatever reason they are gone, and then you
2 have to start all over again, and the same
3 situations that you worked towards getting squared
4 away by going in on the first building or two are
5 all starting to recur because now you have a new
6 super and the same things are happening again.

7 So yes, you tend to end up to be
8 their eyes and construction manager or their
9 supervisor.

10 COMMISSIONER SCHILLER: Mr. Vander
11 Berg?

12 MR. VANDER BERG: Yes, I saw what
13 they were presenting and their community supports
14 them fairly well in allowing them to go over what
15 the minimum amount of the code allows us to do in
16 the sense of the quality control.

17 We are really inspecting mostly life
18 safety issues and there is a specific amount of
19 areas that we are allowed to inspect and some
20 areas are outside of our scope, although we do try
21 to do it.

22 Some municipalities do not support
23 their officials to do as good and as zealous job
24 as those two officials were allowed to do by their
25 community. That's been part of the other problem

1 is the inspectors are held to accountability and
2 high standards, but the municipalities are not
3 held to a standard to comply with the regulations
4 that were established by the UCC.

5 The Uniform Construction Code was
6 adopted a long time ago, and has migrated up to a
7 very still active document, but in that aspect the
8 municipalities, and I don't know of one
9 municipality that's ever been sanctioned for not
10 complying with the UCC.

11 Now I know there have been several
12 inspectors that have lost their license, or had
13 additional training, or been censored in some way
14 by the Department of Community Affairs with going
15 through peer review, our Association agreed that
16 they should be censored, but we do not know of one
17 municipality since 1978, with the inception of the
18 UCC that has ever been held accountable for not
19 complying with the regulations.

20 CHAIRMAN SCHILLER: Mr. Jones, have
21 you found that your office has been used the same
22 way, as a quality control for the builder?

23 MR. JONES: Unfortunately that is
24 the case, but I have also found that in the
25 beginning of a project, especially a larger

1 project, it is incumbent upon you to have a sit
2 down meeting with all principles involved with the
3 project to begin with to set out the ground rules
4 for how you expect the project to be run.

5 If you don't, as Mr. LaCosta said
6 before, you have a tendency to run through
7 superintendents on projects, or field supers,
8 where once you have established a protocol with
9 one individual you come back and there is somebody
10 else there.

11 We have run into problems with
12 language on job sites. If I can't communicate
13 with you I can't tell you what the problems are.
14 There has to be somebody on the site that has at
15 least a functional knowledge of the English
16 language and those are some of the issues that we
17 were running into.

18 COMMISSIONER SCHILLER: Thank you.
19 Commissioner Edwards.

20 COMMISSIONER EDWARDS: You just were
21 embarking on a very intriguing part of the
22 problem, and that is municipal compliance.

23 By municipal compliance you mean not
24 providing resources necessary for the job function
25 that you are required by DCA by the statutes and

1 the Uniform Construction Code?

2 MR. VANDER BERG: Improper staffing,
3 correct.

4 COMMISSIONER EDWARDS: Improper
5 staffing is what you are really talking about.

6 MR. VANDER BERG: Correct.

7 COMMISSIONER EDWARDS: That would
8 require DCA or someone else to do audits of the
9 municipalities to ascertain the work load that you
10 have, operational wise and financial wise in order
11 to be able to issue a report that says that the
12 municipality is wrong, but they are not doing that
13 right now.

14 MR. VANDER BERG: They did, in my
15 experience I had three municipalities that were
16 sent letters by Department of Community Affairs
17 three years consecutively in a row that they were
18 not properly staffing the department. They did
19 take action to notify the municipalities, but
20 there was no repercussion by not increasing the
21 staff.

22 So they did gone on record three
23 years consecutively in a row directly to the
24 mayors on deaf ears, and nothing was changed.

25 COMMISSIONER EDWARDS: There was no

1 sanction with that or any penalty or anything like
2 that?

3 MR. VANDER BERG: Right. Then they
4 did the assessment showing the need was there and
5 they broke down the statistics to the
6 municipalities, and there was no sanctions held to
7 bring them into compliance.

8 MR. JONES: Unfortunately what you
9 also see is re-educating mayor and council and
10 administration as to what the requirements are
11 with the UCC for the individual departments. It
12 is common, unfortunately, for some of the elected
13 officials not to realize what the responsibilities
14 are of the Uniform Construction Code and how we
15 operate within the guidelines of the state laws.

16 MR. LACOSTA: To elaborate on Mr.
17 Jones, I think it takes a proactive approach on
18 the local administration because, they know, for
19 example, if you are dealing with land use and you
20 have a one hundred lot subdivision that is going
21 to be approved and it's before your planning
22 board, you have the mayor and usually another
23 council person who sit on that, it gets approved,
24 they know that you are going to have one hundred
25 homes built in the next year, it gets approved in

1 July or August of the previous year, and you put
2 in your budget for additional staffing and it
3 doesn't happen. It is really a problem with the
4 administration not being proactive, and then you
5 end up with a problem of having your department
6 understaffed and overworked.

7 COMMISSIONER EDWARDS: Thank you
8 very much.

9 COMMISSIONER MARINIELLO: If a
10 person comes in and asks for an inspection, there
11 is a certain time period in which the inspector is
12 expected to provide that service. Correct?

13 MR. LACOSTA: Yes.

14 COMMISSIONER MARINIELLO: What is
15 the repercussions if it is not done within that
16 time period?

17 MR. VANDER BERG: My understanding
18 is that you have twenty-four hour notice, three
19 days to do the inspection. At that point the
20 applicant or the permit holder has the right to
21 call the Department of Community Affairs and
22 express their concerns. The work cannot proceed
23 until the work is actually inspected.

24 COMMISSIONER MARINIELLO: But that's
25 not really true with the CO, right? If the

1 inspections have been done for a CO and the
2 application is put in to get a CO, the inspections
3 have already been done, now they have a certain
4 amount of time period, the construction official,
5 to sign off on the CO. Correct?

6 MR. VANDER BERG: Ten days.

7 COMMISSIONER MARINIELLO: And if
8 they don't sign off within the ten days is it
9 automatically provided, at least you can't prevent
10 someone from inhabiting the home based on the fact
11 that there is no CO?

12 MR. VANDER BERG: Right, there has
13 been some technical bulletins and information on
14 that, issuing temporary COs if certain things
15 comply, then you are mandated to give a CO. A
16 temporary CO and a CO are pretty much the same
17 because you have a very hard time trying to revoke
18 a temporary CO.

19 COMMISSIONER MARINIELLO: One of the
20 things I am struck by, and I probably sat through
21 as much testimony as anyone on the Commission both
22 privately and publicly on this topic. I have
23 heard the story about being under funded and I am
24 certain that it is true in many many
25 municipalities.

1 In fact, just yesterday in Wall
2 Township we had a gentleman that testified that
3 his staff was somewhere between five and six
4 inspectors, and we know from all of our
5 investigations that he had two or three major
6 developments going on at one time, in addition to
7 significant commercial development going on.
8 There is just no way those inspections could have
9 been done properly.

10 But in all of that testimony that I
11 heard I have yet to hear from one construction
12 official or DCA official or builder who has told
13 me that they had to take action because an
14 inspection wasn't done, that they had to report to
15 DCA, or they had to move forward without the CO
16 being signed off on.

17 And so, what that tells me is that
18 there must be some reluctance on the part of the
19 construction official or the inspectors, the
20 individual subs, to say I can't do it, I don't
21 have the facility, I don't have time to do what I
22 need to do, or else maybe that attention might get
23 to those municipal officials earlier.

24 I mean, I would guess having done
25 municipal law for most of my practice, that if I

1 found out that our construction office was
2 allowing people to inhabit buildings without COs
3 being issued, and the reason for that was because
4 they didn't have the time to do it, I would think
5 there would be some -- first of all, I would be
6 worried about the liability of the municipality,
7 but I would think there would have to be some
8 solution taken at some point in time of another.

9 I am just wondering why, after
10 hearing all these officials testify I have not
11 heard one person tell me that they threw their
12 hands up and said I just can't do it. We have
13 heard about drive-by inspections, we have heard
14 about inspections being done without plans, and I
15 am sure a lot of the reasons why they do them
16 without the plans is because it would take too
17 long to get the builder to comply with getting you
18 the plans and we know the time pressure you are
19 under, but why hasn't somebody said at some point
20 during to this Commission, hey, I had to let these
21 gone through, or why hasn't DCA said we received
22 calls from this builder saying this is taking
23 forever, you have to step in and do something
24 about it.

25 And I understand the funding is an

1 issue, but what is the reason why they would
2 rather in some cases give a quicker inspection or
3 a not sufficient inspection, or in worse case
4 scenario no inspection, which we had evidence of
5 that too, rather than step up and say I just can't
6 do it.

7 MR. JONES: Well, there is a couple
8 of parts to that. The first off, there is an
9 individual in the Department of Community of
10 Affairs that will do municipal audit if it is
11 requested by the municipality through the
12 construction office. I have this that done twice
13 and also been audited twice by the DCA in order to
14 determine whether or not my staffing was adequate
15 for the amount of construction activity that is
16 was going on in the municipality.

17 COMMISSIONER MARINIELLO: Do you
18 have to ask for it or do they come to you and pose
19 it?

20 MR. JONES: It could be both. The
21 reason I say that it depends. If you show a
22 sudden increase in the amount of construction
23 activity that will raise a red flag at DCA and you
24 may get a phone call saying what's going on, at
25 first you are doing thirty or forty and now you

1 are doing two hundred permits a month, so it
2 wouldn't be uncommon for the DCA to show up
3 through the regulatory affairs division and ask
4 what's going on in your office.

5 Also, we have to file reports
6 electronically with the state every month to
7 indicate the amount of work that's being done, and
8 it also lists the state training fee that goes
9 down to DCA, that indicates how much work, how
10 many permits have been issued, and the value of
11 construction taking place in the municipality, and
12 that also raises a red flag if there is a sudden
13 change. So unfortunately sometimes the request
14 falls on deaf ears to the municipality itself.

15 You are still obligated to make the
16 inspections, whether you have enough staff or not,
17 so it may mean that you are doing more inspections
18 than you should be doing in a day, even whether or
19 not you have asked the municipality to increase
20 the number of inspectors.

21 One of the other issues you are
22 dealing with is we are not inspecting for quality,
23 and as harsh as that may sound, we are inspecting
24 for code compliance, and the way the state works
25 is it is minimum standard requirements based on

1 the code adopted in the state.

2 As one of the previous individuals
3 that was up here testified to, these are
4 performance based codes, not specification codes.
5 You won't find in the code that it says you use
6 ABC's brands of something, it will tell you what
7 the construction needs to comply with.

8 How you get to that, is where we
9 come in as far as the inspection process is
10 concerned. A lot of it is time consuming, and
11 either you have the right staff in order to do the
12 inspections adequately, or it is going to be
13 suffering in quality for our end of it for the
14 inspections. You can't afford that.

15 MR. VANDER BERG: That's what's
16 created some of the perception on some of the
17 stories that are out there with the municipalities
18 and the inspectors not being able to do their
19 inspections correctly, because of the lack of
20 time, which is resulting in a lack of funding for
21 improper staffing.

22 COMMISSIONER MARINIELLO: I am just
23 wondering, though, it seemed to me even listening
24 to the testimony yesterday of Wall Township, that
25 I don't know in that instance where a man's office

1 was completely overwhelmed that he did enough in
2 my mind, or at least he didn't portray it that way
3 to me yesterday that he did enough in his mind to
4 knock down the doors of that administration and
5 say we need help, and maybe had a few people
6 bought homes at Four Seasons at Wall or Allaire
7 Country Club estates and they found out they had a
8 CO or they were able to close without a CO because
9 the building department didn't have the
10 opportunity and time to even process the paperwork
11 that's necessary, that they would have been
12 knocking on the door of the mayor and council at
13 some point in time or another and saying this is
14 ridiculous, and so it is one way to get their
15 attention.

16 Unfortunately some ends of
17 government don't move until they have to, and one
18 way to do it is by saying I can't do this.

19 MR. VANDER BERG: The side bar of
20 that, is that -- being you brought it up, I mean
21 nobody has commented on it, three of the
22 municipalities I brought it up for three years in
23 a row staffing and the side bar of it is that they
24 got rid of me. So if you really wanted to hear it
25 I am sure Mr. Glassen has the facts and the

1 documentation. They even brought disciplinary
2 charges against me for testifying last time here.

3 So I am saying if you want to take
4 both sides of the story, there is political ends,
5 on both ends and just as everybody has tried to
6 say, including the Commissioner here, that there
7 is bad and good on both sides and bad builders and
8 bad building officials, there's also been bad
9 politicians, and it's very hard when you are up
10 against a political provision. I have survived an
11 immense pressure for a solid five years.

12 So it is out there, and you still
13 try to do your job, gone to work and also become a
14 breadwinner for your family. But it is hard to
15 buck the system.

16 COMMISSIONER MARINIELLO: Thanks.

17 COMMISSIONER SCHILLER: Thank you.

18 I just want to follow-up one question that
19 Commissioner Mariniello brought up on and also
20 Commissioner Edwards brought up yesterday.

21 I notice you are all construction
22 officials so you have staff that work for you, and
23 it was the impression left yesterday that somehow
24 or another you don't have enough power in that
25 office to curtail or enforce your inspectors to go

1 out and do what they are supposed to do, and I
2 just would like to hear briefly, do you think you
3 have sufficient control and operation of the
4 administrative part of your office in each office?

5 MR. LACOSTA: I believe so. I think
6 I have been lucky in Scotch Plains because they
7 are very proactive and they understand that in
8 order to do a proper job you need the proper
9 tools. Scotch plains is probably just like a lot
10 of the other towns that you see, they are
11 demolishing homes, building new homes, you got a
12 COAH obligation, they are building Mt. Laurel, and
13 you have got to do the job.

14 I have been lucky, like I said, they
15 have given me the staff, they have given me the
16 tools, and they have given me the funding.

17 Now my staff right now, because of
18 the work load is probably stretched to the limit.
19 We just got finished with eight or nine schools,
20 and plus a few new major developments. Schools,
21 as you know, they work over the summer, they just
22 grind you to death because they start the last day
23 of school and they got to be opened before school
24 opens again, and you got to be there and you got
25 to be all over. Schools don't pay any permits

1 costs, so the burden to do the inspection work on
2 the schools is really being laid on the people who
3 have taken out the permits and they have paid for
4 it. Our school work is over and now we are
5 getting into our residential work, which is quite
6 a bit again. So my staff is probably right about
7 at their limit.

8 MR. VANDER BERG: Yes, I think
9 administratively we have the tools we need to
10 enforce the inspectors. One of the side bars is
11 that if that inspector has a certain technical
12 expertise that you don't have a common license in,
13 then you can't challenge him or her on their
14 technical aspects of it.

15 But as far as the administrative
16 end, showing up and complying and how to deal with
17 the public and perform your job, I think we have
18 sufficient tools as administrative head
19 construction official to do the job.

20 COMMISSIONER SCHILLER: Mr. Jones,
21 do you feel the same?

22 MR. JONES: I am a one trick pony in
23 one town, I am building inspector and subcode
24 official, so if I can't get myself to go out and
25 do an inspection I have a problem.

1 In Florham Park I have been very
2 fortunate in the towns I have worked for over the
3 years to have the full support of mayor and
4 council and administration to basically have fund
5 whatever I have asked for. I have was able at
6 Florham Park to take on additional inspection
7 staff in order to take on the townhouse complex
8 that we had going in. So as far as that is goes
9 concerned I have been very fortunate.

10 If I may, before I forget, because
11 of a couple of things that were brought up in
12 previous testimony, with regard to things that
13 should be done for the transparency issues, one
14 was the financial disclosure statement.

15 I know that in my municipalities
16 each year I have to file a financial disclosure
17 statement as the department head, so I don't know
18 if that was one of the issues that was missed.
19 Certified hours was brought up. At the end of the
20 year or each year you are required to file with
21 the Department of Community Affairs your outline
22 listing all of the employees in the department and
23 the hours that they physically are in the
24 municipality. That certainly limits the ability
25 to double dip in most towns, you have to list

1 where you are and when you are there.

2 Lastly, the question came up with
3 regard to who is where. If you access the
4 Department of Community Affairs web site there is
5 actually a list of all of the municipal
6 inspectors, the current list, and which
7 municipalities they currently are employed by, so
8 that is readily available to anybody who has
9 access to the Internet and simply go on the web
10 sight and take care of that.

11 The question came up also earlier
12 with regard to the policing of ourselves.
13 Throughout peer review process through DCA, and I
14 am a recent appointee to the peer review board,
15 there are a number of things that DCA takes into
16 account, not the least of which is either economic
17 sanctions for an individual that's found to be non
18 compliant with the requirements, loss of
19 licensure, revocation or sanctions, or requirement
20 for re-education and that may mean going back and
21 certainly taking the educational classes over
22 again or any combination thereof. So there is a
23 mechanism in place by which we are involved in
24 policing ourselves. Hopefully that clears up the
25 question.

1 COMMISSIONER SCHILLER: Thank you,
2 gentlemen. We will come back at 2:30.

3 (Luncheon recess 2:00 p.m.)

4 (Reconvene 2:37 p.m.)

5 COMMISSIONER SCHILLER: Good
6 afternoon, ladies and gentlemen. We'll begin with
7 the first witness.

8 MS. SAROS: The next witnesses are
9 Thomas Kenyon, and Paul Pogorzelski.

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1 THOMAS KENYON and PAUL POGORZELSKI,
2 after having been first duly sworn, was examined
3 and testified as follows:

4 MS. SAROS: May I ask each of you to
5 state your full name for the record?

6 MR. KENYON: My name is Thomas G.
7 Kenyon.

8 MR. POGORZELSKI: Paul E.
9 Pogorzelski.

10 MS. SAROS: Gentlemen, first I would
11 like to establish your credentials. Mr. Kenyon,
12 what position do you hold with New Jersey Planning
13 Officials?

14 MR. KENYON: I am the president, I
15 represent 8,200 members of planning boards across
16 the state, we have seven hundred boards and about
17 four hundred professionals.

18 MS. SAROS: Do you also represent
19 zoning boards?

20 MR. KENYON: Oh, yes. That's
21 planning and zoning boards, both.

22 MS. SAROS: And you also chair the
23 organization's educational operations. Is that
24 correct?

25 MR. KENYON: That's correct.

1 MS. SAROS: What position do you
2 hold with the Township of Tewksbury?

3 MR. KENYON: I am a committeeman. I
4 was mayor in 2002.

5 MS. SAROS: You also have been chair
6 of the New Jersey League of Municipalities
7 Committee on the Highlands and a member of the
8 Affordable Housing Committee. Is that correct?

9 MR. KENYON: That's correct.

10 MS. SAROS: Thank you. Mr.
11 Pogorzelski, what position do you hold and for how
12 long have you held it?

13 MR. POGORZELSKI: I am a partner
14 with the firm VanCleeef Engineering Associates, and
15 also consulting municipal engineer for Hopewell
16 Township, and I have served in the capacity as
17 Hopewell Township engineer since the early 90s.

18 MS. SAROS: And you are a licensed
19 professional engineer in the State of New Jersey?

20 MR. POGORZELSKI: I am.

21 MS. SAROS: And in which other
22 states are you also licensed?

23 MR. POGORZELSKI: Delaware, New
24 York, Connecticut and Pennsylvania.

25 MS. SAROS: And for the record, Mr.

1 Pogorzelski, you provided the Commission with
2 copies of two developers construction agreements
3 that the Township of Hopewell has and those are
4 being made part of the record and I thank you for
5 that.

6 And let me also thank you for
7 providing to the Commission two charts which set
8 forth home builder completion issues and developer
9 default issues that very clearly and concisely
10 states what those issues are and we appreciate
11 that.

12 Mr. Kenyon, Let me begin with you.
13 When a builder constructs a development, what
14 aspect of that is the municipality ultimately
15 responsibility for?

16 MR. KENYON: Well, Counselor, if you
17 start at the beginning, obviously the builder or
18 the developer comes to the planning board,
19 obviously he has to fill out an application and a
20 checklist, obviously he has to supply site plans
21 that consist of everything from the piece of the
22 ground to things like slopes and the road grading
23 and everything.

24 He gets a preliminary approval which
25 allows him to go and begin working the property

1 that he has, he is going to put his development
2 on. And that means he is laying it out, he is
3 putting in all of the necessary surveying stuff
4 and laying the whole thing out, and then when he's
5 got that done, and I am being general here, he
6 comes back for his final approval, and that is he
7 says to the board, to the planning board, I am
8 ready to go, here I am, I am all set. The
9 planning board gives him final approval and signs
10 off on the plans.

11 Now in this process there is also a
12 resolution drawn up by the planning board and the
13 applicant, and it spells out what he is going to
14 do in that site plan, and each one of those
15 resolutions are particular to the particular
16 application.

17 So in one application it may say one
18 thing, and another application it may say
19 something else, but generally it all goes through
20 that, and in the final end it says this is
21 approved if and when they get all of the approvals
22 from the state and the county, because if you are
23 on a county road, for instance, you have to get
24 permission from the county planning board, if you
25 are -- obviously, we know that the state has a lot

1 of rules and regulations in place that the builder
2 or the applicant must more than anything else must
3 comply. Then when it is signed off and he is
4 ready to do all of his work, that's when it shifts
5 over to the municipal responsibility.

6 As he goes through his work he has
7 to have certain inspections. Now the planning
8 board engineer can do that, the municipal engineer
9 can do that, or they can even hire a third party
10 to do that inspection. He puts money up for those
11 inspection fees, putting in sewers, putting in the
12 curbs, putting in the sidewalks, putting in the
13 landscaping inside the municipal right-of-way,
14 because the municipality has a right-of-way down
15 that new road, and that's where the municipal
16 engineer, that's where they take over. It is the
17 responsibility of the municipality from that point
18 on to make sure that everything is put into place
19 correctly.

20 And obviously in residential site
21 standards where the state tells you or outlines
22 what you must do, the inspectors follow those
23 right to the letter.

24 MS. SAROS: Most of the site
25 improvements are completed as the development

1 progresses?

2 MR. KENYON: That's correct.

3 MS. SAROS: Many times what may be
4 left after the development goes up and is not
5 completed by the builder.

6 MR. KENYON: All I can tell you is
7 that the public improvements includes streets,
8 grading, pavement, gutters, curbs, sidewalks,
9 street lighting, street signs, shade trees,
10 surveyors monuments, fire prevention features,
11 water mains, culverts, storm sewers, sanitary
12 sewers and systems, but not including septic
13 systems, systems intended for individual houses,
14 that's not in the purview of public improvements.

15 MS. SAROS: What typically does the
16 builder not complete that the municipality then
17 becomes responsible for?

18 MR. KENYON: Well, normally the last
19 thing done is the top dressing to the road, and
20 many times the builder will walk away from that,
21 many times included in that also can be some
22 landscaping along the road, like berming or
23 putting in shade trees and things of that nature.
24 They will walk away from that, and because quite
25 frankly in many instances they have taken their

1 crew and moved on to the next job.

2 MS. SAROS: Are there other reasons
3 why the builder may not complete them?

4 MR. KENYON: He may go bankrupt.
5 That's happened.

6 MS. SAROS: How common a problem is
7 this throughout the state?

8 MR. KENYON: I think that it is
9 usually a situation where most developers it is
10 like a snowball running downhill. They have to
11 keep going, they have to keep going, because they
12 move along and move along and move along and move
13 along and obviously --

14 MS. SAROS: From one development to
15 another?

16 MR. KENYON: That's correct, from
17 one development to another, he moves his crew on
18 so forth and so on, and depending on the local
19 ordinances that cover guarantees and inspections,
20 there are different years, there are
21 different -- in the case of my town, our guarantee
22 is for two years, some towns is more, some towns
23 it is less. The money he has to put up is 120
24 percent of what the municipal engineer or the
25 planning board engineer, in some cases they are

1 the same, in some cases they are different,
2 consider to be the cost of the improvements, the
3 public improvements.

4 MS. SAROS: If the builder does not
5 complete all of the infrastructure, is the
6 municipality under any legal requirement to report
7 that builder to the Department of Community
8 Affairs?

9 MR. KENYON: No, not to my
10 knowledge.

11 MS. SAROS: Mr. Pogorzelski, has
12 your township encountered a problem with the
13 defaulting builder?

14 MR. POGORZELSKI: Several times.

15 MS. SAROS: How does a municipality
16 protect itself against that possibility?

17 MR. POGORZELSKI: Well, the primary
18 method, again, as Mr. Kenyon indicated, is the
19 performance guarantee that's afforded to the
20 municipality under the Municipal Land Use Law.

21 There are other ways in addition to
22 that, such as the developers agreement that I
23 provided copies to the committee of, that is sort
24 of a separate agreement with the municipalities
25 itself, not the planning board, but the primary

1 form of surety is real the performance guarantee
2 itself.

3 MS. SAROS: A performance bond?

4 MR. POGORZELSKI: It could be a
5 bond, which bond is really an insurance policy
6 where you pay an annual premium that's a
7 percentage of the value, face value of that bond.

8 It could be a letter of credit that
9 really ties up some of the assets of the builder,
10 or it could be cash, so there is three primary
11 forms.

12 MS. SAROS: Of those three items,
13 who decides which the builder's to obtain?

14 MR. POGORZELSKI: The builder really
15 makes a decision. Some builders who are very
16 large and maybe internally financed they can
17 provide their own letter of credit through other
18 own internal organization. Most builders prefer
19 performance guarantees such as performance bonds,
20 because the premium is annual, it is low, and it
21 is specific to the face value of the remaining
22 bond amount.

23 MS. SAROS: Can a municipality
24 dictate what it wants?

25 MR. POGORZELSKI: No, a municipality

1 -- it is purely up to the builder to select what
2 form of guarantee.

3 MS. SAROS: Mr. Kenyon, you made
4 reference to the cap, and under the law
5 municipalities may require performance bond in the
6 amount of up to 120 percent of the cost of the
7 site improvements that must be made.

8 Do municipalities take advantage of
9 that seemingly high cap?

10 MR. KENYON: I don't think so.

11 MS. SAROS: Why not?

12 MR. KENYON: Well, because in one
13 case you do have a situation where, as Paul talked
14 about the bonding, and which is a standard
15 situation. The only place the municipality has
16 any relief would be in the ten percent cash that
17 the developer or the applicant has to put up.

18 MS. SAROS: Well, if the law permits
19 the bond to be in the amount of 120 percent, why
20 would a municipality not take advantage of that
21 full amount?

22 MR. KENYON: Counselor, that's a
23 good question, because some towns do not, and some
24 towns do. It is all in the negotiation when the
25 site plan is being deemed complete.

1 MS. SAROS: In your opinion is the
2 municipality simply negligent in not taking full
3 advantage of that?

4 MR. KENYON: Sometimes, and
5 sometimes not.

6 MS. SAROS: Could that be due to
7 simple inexperience of the officials?

8 MR. KENYON: Could be. It also
9 could be the professional doesn't think that the
10 improvement is going to cost that much.

11 Now I am not pushing anything back
12 on the professional, but I must tell you that
13 every planning board and zoning board must have a
14 planner, they must have an attorney and must have
15 an engineer. Sometimes they are dual roles,
16 sometimes they are separate.

17 In my town we have a separate
18 planning board engineer, a separate planning board
19 attorney, and the same planner. But it is still
20 is up to the professionals to advise the planning
21 board or the zoning board. If the zoning board is
22 hearing an application and this happens at times,
23 when there is a use change, that they rely heavily
24 upon the professionals to give them the right
25 information. And sometimes the professional

1 either may sometimes make a mistake or sometimes
2 it is his professional opinion that this is what
3 this is going to cost.

4 MS. SAROS: Mr. Pogorzelski, in your
5 experience has a perform and bond in the amount of
6 120 percent of the improvements proved to be
7 adequate when a builder defaults?

8 MR. POGORZELSKI: No. For several
9 reasons. First off, my experience in the
10 particular projects that we have had in default in
11 Hopewell Township have been with -- these are
12 larger custom homes on large lots, and it usually
13 takes five to ten years to build out even a
14 project of thirty or forty units.

15 During that ten year time frame
16 market rates just escalate, unit prices, as high
17 as 35 percent. I took a look back on some of the
18 projects in Hopewell Township, and paving prices
19 from 1993 to 2004 increased by just that amount,
20 35 percent. So you can see that a 20 percent
21 contingency when certainly you are already in 15
22 percent deficit if a developer defaults.

23 And then there is other issues about
24 how you certify the default and how you actually
25 collect that money, that actually costs the town

1 more money. And those issues really go to the
2 heart of the type of security that's posted, the
3 type of the bond that's posted. If the
4 performance guarantee is a performance bond, it is
5 underwritten by an insurance company, and the
6 insurance company in the case of a default will
7 essentially have certain operating protocols where
8 they have to evaluate the nature of the default,
9 the performance of their client, and it usually
10 brings in a team of attorneys and takes months, if
11 not sometimes years, to work through that
12 particular situation with a performance bond.

13 We, I as the engineer can't
14 necessarily interact directly with the attorneys,
15 we have to have our town attorney involved and all
16 of that time in delay and management to deal with
17 a particular bonding company can drive the number,
18 I mean that's a direct expense to the
19 municipality. That expense is not included in the
20 performance bond.

21 The performance bond is based upon
22 the physical improvements within the public
23 rights-of-way, what they are classify as public
24 improvements. The contingency's really, I
25 believe, intended to deal with market conditions.

1 The performance bond value, how it
2 is determined is prescribed by law, dictated very
3 clearly in the municipal land use law. It does
4 not allow for say a line item that says developer
5 default, lump sum, \$35,000. That's not possible
6 under the law.

7 So in these dealings with the
8 certification of default and the collecting of the
9 money the municipality needs to fix or finish the
10 improvements, that's all out-of-pocket expenses to
11 the municipality and a direct taxpayer expense.

12 In the case of a letter of credit,
13 it is a far easier way to collect the money,
14 basically I would certify a default in a letter
15 form, prepare what they call a site draft, which
16 is really a check, walk up to the bank and hand
17 them that and within an hour even if the bond is
18 \$2 million, I walk out of the bank with a
19 certified teller check in the amount of
20 \$2 million, take it back to the municipality and
21 deposit it into the escrow account, but that
22 doesn't give me the right to pick up a phone to a
23 reputable contractor and say please finish these
24 improvements, I have the money to pay it, that's
25 the value of the improvement.

1 We then have to take, as the
2 engineer they will prepare detailed documents
3 under the public contracts law, I have to get
4 surveys and assessments and write up construction
5 specifications and plans and send it out to public
6 contract, go through the whole contract
7 administration process. That can wind up being
8 upwards of, through that whole process of upward
9 of 20 percent of the value of the remaining
10 improvements. So that's out-of-pocket expense.
11 You can't anticipate that expense in the original
12 value of the performance bond.

13 MS. SAROS: To exemplify what you
14 are talking about with respect to the inadequacy
15 of a performance bond, I am going to direct your
16 attention to Exhibit Number 303, to your right
17 it's being blown up on the screen and to your left
18 we have a chart. The exhibit is also presented to
19 you.

20 Would you take us through this
21 example so that we understand exactly what the
22 added cost to the municipality is?

23 MR. POGORZELSKI: Sure. Again,
24 under the first line the municipality approves the
25 plans, that's just due process, the municipal

1 engineer looks at the plans and under the law
2 determines in this particular example, the cost of
3 the improvements inside the public rights-of-way
4 and that's an important distinction I will make
5 later, is \$100,000. We have the option to add up
6 to an additional 20 percent for contingency, which
7 could be, in this case would be \$120,000 for a
8 total. If the project takes ten years and
9 escalations on pavement costs and the like, rise
10 to the extent I have indicated or higher or as
11 high as 40 percent, that would add an additional
12 \$20,000 right to the cost of the improvement.

13 Now, already if the cost of the
14 improvement is set at twenty thousand and it takes
15 ten years, or \$120,000 and it takes ten years, you
16 are already at the cost of the improvement of
17 \$140,000, so you are working at \$20,000 in debt
18 already.

19 If the developer defaults and does
20 not perform the work, I mean, he just sort of
21 walks away unscathed, we have no tracking
22 mechanism for that, the municipality would certify
23 a default, have to negotiate with the lending
24 institution, the bonding company in this
25 particular instance, that could cost yet an

1 additional \$30,000. So already through the
2 escalations created by the market, rate increases
3 and the cost in dealing with the bonding company
4 per se, you have added \$50,000 to the cost of the
5 improvement so you are already at \$107,000.

6 Then what then has to happen, as I
7 indicated, presumably the bonding company in this
8 instance does not come out and undertake the
9 remedy, the remedy that it does have available to
10 send out a team of its own contractors and
11 contract for the completion of the improvements.
12 Presumably the bonding company says look, it is
13 easier for us at this point to give you the
14 \$120,000 check and you go get the improvements
15 done. That's the case where wind up the next line
16 where it says the municipality has to hire an
17 engineer because in order for any municipality to
18 go to contract for such improvements we fall under
19 the guise of the public contracts law and that
20 requires plans and specifications to be drawn to
21 insure a fair bidding process.

22 MS. SAROS: I presume that the
23 municipality cannot force the bonding company to
24 do the improvements themselves?

25 MR. POGORZELSKI: That's correct.

1 So where you are at that point is you have added
2 again another \$15,000 to go out and conduct
3 surveys of all of the remaining improvements so
4 that you can adequately describe in specification
5 and plan form through the public contracts law to
6 insure a fair bidding process, and the cost of
7 that would be potentially \$15,000.

8 The public bidding fees, that's the
9 association of all of the reproduction of plans
10 and specifications, award reviews, bid reviews and
11 all that, there is yet another \$2,000, and then
12 once you award the contract somebody has to stand
13 there and actually inspect all of the improvements
14 that has been talked about before today, those
15 inspections -- at this point in time if the
16 developer is in default they probably liquidated
17 just about all of or any of the escrow account and
18 have walked away and run that down to zero, so
19 there is no money available for the inspections
20 left, so you are therefore at \$15,000, potentially
21 you have added \$82,000 to the cost of the \$120,000
22 improvement, that \$82,000 is funded in its
23 entirety out-of-pocket by the municipality at
24 taxpayer expense.

25 That's an important distinction,

1 because if this is to happen in one particular
2 budget year, fiscal year, the municipality would
3 declare an emergency to appropriate that money.
4 That emergency would have to be made up in the
5 next fiscal year, and that emergency being made up
6 in the next fiscal year is within a cap, so with
7 the cap constraints that there are, that might
8 drive a reduction in services or cuts in other
9 services throughout the municipality that would
10 really be a negative impact.

11 MS. SAROS: Severe ramifications for
12 the municipality, and therefore its residents?

13 MR. POGORZELSKI: That's correct.

14 MS. SAROS: You touched upon this
15 already, but if a builder defaults from the
16 perspective of the municipality what are the pros
17 and cons of having a performance bond or letter of
18 credit or cash?

19 MR. POGORZELSKI: Well, again, a
20 performance bond is the most difficult for a
21 municipality to deal with, primarily because you
22 are dealing with an insurance company and they
23 have certain operating protocols and the
24 justification process is quite cumbersome.

25 An example would be one that I am

1 dealing with right now where we have an insurance
2 company that was licensed to do business in the
3 State of New Jersey, they were from New York
4 state, three or four years ago they decided not to
5 write new bonds, and have since gone out of
6 business leaving the state of New York to handle
7 any collections. We have certified default.

8 Now we are no longer dealing with
9 not even the bonding company, we are dealing with
10 the state of New York, they have to interact with
11 employees of the bonding company who have all of
12 the old files, and it is problematic, we are now
13 four to five months into the process and we don't
14 even have a return letter yet.

15 So we have already lost five months,
16 lost the entire construction season, we, the town
17 will have to maintain those roads, those roads now
18 have manhole lids that are two to three inches
19 above grade, we will have to snow plow those roads
20 and potentially break plows and frames and things
21 like that and they are all direct costs to the
22 municipality.

23 MS. SAROS: And advantages and
24 disadvantages of cash or letter of credit?

25 MR. POGORZELSKI: Well, certainly

1 cash and letter of credit, I think cash is the
2 easiest of all because it is directly immediately
3 accessible, we like cash. Letters of credit are
4 almost as good as cash, in my experience.

5 MS. SAROS: But even in those
6 situations is the municipality still going to
7 realize the full amount of what it will cost them?

8 MR. POGORZELSKI: Absolutely,
9 whatever is required to complete whatever
10 improvements the developer has left are a direct
11 out-of-pocket expenses, i.e. the administrative
12 costs, the engineering costs and those kind of
13 costs.

14 MS. SAROS: It's all the same?

15 MR. POGORZELSKI: Yes.

16 MS. SAROS: It's just that it is not
17 a protracted process?

18 MR. POGORZELSKI: Correct.

19 MS. SAROS: Mr. Kenyon, does the
20 municipality have any leverage to compel the
21 builder to complete the project so it doesn't have
22 to resort to performance bond or letter of credit?

23 MR. KENYON: Well, Counselor, it is
24 done, the professionals again, for the board or
25 for the municipality itself, can get ahold of the

1 professionals that represent the builder or the
2 applicant in this case, and try and work it so
3 they will come back and finish his work.

4 MS. SAROS: And what's the incentive
5 for the builder to do that?

6 MR. KENYON: Well, frankly there is
7 none, but a good smart board, if the builder comes
8 back and wants to do another development in the
9 town, a good smart board will know that, and the
10 professionals of the board will tell them that
11 when they are reviewing the application to deem it
12 complete, and that's when everything starts, when
13 the application is deemed complete, the clock
14 starts, everything starts at that point.

15 So in the review of this, if you are
16 right on top, and that's what we try to teach, is
17 the fact that then they will know and once burned,
18 twice careful, and they can do things in a
19 resolution that could probably get the builder to
20 honor his contract, if you will.

21 MS. SAROS: You testified earlier
22 that one of the reasons a builder may default on
23 the site improvements is that the corporation that
24 he is set up to put up the development has filed
25 for bankruptcy.

1 If that same developer then sets up
2 another corporation any recourse for the
3 municipality?

4 MR. KENYON: He can come back in
5 with another application.

6 MS. SAROS: But the municipality
7 cannot go after that new corporation, can it?

8 MR. KENYON: No, not under the
9 situation. As a matter of fact, in my town one
10 builder declared bankruptcy three times and came
11 back in three time. All they do is they just
12 manipulate their officers and then in the
13 application you have to tell who the officers are,
14 who the owner of the property is, are you the
15 agent and so forth and so forth, there has to be
16 disclosure, but they just change the family around
17 or relatives around and it is a new corporation.

18 MS. SAROS: Mr. Pogorzelski, if a
19 builder applies for permits to construct a
20 development in your township, and you know he has
21 a poor track record either in your town or a poor
22 track record in a neighboring municipality, what
23 do you do to protect your residents?

24 MR. POGORZELSKI: Well again,
25 besides the guarantees, and the conditions that

1 Mr. Kenyon just described where you have all of
2 the conditions and in the resolution, Hopewell
3 Township went one step further and said we would
4 like to do an agreement between the municipality
5 and the builder. That agreement sets forth all
6 sorts of criteria, noise, working hours, things
7 like that, that's one component of it.

8 But outside of that, there really
9 isn't anything that can be done. We are
10 struggling right now with the various situation
11 where we had one builder come in and start a
12 development, 50 percent through, files another
13 application, and during that first 50 percent
14 through the first development we had all sorts of
15 problems, files another application, never -- you
16 know, we couldn't say anything about it. The
17 residents were coming in and complaining about it,
18 we had no recourse but what was afforded to us
19 under the law, which did not allow us to say hey,
20 you know, you are sort of a bad person, or you
21 have done not so good things in the eyes of
22 Hopewell Township or its residents, so therefore
23 we are going to withhold this next approval from
24 you.

25 We had no recourse, so we approved

1 the second development which we are obliged to
2 under the law, and now we have two developments
3 with two performance bonds from New York state,
4 and now being handled by New York state, so we
5 have had a lot of residents that, again, and this
6 is the distinction I was going to make, that the
7 performance bond bonds only for the public
8 improvements which is that part within the
9 right-of-way within the street surface itself, and
10 the area limited outside of that. There is no
11 bond for the construction of the lot grading, the
12 areas around the house itself, once you get beyond
13 that right-of-way there is no protection in the
14 form of a bond or a guarantee.

15 MS. SAROS: Mr. Kenyon, in a gated
16 community who is responsible for the common areas,
17 and does a gated community possess special
18 problems for the homeowner and the municipality?

19 MR. KENYON: Well, in most instances
20 if there is a homeowners association they are
21 basically in charge of everything that goes on
22 within their association. They have to keep their
23 open space up, they have to do this, things of
24 that nature.

25 However, the Court has said that the

1 township must plow the roads, and that's the
2 condominium law, and I believe collect the garbage
3 at the same time, if you have a public trash
4 removal. If it is contract, in my town it's all
5 contract individuals, but the courts have ruled
6 that you have to do that. And even though the
7 roads are not finished, as my colleague has talked
8 about, we can break plows, we hate to do that,
9 because you have the manhole covers and the storm
10 water inputs standing two, three inches above that
11 grade at that time. How do you do that?

12 But at the same time, that's about
13 as far as we can go, and we try in all our
14 townhouse developments or our high density
15 developments in my town, we have a homeowners
16 association that is responsible for the upkeep of
17 their open space, and that kind of thing, but we
18 still plow the roads.

19 MS. SAROS: If the builder defaults
20 on completing the site improvements, the
21 infrastructure in a gated community, the
22 municipality is not responsible for those, for
23 completing them, is it?

24 MR. KENYON: With all due respect,
25 to stop having one hundred fifty residents from

1 that gated community sitting in front of the
2 township committee, you know, on a slow night, we
3 will plow the roads.

4 MS. SAROS: How about completing the
5 site improvements, paving the roadway?

6 MR. KENYON: Again, it's the same
7 things that we have been talking about, to finish
8 off. A perfect example is the hills, I'm sure
9 everybody here is familiar with the hills in
10 Bedminster Township. When they built that they
11 built that in about six sections, and they
12 completed one section, two sections, and they then
13 stopped for awhile and then they started again and
14 they do three or four, and the general contractor
15 had contractors working under him, so one section
16 would be completed before this section would be,
17 don't ask me why, but you had the testimony on
18 that before, and the third one would muddle along.

19 So you would have one section to get
20 into the third section, the first section is in
21 shambles, you have the third section is complete,
22 everything is done, so you still have to go in the
23 first two to get in to the third one, they were
24 giving out COs in the third one, and everybody was
25 in this finished complete section and complaining

1 to the management company and the general
2 contractor because the first two weren't finished,
3 and it was terrible, I know, I my daughter lived
4 in the third section, and to try and get through
5 it was like going through an obstacle course
6 because they had machinery in the street, they had
7 nothing down, no top at all, it was all just
8 grade, things of that nature. But that happens.

9 MS. SAROS: Who ultimately is going
10 to pay for that to be done?

11 MR. KENYON: Well, supposedly the
12 Hills, the owner is to do that, the developer.

13 MS. SAROS: With a gated community
14 is municipality is not --

15 MR. KENYON: Eventually, that's
16 correct.

17 MS. SAROS: Is not responsible?

18 MR. KENYON: Is not responsible.

19 MS. SAROS: So if you have a
20 defaulting builder where does the homeowner go?

21 MR. KENYON: He has to go to the
22 management firm, in the Hills if you are all
23 familiar with it, they have had about seven or
24 eight management firms, they just can't take the
25 heat.

1 MS. SAROS: Mr. Kenyon, how can a
2 municipality better protect itself against the
3 potential default by a builder?

4 MR. KENYON: How can we? Well, I
5 think we can write more stringent conditions in
6 the resolutions, that's number one, because the
7 resolution in preliminary approval is very
8 important, very important.

9 The second thing that I think we
10 could do to help the community or municipality is
11 raise, if you will, the cash deposit that the
12 applicant has to make. Don't forget, the
13 applicant is putting up escrow money for all of
14 the experts, both sides, his and ours, meaning if
15 I am a municipality, he is putting up money for
16 inspection fees, and most towns, most
17 municipalities have a chart or a table on that, if
18 it is over this much it is this minimum, plus four
19 percent of everything over this, or three percent,
20 and the third thing when he is finally finished he
21 is going to put up his performance bonds.

22 So I think Mr. O'Keefe this morning
23 did talk about that a little bit, but obviously
24 he, in that particular case he is very articulate
25 and he's been on this case for a long time, they

1 don't like all these fees, and user fees and
2 things like that, plus the fact he has to get his
3 permits not only from the township, but from the
4 state, so there is a lot of front money involved.
5 So he is going to try and put up the least amount
6 of cash he can, and it would help the
7 municipalities if we had a bigger cash pot at the
8 end. Rather than ten percent cash, a 15 or a
9 20 percent, because as my colleague has said some
10 of these things go on for four or five years, and
11 obviously the cost of everything goes out of sight
12 and you are not protected at all.

13 MS. SAROS: Mr. Pogorzelski, what
14 has your township done to better protect its
15 residents, and what recommendations would you make
16 to ameliorate the end result with the defaulting
17 builder?

18 MR. POGORZELSKI: Well, again, we
19 try to protect our residents to the best we can
20 through the process. Developers agreements are
21 important, a primary way. In our developer
22 agreements, for example, we have a right if a
23 builder has five houses under construction at one
24 development and he does have a violation on one of
25 the homes, when that work is stopped on that one

1 house we have the right to shut down the work for
2 all of the houses which is a pretty big penalty to
3 a developer.

4 Ironically, though, those agreements
5 evolve over time, as does law. When we started in
6 1988, which I have given you an example of, you
7 can see it's only about ten pages long or so, and
8 the newer ones are probably up to thirty pages,
9 but a wonderful example of this is exactly what
10 the problem we are faced with right now where we
11 have certified the developer in default. One of
12 the criteria of that particular developer's
13 agreement says specifically that the final surface
14 paving shall not be installed until 95 percent of
15 all certificates of occupancy have been issued.

16 Ironically, one of these
17 developments is a ten lot will development. The
18 developer sold one of the home, sold of all of the
19 homes, one of the homes was sold, there was no CO,
20 but there are people living in it. The bonding
21 company looks at the developer's agreement for
22 face value and comes back and says wait a minute,
23 there is only nine COs in this development, there
24 is only 90 percent, our client has no obligation
25 to put the surface paving down, therefore this is

1 a moot issue, and we are just not going to give
2 any money or provide for service to that.

3 So you can see what's in black and
4 white is really what counts. To me there is
5 probably a couple of things that we could
6 certainly do or could be done as suggestions
7 anyway.

8 One of the things is certainly
9 performance tracking of home builders, if there is
10 a way to say monitor that. What we have done in
11 Hopewell is we have announced publicly that we
12 will make all copies of all of the construction
13 and site improvement files open to any prospective
14 home buyer. You can't flag specific pieces of
15 information, because that sort of leads the
16 witness, so to speak, so we just have a box
17 sitting there that nobody ever comes and in looks
18 at. If there is a performance tracking mechanism
19 that would sort of be created at state level that
20 when that developer came in and we could look at
21 and say wait a minute, we have issues here, we
22 have a right to withhold approval until you have
23 those squared away that would certainly be a
24 wonderful thing.

25 Another huge problem for us is most

1 builders, as I indicated, will chose performance
2 bonds, because it is cheap, it an easy things to
3 do. If there could be some type of guidelines
4 that sort of mandates as part of the registration
5 process for a bonding company in the State of New
6 Jersey to say if you have a certification of
7 default you have a 30-day window in which to
8 respond to the municipality on how you are going
9 to resolve this, that would save a huge amount of
10 time and energy. Because a lot of these, again,
11 as I indicated before were off to five or six
12 months and going in that direction.

13 Certainly one of the things I heard
14 earlier was a bond for home construction. I
15 indicated, to me, I don't really deal as the
16 engineer we have the construction official that
17 deals with the foot print of the house and the
18 house itself, but one of the problems is that
19 there is no guarantee for the site work associated
20 with the individual lots themself. If that was
21 posted at the time of the building permit will
22 issuance, and there was some ability to collect at
23 the end, if there was a default by a builder at
24 that point in time, that would be another
25 wonderful thing.

1 Lastly, something I thought about
2 today, is we have home builder registration, we
3 attorneys and architects and engineers operate as
4 licensed professionals. If home builders were
5 licensed professionals they would be subject to
6 the rigors of someone filing a complaint before a
7 state board or something to that effect where
8 there could be real punitive assessments against
9 them that might make them think twice about
10 working in a different light.

11 MS. SAROS: Would any type of
12 coordination between the construction official and
13 the engineer as the development proceeds serve to
14 insure that all site improvements were completed?

15 MR. POGORZELSKI: My experience is
16 that in my particular experience we have had good
17 success in coordinating with the local
18 construction officials. They regard the municipal
19 engineer as sort of a prior approval under their
20 realm of operation, and quite often nothing will
21 happen unless the municipal engineer signs off on
22 signs off on it.

23 They really take jurisdiction of the
24 building itself, site work, drainage issues, they
25 really regard the municipal engineer as a heavy

1 input into that process.

2 Again, where we have the problems
3 is, when we get to the very tail end of the
4 process, we have people who may have been up in a
5 hotel for a year and a half because of contractual
6 arrangements that the town, the municipality is
7 just not privy to. We may get a phone call of
8 desperation saying please, the house is almost
9 done, they have come to the committee, they have
10 petitioned the committee to give the construction
11 official the authority to release the CO, and then
12 when they get in there they are just fraught with
13 problems.

14 In Hopewell Township we do collect
15 performance bonds for the remaining site work, and
16 the irony of that is that we can only collect the
17 performance bond that is scribed to a certain
18 standard of performance. While someone may have
19 an expectation in a contract of sale that when
20 they take occupancy of their home their yard will
21 look like a golf course, that's not necessarily
22 what's prescribed under the law. The law under
23 the Soil Conservation Act basically says you shall
24 have mulch and seed down, which is basically just
25 hay and seed on their dirt, and if they take

1 closing and you spend six or \$700,000 for a home
2 and you walk in and see hay and no grass, you are
3 pretty upset.

4 When the developer or the builder
5 does not ultimately come back and say they have a
6 30-day window to remedy any deficiencies, when
7 they come back say 90, 120 days, the then owner
8 who has responsibility for the final CO comes back
9 in the municipality and says hey, the developer
10 put up a temporary or put up a performance bonds
11 for this little punch list to get a temporary CO,
12 I would like that money, and the municipality
13 holds a public hearing and gives them that money
14 and that money covers \$300 for spraying straw and
15 seed in a bare spot, and they want to put sod down
16 and then they come back to the municipality and
17 complain and say that's not enough money because I
18 want sod where that bare spot is, or I want a
19 brick sidewalk where all you are giving me is some
20 slate laid down so I have a primary means of
21 egress into my home.

22 So there is complications when you
23 get into the bonds, but Hopewell Township I think
24 has gone as far as it can to represent the
25 interest of future home buyer in the town.

1 MS. SAROS: Thank you. I have no
2 further questions.

3 BY COMMISSIONER FLICKER:

4 Q. Mr. Pogorzelski, I think I asked a
5 question way back in our first hearing, and that
6 is some kind of, for lack even a better term, a
7 listing, some web site, something where township
8 officials as well as potential home buyers could
9 gone and look at the record of a home builder.
10 Did he have judgments against him, did he have
11 bankruptcies, did he have a criminal record,
12 something. Is that something that you think would
13 be useful to you?

14 A. As long as there was some other
15 compatible legislation that said if their name
16 shows up on the list then we have the right to say
17 withhold an approval, or require some additional
18 guarantee that the developer will perform.

19 Q. Well, there would be no aspects to
20 it, one would be the protection for the
21 municipality, where you might not know about Joe
22 Blow's reputation if he is been working in another
23 part of the state, but the second would be access
24 for the consumer to be able to check on the
25 reputation of a builder, because the reputation --

1 we have heard testimony from some of the builders
2 that they think their reputation is their stock in
3 trade, and perhaps the reputation wouldn't be so
4 fine if some of the information appeared.

5 So I was sort of conceptualizing a
6 list that would be available to the municipality,
7 likewise available to a potential homeowner who
8 can check out a builder's reputable or reputation
9 statewide.

10 A. I agree, I think it would be a
11 wonderful thing.

12 COMMISSIONER FLICKER: Given our
13 time constrains all I am going to say to you
14 gentlemen is thank you ever so much and I have
15 been following with great interest the Hopewell
16 situation since I live fairly nearby.

17 COMMISSIONER MARINIELLO: I just
18 want to express my thanks also. I don't have any
19 questions at this time. Mr. Chair.

20 COMMISSIONER EDWARDS: No questions.

21 COMMISSIONER SCHILLER: Gentlemen, I
22 want to thank you very much for coming in. I hope
23 you are better at getting cash out of builders
24 than we are, but I think that is the right way to
25 go in terms of a letter of credit, and so we

1 appreciate your coming in and explaining to us how
2 the system works and how we can improve on it.
3 Thank you very much.

4 MR. KENYON: Mr. Chairman, if I may,
5 in the public contracts law it is just the
6 municipalities can now refuse the low bidder if
7 they have had a bad record, contractors for the
8 township, you know, if they have had a bad record
9 in the township.

10 COMMISSIONER SCHILLER: That is on
11 public bids.

12 MR. KENYON: Right.

13 COMMISSIONER SCHILLER: But there is
14 no right as far as I know for a private builder to
15 be turned down for an application regardless of
16 what his record is in terms of municipality.

17 So that's why it is important if you
18 have given preliminary site plan approval that you
19 get the bond posted before you certify that there
20 is a completion to the project. At least I know
21 in Jersey City we can't get anything done until we
22 post that bond or give up a letter of credit.

23 Thank you.

24 MS. SAROS: Mr. Chair, if I may ask
25 another additional question which will bear upon

1 our recommendations.

2 With respect to that 120 percent cap
3 for the performance bond, that bond is renewable
4 each year, correct.

5 MR. POGORZELSKI: That's correct,
6 automatically.

7 MS. SAROS: And can the municipality
8 have that amount increased, and should it?

9 MR. POGORZELSKI: No. Actually
10 that's one point I didn't mention I apologize,
11 that's an excellent point, that if there is an
12 opportunity to say, even if you could take a two
13 or three-year average to be fair, and increase
14 that if the market conditions drove it well above
15 where it currently stood, that would be an ideal
16 situation.

17 MS. SAROS: Thank you.

18 MR. POGORZELSKI: Thank you.

19 CHAIRMAN SCHILLER: I am going to
20 ask Commissioner Flicker to read a statement that
21 we have and then I will ask the Deputy Director to
22 open up with the next witness.

23 COMMISSIONER FLICKER: Good
24 afternoon, ladies and gentlemen. As you know, we
25 have examined many issues during the course of

1 this investigation, from questions surrounding the
2 quality of new home construction to the adequacy
3 of inspections and code enforcement to matters of
4 oversight and consumer protection. It has been a
5 wide ranging and at times controversial but always
6 constructive inquiry.

7 At every juncture, no matter what
8 the issue, the focus has invariably wound its way
9 back to the same place, to the same critical
10 agency of state government, the New Jersey
11 Department of Community Affairs.

12 DCA is the agency of the hour, so to
13 speak, because it was long ago vested with
14 statutory and regulatory responsibility to insure
15 that the vast and complex machinery of new home
16 construction and inspections functions properly
17 and in the best interest of consumers and the
18 industry.

19 Through its various divisions,
20 bureaus, and offices, DCA is meant to be the front
21 line bulwark against the myriad abuses to which
22 the system seems so prone.

23 Joining us here this afternoon are
24 the key member of DCAs senior management team,
25 including Commissioner Susan Bass Levin, and

1 Director William Connolly, of the Division of
2 Codes and Standards.

3 We are pleased at their presence and
4 look forward to a frank and forthright discussion,
5 particularly with regard to how this system can be
6 made to work better in the service of the citizens
7 of the state. If you would, please.

8 MS. GAAL: Thank you. Before I call
9 the last two witnesses who will appear together, I
10 have one matter that's come to my attention during
11 the lunch break, and I am going to hand this
12 notebook to the staff member to have it marked by
13 the reporter.

14 (Exhibit NCI #319 marked for
15 identification.)

16 MS. GAAL: Exhibit number 319, we
17 will make part of the permanent record. Yesterday
18 there were about fifteen people here from Holiday
19 City in Monroe. I know a number of them are in
20 the audience today, and they brought various
21 materials that they would like to be made part of
22 the record for the Commission to have when it
23 considers this whole matter, and they feel it
24 directly would bear on matters that were discussed
25 yesterday when Ms. Hovnanian testified.

1 I am not going to go through great
2 length describing the materials, but I understand
3 that there are at least thirteen colored
4 photographs showing some shoddy workmanship and
5 documentary evidence relating to not only the
6 various time frames involved, but indications of
7 the witnesses more direct involvement or very
8 direct involvement in the building of their homes.

9 Also, there is indication and
10 reference to the fact that there are three hundred
11 and twelve homes in that particular development
12 that have not been satisfactorily repaired, that
13 is at Holiday City of Monroe, according to the
14 homeowners, and one particular individual, an
15 Isabelle Wolmar, has sent a letter via Frank
16 Semeca, who is here, which indicates that there is
17 still water and mold in her home, but it is not
18 covered by the code, and it is signed by
19 representative of the Department of Community
20 Affairs. So I want to thank you for bringing the
21 materials and we will have them and consider them.

22 With that matter aside, the next
23 witnesses are Commissioner Levin and Director
24 Connolly.

25 COMMISSIONER SCHILLER: Good

1 afternoon Commissioner, good afternoon Mr.
2 Connolly. Perhaps we could swear the witnesses.

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1 SUSAN BASS LEVIN & WILLIAM CONNOLLY,
2 after having been first duly sworn, was examined
3 and testified as follows:

4 COMMISSIONER SCHILLER:
5 Commissioner, before we begin, I think Ms. Gaal
6 has some preliminary findings for us so that will
7 better fit through the comments I think you are
8 going to be leading into, so I would ask Ms. Gaal
9 to commence.

10 MS. GAAL: Thank you. At this point
11 in the hearing it is probably a good idea for us
12 to present to you some of the key findings that
13 the Commission has made throughout its
14 investigation. I think it will provide a lot of
15 context for our discussions this afternoon.

16 Given the format that I am going to
17 use, which is basically by putting it on a chart,
18 I doubt it will necessarily be brief, but I will
19 try to get full through thank for you fairly
20 quickly.

21 The first area we looked at was the
22 inspection process, and I think what we will do is
23 we will hand you a copy of the chart, why don't we
24 do that right now, was the inspection process, and
25 when we did that we looked at and discovered a

1 number of items and I am just going to summarize
2 them for you.

3 We found deficient inspections, we
4 found inspections that were not performed. We
5 also found instances with inspectors or local
6 officials accepting gifts and gratuities. We
7 found that plans were not on site, and that plans
8 were not often not specific to homes. We also
9 found significant obstacles, for what we are going
10 to call the quality inspectors which prevented
11 them from doing their jobs, and we also had some
12 testimony about that earlier today.

13 Some of those hurdles involved the
14 fact that they simply can't be on site 24/7, and
15 they have to rely on the quality of the builders
16 and in many instances they are becoming part of
17 the quality control system for the builders, and
18 sometimes the sheer volume of inspections that
19 those people are asked to do.

20 We also found issues and allegations
21 relating to staffing and funding issues in the
22 local inspection offices, and we found what, for
23 lack of a better term we are going to call
24 technology issues, the changing construction
25 practice can make it difficult for an inspector to

1 do their job.

2 You may address, and we have heard a
3 lot about the new truss systems that came in with
4 the pre-engineered trusses and the differences in
5 materials and methodologies that developed. So
6 these are issues that we think impact on the
7 inspection process, they are not all of them, but
8 they are a summary of some of the key issues.

9 Next thing we looked at were the
10 builders, and with respect to the builders we find
11 a series of problems also. Some of them include
12 lack of quality materials, and substitution of
13 materials, some of them include overall poor
14 performance. No real oversight as to what's going
15 on out there at the site. We have found and heard
16 a lot about labor force issues and that covers two
17 sub topics, one is the use of undocumented
18 workers, and the other is the use of unskilled
19 laborers.

20 We have also heard a lot about the
21 lack of oversight of subcontractors, and that subs
22 often sub out work, and that no one is on the site
23 who is knowledgeable and can deal with some of the
24 issues.

25 Another issue that's been presented

1 over and over which we are calling here lack of
2 certification for subs, it also could be lack of
3 licensing, relates to the fact that it seems to a
4 significant degree that the problems are not found
5 in the electrician and plumbing field, which are
6 licensed, but with respect to people that are in
7 the unlicensed trades such as masonry, framing and
8 so forth. So that's an issue.

9 We have also talked about defaults
10 and their defaults before construction and
11 defaults after, the one that's been particularly
12 troubling seems to be a builder default before the
13 home gets built or before it is completed.

14 Builders appear to some degree to
15 rely on your local inspectors for some form of
16 quality control, they set up limited liability
17 corporations which are established for each
18 development, and that also limits liability, and
19 we have also heard over and over from home buyers
20 who have complained that they weren't allowed to
21 inspect their home during the construction, or
22 they may have wanted to bring an inspector in, and
23 we recognize that there are issues on both sides
24 of that fence, but it is something that we have
25 heard about a lot.

1 Turning to the next general area, it
2 is the warranty area. And there are a large
3 number of issues that have come to our attention
4 in connection with warranty areas, and I am going
5 to try summarize a few of them. The key ones, the
6 builder lulling, and we have talked about that
7 over and over again throughout the hearings. The
8 complexities of the warranty process for the
9 average homeowner. They are put in a situation
10 where they have got to quote unquote prove their
11 case, and by the way, when I mention these key
12 findings they are essentially not necessarily
13 exclusively, but essentially on the private plans
14 side, not the state-run side, although there are
15 problems there, but they are not anywhere near
16 significant nor in those numbers.

17 The homeowners face a series of
18 deadlines and hurdles, they don't understand the
19 appeal process or the options, and quite frankly
20 they need to hire the experts anyway, it is almost
21 as if they were litigating, they have got to hire
22 lawyers or they do hire lawyers and they have to
23 hire engineers.

24 We feel that the overall process is
25 flawed, that there are inconsistencies in the way

1 arbitrators approach the process, that there are
2 conflicts of interest involving arbitrators and
3 builders, there is really no oversight of the
4 arbitration process, and we think that there is
5 some questionable credentials for some of the
6 arbitrators.

7 We also feel that there are
8 conflicts, and I talked a little bit about that,
9 and also conflicts with respect to the warranty
10 providers, the insurers, and those relate to risk
11 retention groups.

12 A lack of penalty to the builders.
13 We have put it in this category, perhaps it goes
14 somewhere else, but we see a lot lack of penalty
15 with respect to the process, and relatively
16 speaking minimal oversight over the private plan,
17 and the builders that operate through the private
18 plan, I believe they are maybe down to one person
19 or one person at DCA. No fining capabilities in
20 general and just general lack of oversight over
21 the process.

22 The last area that I would mention
23 in terms of a general topical area is the
24 government oversight and that would include both
25 state and local oversight. We found while we went

1 into it looking at construction code, we found
2 lots of issues and lots of complaints concerning
3 site related issues, for lack of better term, I am
4 going to call it site issues. It is the grey area
5 perhaps between where the construction code
6 officials duties cease five feet from the home, or
7 where the utilities hook up, and where it relates
8 to engineering, and that also includes I think the
9 common areas in the gated communities. There is a
10 whole area there where we have the common areas in
11 the gated communities and we think that is
12 something of concern and it came to our attention.

13 The registration process we think is
14 not tight, or there isn't really much of a
15 registration process, if you consider it against
16 the licensing or certification process.

17 We looked at the lag time in the
18 disciplining of inspectors. It has come to our
19 attention and we heard about it this morning from
20 the representative of the U.S. Attorneys Office
21 about concerns in some instances of inspectors
22 working in multiple towns, and again, the builder
23 default would be under that Category.

24 One area that has been talked about
25 a lot is that there is not public disclosure or

1 information available for the new home buyer, the
2 prospective buyer, where they might be able to go
3 and get some information about their builders.

4 And last we have entitled transition
5 issues. That again, goes back to the homeowners
6 association, sometimes it's the gated communities
7 and others it's the condo associations, we have
8 just seen quite a number of problems where those
9 homeowners are very frustrated with their
10 problems, they find themselves faced with some
11 significant problems related to whether it is
12 roads, sidewalks, transition agreements. By the
13 time they take the control over the project the
14 warranty period has passed and so forth.

15 So these in essence are our areas,
16 and we are also concerned about there being no
17 formal tracking system or tracking process
18 available in the state to track complaints, the
19 warranty complaints against code violations,
20 against builder issues and so forth.

21 All of this together in our mind
22 comes together and produces basically a lack of
23 consumer protection. So with that back-drop, I
24 guess I would first turn to Commissioner Levin who
25 I believe has a statement or some information.

1 MS. LEVIN: I do, thank you. Good
2 afternoon, Chairman Schiller and members of the
3 Commission. I would like to thank you for
4 allowing me the opportunity to address the
5 Commission today. I appreciate in particular the
6 opportunity to discuss some of the Department's
7 recent changes and accomplishments, and also to
8 offer recommendations for improvements to the
9 state's laws regarding or regulating residential
10 development.

11 The Commission's hearings on
12 residential construction highlighted several
13 problems that the Department had already
14 recognized and addressed in the past two and a
15 half years, while other testimony before you makes
16 the case for reforms that are advocated by the
17 Department.

18 A number of those testifying before
19 you found fault with municipal inspections that
20 missed framing problems and leaking roofs. We
21 recognized those problems and beginning in 2002
22 instituted mandatory construction framing seminars
23 for building inspectors.

24 In May of 2003 we mandated the use
25 of a framing inspection checklist by inspectors to

1 insure that no aspect of the structural frame is
2 missed during an inspection. We also established
3 new plans, new requirements for the plans and
4 specs submitted to the local construction official
5 in order to make the plans a more useful tool for
6 inspectors so that they could verify code
7 compliance in a systematic way. All of these
8 measures have served to improve the inspection of
9 residential construction.

10 We have also taken steps to improve
11 the Department's monitoring of local inspectors.
12 In May of 2002 we began to increase the staff, the
13 number of staff available for investigations and
14 monitoring of local code enforcement, it was then
15 three, it is now up to twelve. When the unit was
16 understaffed at three inspectors, the priority was
17 given to getting needed corrections made in
18 developments with problems. We would get a
19 complaint from a resident, we would respond to the
20 complaint.

21 A staff of three was not sufficient
22 to institute or undertake routine monitoring, a
23 process that is really necessary to insure that
24 licensed officials are properly enforcing the
25 state's Uniform Construction Code.

1 Now that we have appropriately
2 staffed this unit we can monitor local inspectors
3 much better and take disciplinary action as
4 necessary. In the past year we have taken action
5 against approximately sixty licensed officials,
6 three times the number from the year before.
7 These actions run the full range of options
8 available to the Department, from a simple letter
9 of warning, to a revocation of an inspector's
10 license.

11 Another change is Permits New
12 Jersey, a web based system designed to accommodate
13 all of the administrative records of municipal
14 construction code enforcement which is being
15 rolled out now. This new state-of-the-art
16 information system will support our monitoring
17 efforts.

18 In addition to dramatically
19 improving the consumer service side of the code
20 enforcement system, Permits New Jersey will give
21 the Department and the public more precise
22 information on enforcement activity, allowing us
23 to track and compare the permits issued,
24 inspections performed, the notice of violations
25 issued, all in realtime.

1 Another important step forward in
2 the enforcement of the Uniform Construction Code
3 is the recent increase in the maximum penalty that
4 may be charged. We have long regarded the maximum
5 penalty of \$500 as inadequate to control
6 developers to comply with the code. The penalty
7 had for some just become just a cost of doing
8 business. Last year we sought and received
9 legislative approval for an increase in maximum
10 penalty to \$2,000. The governor signed this bill
11 in January of 2004, giving the Department the
12 ability to impose a penalty that would certainly
13 get a developer's attention. Local enforcing
14 agencies immediately began imposing the higher
15 penalties.

16 Bill Connolly will address some of
17 these issues in greater detail, so I should have
18 said in the beginning I intend to just lay out a
19 framework here and Mr. Connolly will fill in and
20 then of course we will certainly take your
21 questions.

22 I want to turn to the state's New
23 Home Warranty Act. This act was groundbreaking
24 legislation when it was passed in 1979. It
25 expanded the traditional one year builders

1 guarantee, provided a process for the resolution
2 of disputes between builders and home buyers that
3 did not involve going into court, and offered
4 financial backing for back for the repair of
5 defects. To date 58,000 complaints have been
6 successfully resolved to the correction of defects
7 by builders, and 10,000 homeowners have been
8 assisted to the cost of repairs by the warranty
9 plans, representing a total of one hundred
10 twenty-five million dollars in warranty repairs.

11 We have taken a number of steps to
12 make the new home warranty process more accessible
13 to home buyers. Currently every home buyer
14 receives a booklet about the warranty coverage at
15 their closing. Every booklet has our telephone
16 number, so that home buyers know who to call. We
17 are adding e-mail addresses to make that process
18 even easier. But unfortunately this booklet is
19 often lost in the mass of paperwork that a buyer
20 gets at closing, or they move into their house and
21 file it away and don't look at booklet until it is
22 too late. We are in the process of drafting a new
23 booklet to be mailed to homeowners approximately
24 four months after the closing. This booklet will
25 highlight important information about the

1 warranty. We will emphasize, and this is
2 critical, the importance of filing a timely claim.
3 Many homeowners enter into a prolonged
4 communications with the builder, often known as
5 builder lulling and fail to file a warranty claim
6 before it is too late to do to so.

7 Our second booklet will caution
8 builders plain clear English so they can preserve
9 their warranty rights by failing a claim.

10 As documented by the testimony heard
11 before this Commission, the warranty process often
12 is too complicated and takes too long,
13 particularly where private warranty plans are
14 concerned. Too often homeowners found they needed
15 to hire architects, engineers, and attorneys to
16 press their claims. To investigate the processing
17 of claims by private warranty plans we instituted
18 random audits of these plans in the past year. We
19 have completed sixty audits this year and found
20 delays due to failure to go directly to
21 arbitration, lack of detail in the arbitration
22 report, delays due to builder appeals, due to the
23 method of repairs, and home buyer's
24 dissatisfaction with the extent of the coverage
25 provided.

1 As a result we have identified areas
2 of improvement to make the claims process for
3 private plans more prompt and more user friendly,
4 and Mr. Connolly will discuss this in just a few
5 moments. But time and experience have told us it
6 is time for statutory changes to improve coverage
7 under the New Jersey New Home Warranty Act. We
8 would like to see the time to file a claim
9 extended for certain types of coverage. We would
10 like to see the Act amended to authorize penalties
11 of up to \$5,000 per violation.

12 Currently the only monetary penalty
13 in the Act is for failure of the builder to enroll
14 a home. There are a number of other actions that
15 constitute violations of the law, and the
16 Department should have the ability to impose fines
17 for these violations. Revocation of the builder's
18 registration, while it is certainly an incredible
19 stick, is often not the appropriate sanction in
20 many cases. Again, Mr. Connolly will discuss this
21 in greater detail in just a few moments.

22 The commission also heard testimony
23 about builders taking deposits and then failing to
24 deliver. The purchase of a new home is
25 essentially a matter of private contract. There

1 are no specific laws governing the transaction, as
2 you know, except in the case of planned real
3 estate developments. Bargaining positions of the
4 buyer and seller in these transactions are
5 unequal. One way to level the playing field for
6 new home buyers is through legislation, a home
7 buyers bill of rights, if you will.

8 One of the essential provisions of
9 such a law would be a requirement that all deposit
10 monies be held in escrow. We already require this
11 for all approved planned real estate developments.
12 This requirement should be made universal to
13 protect the home buyer.

14 A home buyer's bill of rights would
15 give buyers the right to make progress inspections
16 during construction or to have their designated
17 engineer or home inspector make such inspections.
18 Buyers would also have the right to a set of plans
19 and spec sheets that would become part of the
20 contract. Many builders currently provide these
21 rights in their negotiated contracts. We believe
22 that every builder should do so.

23 Buyers could have the right to
24 arbitration pursuant to the New Home Warranty Law,
25 whenever there is a dispute regarding any of these

1 rights. The Department could be authorized to
2 enforce these rights using the remedies provided
3 by the New Home Warranty Law.

4 We also heard through the course of
5 testimony given before this Commission that
6 consumers want more information, that they need
7 more information about a builder's track record.
8 The Department already collects data on registered
9 builders, some of this information comes from the
10 builder registration application, some of it comes
11 from claims activity reports. We are changing and
12 increasing what we are collecting to serve
13 consumers better, but legislation is needed to
14 authorize the agency to make all of the
15 information public and generally available,
16 specifically information as to criminal records,
17 bankruptcies and judgments.

18 Another of the problems with
19 residential construction brought to light during
20 these hearings is the shortage of trained and
21 qualified supervisors in the residential
22 construction industry. We would support
23 legislation to require the certification of all
24 superintendents and trade supervisors employed by
25 registered builders, based on experience,

1 technical training, and testing. The
2 certification program would also include mandatory
3 continuing education. Through amendments to the
4 New Home Warranty Act we would require that each
5 project be under the supervision of a DCA
6 certified construction superintendent and that
7 workers in each trade be under a DCA certified
8 trade supervisor. We would hold them accountable
9 for any work that does not meet the code or
10 warranty standards. Again, this accountability
11 would be enforced through penalties, suspensions,
12 and revocations.

13 The Commissions' hearings also
14 provided evidence of the gap that exist between
15 the work covered by the Uniform Construction Code
16 Act and the New Home Warranty Act and the work
17 covered by the Municipal Land Use Law.

18 The Uniform Construction Code covers
19 the house, the Municipal Land Use Law covers the
20 public improvements, but key items such as
21 drainage, sidewalk, grading, driveways and private
22 on private lots are frequently outside the
23 jurisdiction of any public agency, and it is here
24 that we all too often see complaints from
25 homeowners.

1 We propose that the coverage of the
2 Uniform Construction Code be extended to all site
3 work, not subject to inspection and bonding under
4 the Municipal Land Use Law. Again, this would
5 require legislation.

6 The hearings also pointed to
7 shortcomings in the protections provided to those
8 residing in common interest communities. The
9 Planned Real Estate Development Full Disclosure
10 Act insures that all aspects of condo and
11 homeowner association developments are fully and
12 plainly disclosed to perspective buyers. The law
13 also authorizes the Department to take enforcement
14 action whenever a builder fails to disclose the
15 material information, or when a builder fails to
16 deliver any improvement which was promised
17 respective buyers. But homeowners in these
18 communities are at a disadvantage in terms of
19 receiving the benefits of warranty coverage for
20 common building elements, because the builder
21 controls the association board during the time
22 that warranty claims should be made.

23 We would support statutory changes
24 to provide a procedure for homeowners to file home
25 warranty claims independent of the association

1 board when the builder is still controlling the
2 board. Current law requires builders to cede
3 control when 67 percent of the units have been
4 sold. We propose a homeowners committee
5 authorized to file claims for defects in common
6 elements on behalf of all of the owners during the
7 time the builder has control of the board.

8 Our proposed changes to the law
9 would also provide a statutory transition
10 procedure that would insure that all associations
11 have the benefit of an engineering survey of all
12 common elements, all required municipal approvals,
13 and a full financial accounting of association
14 activities during the period of builder control.

15 Currently during the transition
16 process when the builder is turning control over
17 to the homeowners association, the homeowners must
18 do something akin to passing the hat, taking up a
19 collection among the owners to hire an independent
20 engineer to evaluate the condition of the
21 improvements for which the association will be
22 responsible.

23 An independent engineering firm
24 would be hired by the homeowners community at the
25 association's expense. We also propose a

1 requirement for the posting of a bond to secure
2 satisfactory completion of all promised common
3 elements such as streets, drainage and
4 recreational facilities. For improvements that
5 will become the municipality's problem the town
6 covers itself by requiring the posting of a bond.
7 Homeowners in common interest communities should
8 be afforded the same protection against defective
9 streets and storm sewers.

10 As I outlined, we have identified a
11 number of areas where legislation is necessary to
12 better enable us to protect new homeowners. We
13 look forward to working with you and the state
14 legislature to make sure that we protect the
15 homeowners of New Jersey, to make sure that we
16 follow the lead of the good builders in this state
17 who do insure the developments are properly built
18 and recognize that there are gaps that we need to
19 fill.

20 I would now like to call upon Bill
21 Connolly, the director of the Division of Codes
22 and Standards, and he will go over the specifics
23 of some of the changes that I have discussed.

24 EXAMINATION

25 BY MS. GAAL:

1 Q. Mr. Connolly, before you begin, just
2 so that the Commission record is clear, how long
3 have you been the Director of Codes and Standards?

4 A. I have been the director of the
5 division or its predecessor since 1977, and I have
6 worked in the division since 1973.

7 Q. What's your professional background?

8 A. I am a registered architect and a
9 licensed professional planner.

10 Q. One last question. What are the
11 duties and functions of that division, maybe you
12 can just sort of summarize what comes under your
13 bailiwick?

14 A. Well, first of all, the Uniform
15 Construction Code with all that entails. We are
16 responsible basically for setting the standards
17 and ultimately for enforcement of the standards
18 for every kind of building, both private and
19 public. We act as the building inspector for all
20 construction done by the state of New Jersey, we
21 directly do the plan reviews for very large
22 complex structures like casino hotels and
23 hospitals and public schools and things like that.

24 We administer the code on behalf of
25 thirty-five municipalities who have requested us

1 to do so, those that don't have a local building
2 department, we inspect all the elevators in the
3 state twice a year under the Uniform Construction
4 Code. We administer the largest training program
5 for municipal code officials in all of America, we
6 license, we have license oversight responsibility
7 of about thirty-five hundred municipal code
8 official, you can't work as a code official in New
9 Jersey unless you are licensed.

10 We administer the New Home Warranty
11 Program and Planned Real Estate Full Disclosure
12 law which insures that purchasers get a fair shake
13 when they are buying into condominiums also and
14 cooperatives that have homeowners association. We
15 regulate continuing care retirement communities,
16 for similar reasons, but in addition we have a
17 responsibility to make sure that they remain
18 financially stable over time.

19 We inspect rooming and boarding
20 houses which we license, and are responsible for
21 all construction buildings that take place in
22 factories outside of the state, and I am sure I
23 have left some out, but that's about it.

24 Q. Thank you. I have thought long and
25 hard about asking you questions, but I think at

1 this stage it is probably better if you give us an
2 outline of your recommendations and what you have
3 implemented and what you hope to implement, and so
4 forth, and we will go from there.

5 A. Sure. I am pretty being much going
6 to fill in the blanks and provide some detail, the
7 Commissioner highlighted basically seven areas
8 where we have either made changes are or are
9 making some recommendations for changes.

10 The first is the whole question of
11 municipal inspections. The framing checklist was
12 developed at our discovery of these kind of
13 problems in the late 1990s. In large measure it
14 responds to changes in building technology,
15 building is a pretty low tech industry, I am
16 reluctant to use the term technology too much, but
17 a complicated truss framing systems, engineered
18 flooring systems, and new ways of anchoring
19 foundations changed the way inspectors need to
20 inspect buildings, and many of them were on the
21 back side of the power curve, and the framing
22 checklist provides a great deal of detail on the
23 grade, size, species, connectors, spans,
24 anchorage, gable end bracing and sheathing, and
25 all kinds of things that have begun to fall

1 through the cracks, as builders adopted new
2 building methods but really didn't understand how
3 fussy you needed to be with the installation of
4 some of those new building methods.

5 Traditional building methods are
6 highly redundant, you can make a lot of mistakes
7 and still not have a real problem. With the new
8 building methods which are intended to save
9 material and labor and therefore reduce costs in
10 the construction process, they do that by making
11 the things that are installed much more precise in
12 terms of engineering, and the installation of them
13 much more critical than traditional construction
14 methods were.

15 We adopted new rules on the
16 inspection process itself to try to close some of
17 the collapse gaps that we observed. Those rules
18 emphasize the use of plans in the construction
19 process, a lot of inspectors had fallen into the
20 habit of not using the approved plans to do the
21 inspections, and with traditional construction
22 that was almost okay, but with modern building
23 methods it is not okay. We required the
24 foundation location surveys so we know that both
25 the height and placing of the foundation is right,

1 before anything else can be done in the building.

2 We required framing to be the last
3 of the rough inspections, because you wouldn't
4 believe how much damage a plumber or electrician
5 can do to a wood frame building after it has been
6 erected by a carpenter, so we want to do it
7 framing inspection after all of the other kind of
8 work is complete.

9 We require specific truss plans and
10 truss bracing plans, and the inspectors to carry
11 out the specific truss bracing inspection. We
12 require that insulation can't be installed until
13 all of the rough inspections have been completed,
14 and finally we made the use of the checklist
15 mandatory. It's not just an aid to the memory of
16 the inspector, it's also an accountability device
17 because we have each on record for each aspects of
18 the building inspection that matters at a
19 particular site.

20 There is no doubt that the framing
21 requirements that were in these rules at least
22 double the amount of time that it would take an
23 inspector to do a proper inspection, framing
24 inspection, but we believe that additional time
25 was absolutely necessary.

1 Q. Let me interject a question here,
2 and I don't intend to do that a lot, but is there
3 any requirement that the builder is, is there any
4 way to require or is there any requirement that
5 the builders follow, for example, a framing
6 checklist, or take any of those educational
7 courses related to that?

8 A. There is not a requirement, of
9 course there would be or could be if some of the
10 other recommendations the Commissioner talked
11 about were to be in place.

12 We did make it available to them,
13 some builders use it, as Mr. O'Keefe testified
14 this morning about five hundred builders took
15 advantage of that training that we offered, 2200
16 inspectors, well, they didn't have much choice but
17 this they did take advantage of it.

18 We set new requirements for the
19 plans that are submitted. You heard system that
20 prototype plans have been a problem and they
21 certainly have been, so we have severely limited
22 the scope of prototype plans and numbers and kinds
23 of variations that can be included in a prototype
24 plan. No reverse plans, you wouldn't believe how
25 difficult it is, or maybe you would, to inspect

1 the house with a set of plans that is a mirror
2 image of the one that's actually being
3 constructed. Of course, mirror images are very
4 common if you are riding around our neighborhoods.

5 We don't allow any significant
6 structural variations within a prototype. If
7 there is significant structural difference it's
8 another plan. And finally, we require a house
9 specific inspection set so that the inspectors
10 would not have to use prototype plans in the
11 field, but will have a specific set of plans that
12 shows exactly what that particular house on block
13 18, lot 7 is supposed to be, so there is no
14 confusion as to the requirements.

15 As I think you also heard in some of
16 the testimony from some of the industry, the
17 construction workers get confused by the reverse
18 plans and the complexities of prototypes too, and
19 they put the piers in the wrong place and things
20 like that, so there is no doubt that house
21 specific set of plans in the field will help the
22 builders to avoid unnecessary errors.

23 Q. Is that something is that was
24 recently enacted or required?

25 A. The plan requirements were adopted

1 in the Spring of 2004.

2 Q. Thank you.

3 A. Everything I have discussed, the
4 framing checklist, the rules on the process, and
5 the plans, were all part of what we referred to as
6 the framing project, some parts were more
7 difficult than others, and so it came into effect
8 in a phased way, the oldest the first part back in
9 January of 2002.

10 Just a little bit more about Permits
11 New Jersey. What will make it such a powerful
12 tool for everybody is that there will only be one
13 database, the Internet makes that possible. So
14 all of the records of all of the building
15 departments in the state will be on one common
16 database searchable by one common set of criteria.

17 The kinds of records that will be on
18 it, it tracks everything important, plan reviews
19 who did it, whether it has been done yet,
20 inspection requests, and inspection responses and
21 how long it took between the two of them, any
22 violations that have been cited, staffing levels,
23 it was intended to support building departments
24 and it will, very powerful tool for them to keep
25 adequate records, it requires conformity with

1 rules, things that you are not supposed to be, the
2 machine won't let you do, so we know in a computer
3 system you can do a certain amount of that with
4 any criteria, it will enhance the accountability
5 since nothing will happen unless the proper
6 approval is entered by the proper person, it
7 simply won't be possible to issue a certificate of
8 occupancy, it just won't come out unless all of
9 the proper subcode officials have signed off on
10 it.

11 It will facilitate on line
12 permitting for permit applicants and also status
13 checking by permit applicants, they will be able
14 to see where the plan reviews are, which one of
15 them isn't completed, how long their inspection
16 request has been pending and things like that.
17 But because of all of these things with a common
18 data place the it will provide for us the ability
19 to monitor in realtime all aspects of legal is
20 operations and construction activity, and we have
21 ways to do that now, but this will be a quantum
22 step forward in terms of our ability to keep on
23 top of what's going on in local building
24 departments.

25 Q. Would it assist in monitoring

1 inspectors working in multiple towns?

2 A. Absolutely. I mean, we do now in
3 that we get an annual report where everybody
4 reveals who is working in my building department
5 and how many hours a week do they work.

6 This system will tell us what they
7 did today, where, and if they did twelve
8 inspections, let's say in the worse case example
9 they did thirty inspections, and you really
10 couldn't, we would know that that evening, because
11 we can program those kinds of criteria into it.

12 They can't approve thirty jobs, and
13 that has happened, I mean it is very exceptional,
14 but that sort of a problem has arisen, and we'll
15 be able to catch it right away.

16 Sort of one statutory
17 recommendation. You heard a lot of testimony
18 about the difficulty with staffing and adequate
19 staffing. And that is something that we have
20 already monitored with even during the years when
21 we couldn't do operational audits of municipal
22 building departments we have always continued to
23 monitor income and expense ratios to try to
24 identify those municipalities that have the
25 largest staffing problems, that have the largest

1 gap between expense and income. All we have to
2 deal with that sort of a problem is a death
3 penalty. We do have the power to close the
4 municipal building department, have all the
5 employees fired, and take over, but that's a very
6 severe remedy. We need something short of that, I
7 believe, not just because it is so severe, but
8 because the municipality obviously has a right to
9 appeal that, and by the time the appeal process is
10 over so will the construction boom be over, and it
11 doesn't provide for any sort of immediate relief.

12 We think a process that would allow
13 us, based upon this real time monitoring that we
14 are able to do, to provide order, either DCA
15 inspectors or architects or engineers working for
16 DCA to carry out the required inspections that we
17 feel need to be carried out to keep things go in
18 terms of protecting the consumer until the
19 municipality can correct the problems that it is
20 having with inadequate staff.

21 There are a whole of lot of reasons
22 why even well meaning communities have some
23 difficulty reacting timely to those kinds of
24 staffing problems and it would give us a workable
25 remedy. We are not able to have a great amount

1 staff either, that's why the sort of ability to
2 deputize architects and engineers and that sort of
3 thing would be very useful.

4 Obviously that wouldn't appealable,
5 it shouldn't be appealable, simply putting enough
6 inspectors in place to adequately do the job, it
7 really doesn't harm the interest of the
8 municipality, it just assists the interest of the
9 ultimately home buyer.

10 Q. Who would pay for it?

11 A. Pardon me?

12 Q. Who would pay for that?

13 A. The builder would pay for it, and
14 they would get a credit against the municipal fees
15 that they were paying that they weren't getting
16 service for.

17 Let me turn now to some of the
18 details with procedural changes in the warranty
19 system. The warranty system that you have talked
20 about here is not the warranty system the
21 legislature intended, and it's not the warranty
22 system that I want it to be or the Commissioner
23 wants it to be.

24 I think in both your hearings and
25 our auditing have identified a number of problems

1 that need to be addressed. The warranty itself,
2 the law itself is rooted as the Commissioner
3 mentioned, in the traditional one year's builders
4 guarantee and the ten year's statute of
5 limitations on construction defects, one year for
6 everything, ten years for structural, basically.

7 It was conceived of as an
8 alternative to litigation, and that's why when I
9 hear comments that it is just like litigation, you
10 need your own experts and your own attorneys,
11 that's broken because that's certainly not the way
12 it was intended to be, it is supposed to be
13 alternative to litigation. So that basic
14 guarantee that two years on all mechanical
15 systems, ten years on the structural soundness,
16 the dispute resolution process that was free to
17 the consumer, they didn't have to lay out money to
18 do it, and it provided financial recourse in the
19 event that the builder didn't perform.

20 And while the system is certainly
21 not all it should be, a system that has assisted
22 sixty thousand homeowners since 1980 in dealing
23 with builders and getting those builders to make
24 corrections, fifty thousand of them done by the
25 builder, and has assisted ten thousand homeowners

1 financially to correct the defects to the tune of
2 around \$100 million, is not insignificant.

3 The homeowners in Shelter Bay on the
4 Hudson River who had \$6 million worth of repairs
5 to buildings that otherwise would have collapsed
6 due to them being built on illegal fill in the
7 Hudson River by a builder who was in federal
8 prison and an engineer who was dead, they would
9 have had nowhere to turn, those homes were rebuilt
10 and they are sound today, and I think that's
11 testimony to the wisdom of the warranty law. It's
12 not all it should be, but it has done a lot to
13 help a lot of people who would have had nowhere
14 else to turn.

15 The Commissioner mentioned that we
16 have done sixty audits of individual warranty
17 claims since your hearings in January. The
18 information that you brought forth in your
19 hearings in January, and also our audits,
20 suggested to us that we need to make a number of
21 changes. Almost all of these changes affect the
22 private plans a great deal more than state plan
23 and we think we can implement them because the law
24 has a provision within it that says the private
25 plans must provide coverage equivalent to the

1 state plan.

2 First is we have to make clear that
3 there is a permanent obligation to make a repair
4 that sticks. And this obligation is on the
5 builder and on the plan. That should eliminate
6 litigation, arbitration, arguing about method of
7 repair. The method of repair isn't important,
8 what's important is that the repair is permanent
9 and if it is repaired in sixth month and not
10 functioning in the fourteenth month, it should be
11 repaired again.

12 Once it is claimed and repaired
13 during the warranty period it should stay repaired
14 for the life of the home, and the state plan
15 approaches it that way and the private plans need
16 to approach it that way.

17 The burden of proof was never
18 intended to be on the homeowner and it should not
19 be on the homeowner. The arbitrator should be
20 responsible to measure, calculate whatever is
21 needed to determine whether there is a defect and
22 provide a clear narrative written decision that
23 talks about what was found factually, the defect
24 standards that are part of the law, applies those
25 standards to what was found and makes a clear

1 recommendation as to whether it is a defect or not
2 or why.

3 We have found a lot of the
4 arbitration decisions in the private plans to be
5 very inadequate in terms of meeting those
6 standards I have just outlined, that leads to
7 further disputes, further arbitration, further
8 appeals and things like that because you can't
9 tell what the arbitrator's ruling was because they
10 are so abbreviated.

11 We need to eliminate multi step
12 processes, you saw a chart, and it was right over
13 there, I believe, you saw the multi step process
14 in the warranty and some of the private warranty
15 programs. There should be one arbitration and we
16 should not be talking about financial settlements,
17 there should always be a correction.

18 One of the most important reasons
19 there should always be a correction is that the
20 warranty runs with the land, and the next
21 purchaser is entitled to have that defect
22 corrected, not a cash award made to the first
23 purchaser and that cash award not used or not used
24 fully to correct the defect.

25 I mentioned the builder needs to

1 make a repair that sticks, but we obviously can't
2 give him a half a dozen chances and there needs to
3 be a severe limit, certainly no more than two
4 tries before the plan is required to take over and
5 execute a repair that sticks.

6 The Department has begun to review
7 arbitrator qualifications, the Department should
8 have and I think can exercise approval authority
9 on all arbitrators so that we know that they are
10 qualified, and no arbitrator that does major
11 structural defect arbitration should do that
12 unless they are a licensed design professional
13 architect or structural engineer.

14 We are going to require a plan
15 administered economic relationship rules. The
16 private plans follow, and for that matter the
17 state plan at this point, follows the traditional
18 forms of arbitration, which is the arbitrator's
19 code of ethics says you have to go to the
20 arbitration and disclose any economic
21 relationships and then the parties get to object,
22 and if they object then you can't be arbitrator,
23 you try someone else.

24 You heard testimony in January about
25 the gentleman that had to take a day off to

1 exercise his right to reject an arbitrator that
2 have an economic relationship with the builder.
3 That's just ridiculous. The plans can screen
4 those, obviously the arbitrators, most good
5 arbitrators are in the industry somewhere, but the
6 plans can track any economic relationships and
7 simply not send someone out who has an economic
8 relationship, we really don't need that.

9 There shouldn't be a builder appeal.
10 The builders select the private plans, if they
11 think the private plans aren't being fair with
12 them they can select another one, or they can
13 litigate with the private plan but we don't think
14 the homeowner should wait around after a qualified
15 arbitrator has said this is a defect, while the
16 builder appeals the plan's decision.

17 The Commissioner mentioned the four
18 month booklet which we hope to highlight, we have
19 the enrollment of all private plans, we receive
20 them within 90 days of the enrollment, that's why
21 four months. The booklet is not like the big
22 thick warranty program, but more friendly sort of
23 trifold or fourfold that explains to the homeowner
24 the key points they need to keep in mind so they
25 can take advantage of their warranty rights.

1 We also wanted to implement a
2 standardized walk through escrow form. One of the
3 traps homeowners fall into is when they do walk
4 through just before they move into the home and
5 they withhold some money, because something isn't
6 complete to their satisfaction. Anything that
7 they indicate that's not right and they wish to
8 withhold money for is an incompleteness, not defect
9 and if they haven't withheld enough money they
10 don't have enough warranty on that because they
11 have withheld money. It should be very clear to
12 them so they know they don't have to withhold
13 anything, they certainly should have the right to
14 withhold money and use those kind of private
15 remedies if they want to, but they should be very
16 much aware of how they might be compromising some
17 other rights if they do that, and they need to be
18 very sure if they are withholding money that they
19 are withholding enough to cover whatever it is the
20 builder hasn't finished.

21 The Commissioner talked about
22 lengthening the coverage periods and I think this
23 is the most fundamental problem with the new home
24 warranty program. The periods were set as they
25 were as essentially as I said because they picked

1 up on the traditional one year guarantee. At some
2 point it becomes difficult to distinguish between
3 a defect and a lack of maintenance by the
4 homeowner on the home, that's why the coverage
5 particularly on minor items can't be forever.

6 But we are recommending that the one
7 year coverage on water damage be extended to three
8 years, originally, I personally thought that if
9 you had a water infiltration problem it would show
10 in a year. That's simply not true. Weather
11 conditions vary enough in the state that you can
12 have a defect that's going to cause water damage
13 that won't show up in one year. I think there is
14 an extremely high probability it will show up in
15 three years. Once you get beyond three, and hit
16 four and five, it becomes is that the fault of a
17 fundamental problem or because the windows haven't
18 been caulked because maybe the windows have to be
19 caulked every four years or that sort of thing.

20 Concurrently, we think that the
21 coverage should be extended from two years to
22 three years on wells, septics, mechanical systems,
23 electrical heating systems and things like that.
24 From one year to ten years on basic fire safety
25 systems, fire safety systems and requirements are

1 covered as year one defects, but they should
2 certainly be covered right out to the full extent
3 of the statutory limit of repose.

4 Finally, we need to extend the major
5 structural defect coverage, not extend in years,
6 because it is ten years, but we need to strengthen
7 the definition. The current definition of a major
8 structural defect is a virtual collapse, we think
9 that should be rewritten so that the covers any
10 substantial failure to meet structural performance
11 requirements, and that is something that can be
12 determined and analyzed from an engineering
13 standpoint. You are not going to have an actual
14 collapse even with a building that isn't
15 sufficiently strong to resist wind loads unless
16 you have a 100 mile an hour wind, and we ought to
17 be able to cover those kinds of defects without,
18 at least in that instance the damage actually
19 having to occur.

20 The Commissioner mentioned there
21 needs to be penalties. There are no penalties
22 other than for failure to enroll a home. I am
23 going to turn now to builder track record.

24 MS. GAAL: Mr. Connolly. I am going
25 to take pity on the court reporter, I think she

1 would like a break.

2 (4:20 p.m.)

3 (4:33 P.M.)

4 COMMISSIONER SCHILLER: We will
5 continue with the hearing.

6 BY MS. GAAL:

7 Q. Thank you. Mr. Connolly?

8 A. All set. The Commissioner really
9 outlined very completely our recommendations on
10 the consumer protections so I am not going to fill
11 in any of the details on that.

12 I would like to turn to the builder
13 track record issue. And this was one when it
14 first came up at the first hearing I said to
15 myself you know, what on earth are they talking
16 about, I mean we have some information on builders
17 and it is certainly a public record, people can
18 access it, but then as you explored the idea a
19 little bit further and I thought about it a little
20 bit further I realized that we do collect some
21 information, we certainly are in a position to
22 collect more, that if we put it together and
23 packaged it right and give people the real
24 opportunity to know what the track record of a
25 builder is, and it is something they really need

1 to know, it's not that easy at the present time.

2 We currently collect criminal
3 background information, we obviously ask that on
4 every builder registration application and we run
5 criminal background checks on everyone who
6 applies, all officers and directors and
7 stockholders, to verify that they are telling us
8 the truth in terms of whether there is any
9 criminal issues in their background.

10 We have begun to collect all claims
11 from the prior plans, we historically have
12 collected all homes enrolled, and of course we
13 have all of our own claims, but we have begun to
14 collect all claims to the private plans.

15 Now a claim is when the builder
16 hasn't taken care of a problem and needs to be
17 prompted in some way by the warranty plan or
18 program. So a claim is an indication of a builder
19 that is not acting fully responsible, they would
20 never get to a claim if they were honoring their
21 obligation and responding promptly to whatever
22 defect the homeowner has identified. We are going
23 to change our forms to ask them to supply records
24 of all judgments, satisfied or not, and they are
25 also, as you know, these days with Lexis and Nexis

1 and other computer based systems ways to check on
2 the veracity of whether they are providing that
3 sort of information to.

4 Finally, records of all
5 bankruptcies, especially those that leave a
6 homeowner as an unsatisfied creditor. As you well
7 know, bankruptcy is the great American
8 forgiveness, and we really can't penetrate
9 anything you do that you are financially
10 responsible that once you gone through bankruptcy
11 you are washed clean. But people certainly have
12 the right to know whether that has happened,
13 because it reflects on whether it would be a good
14 idea to buy a home from this particular builder or
15 not.

16 One thing I want to emphasize on all
17 of this information and also our approach to
18 builder registration, and that's the concept of
19 related companies. As you know, it is very common
20 in the building industry that every development
21 has a different company, sometimes every section
22 has a different company, it limits the liabilities
23 of builders going forward and provides a number of
24 other benefits for them.

25 Our approach is that if there is a

1 criminal issue in the background, it applies not
2 just to that company, but to any related company.
3 So that we have that information on all officers
4 and directors and stockholders, and if company A
5 has one officer or director or stockholder that
6 was implicated in some of those kind of activities
7 in company B, it would be reported under company
8 A, because these corporations are something of a
9 convenience, they are not really real in terms or
10 they shouldn't be real in terms of accountability.

11 That's the way we administer the
12 warranty law. If a builder refuses to correct the
13 defect then we have to, we will revoke their
14 registration, we are not here to pay for the
15 correction of defects for builders that are still
16 in business. We will revoke not just the company
17 that has failed to correct the defect, but any
18 related company, in other words, any company that
19 shares officers, directors or stockholders, and we
20 believe that the disclosure systems should work
21 the same way.

22 I think something else that fits in
23 here is the concept that you have been exploring
24 of reporting. Mr. O'Keefe mentioned this morning
25 that if you bore into the warranty law it has the

1 essential elements of licensing, and it does. One
2 section of it says that a builder can be revoked,
3 denied, or suspended for any of the following
4 activities. And it's the kind of language that
5 you would find in any licensing statute. It is in
6 fact our response to DKM.

7 One of the ways a builder can lose
8 their registration is a willful violation of the
9 Uniform Construction Code. It is our position
10 that once they are notified of its existence the
11 failure to correct it is a willful violation of
12 it. It is very difficult to prove that the
13 builder willfully failed to drive the nails or put
14 the bracing in the right place, but once notified,
15 failure to correct it is a willful violation of
16 the code. It sort of gets around the DKM
17 decision, but I think in the long term it is a
18 better remedy than the building inspector chasing
19 them with \$500 penalties or \$2,000 penalties
20 because it's far more positive.

21 Now, we talked a little bit about
22 would it be helpful if municipalities reported
23 when they were having those kinds of problems with
24 the builder. A builder that simply does not
25 finish the streets or the roads or what have you,

1 bond or no bond, and remains in the building
2 business is certainly at the minimum being
3 negligent, and that's one of the causes for
4 revocation and suspension. I think we have the
5 basis of a very good system with some statutory
6 changes that would provide for that kind of
7 reporting, and also provide, because I am just a
8 little bit concerned that making all of this kind
9 of information just generally available on a web
10 site or what not, really should have some
11 statutory authorization, we can collect the
12 information, but I think it would be helpful and
13 useful in the long run if we clearly had a
14 statutory basis for making all of that information
15 available, obviously there would a correction
16 system just like we had before, if we pick up
17 something from a criminal background check on the
18 individual named it gives him an opportunity to
19 correct the record before it becomes a part of the
20 public record.

21 The Commissioner talked about the
22 builder labor force issues and what our proposal
23 is. We think it would be a serious mistake to
24 make subcontractors financially responsible so
25 that builders were not financially responsible,

1 they picked them, they are their subcontractors,
2 the builder should be responsible to the
3 homeowner.

4 But clearly your record shows that
5 those builders, at least some of them, are not
6 doing a very good job selecting those people, and
7 they appear to need some help insuring that the
8 subcontractors they hire are technically
9 competent, and that's why we talked about
10 requiring the certification of them, embedding
11 that certification requirement in the warranty law
12 so that a regulatory action could be taken against
13 the individuals who failed to build properly, but
14 also could be taken against the builder who
15 employed those individuals.

16 You spent this afternoon talking
17 again about site work issues. Let me just talk
18 about that for a couple of moments, we have some
19 recommendations there too. This is a classic
20 falling between the cracks issue and I think your
21 hearings have highlighted that very well.

22 The Uniform Construction Code and
23 the New Home Warranty Act are both clearly limited
24 to the builder. The construction code is limited
25 to the building itself and utilities five feet

1 beyond, except for a water or sewer connection
2 where it covers to the point of connection, where
3 it joins the public sewer or joins the septic
4 system, but that's it.

5 The New Home Warranty Program only
6 covers those things that are structurally a part
7 of a house. It doesn't even cover a deck that is
8 not structurally a part of the house.

9 The Municipal Land Use Law, on the
10 other hand, primarily covers those improvements
11 that are going to become the property of the
12 municipality. The whole bonding procedure that
13 you were talking about earlier is really intended
14 to guarantee that the builder will provide the
15 improvements. I mean, the fundamental principle
16 is every new house has to be on an improved
17 street, and when you approve the subdivision and
18 there are no improved streets and the basic
19 requirement is to build all of the streets before
20 you can pull the building permit. The bonding
21 requirements were sort of to get around that and
22 allow them to bond the completion of streets so
23 they could pull building permits before all of
24 those improvements were finished. That's
25 historical genesis.

1 Some municipalities have used that
2 bonding ability very creatively, probably beyond
3 the strict letter of the law, to try to protect
4 individual homeowners or to try to protect
5 homeowners association in gated communities.
6 Their statutory authority to really do that is a
7 little bit questionable, and more importantly all
8 of the remedies of the Municipal Land Use Law are
9 optional with the municipality, it's an enabling
10 legislation, it does not require the municipality
11 to adopt its procedures, and of course there is no
12 oversight whatever or no independent appeal of
13 whether a municipality does or does not take steps
14 to protect the home buyers, many of them do, but
15 not all of them do, it is a big state.

16 You have heard the problems that we
17 have had in some municipalities even with
18 oversight, obviously you can imagine we have a
19 little bit more where we have no oversight. What
20 we are recommending is to extend the coverage, as
21 the Commissioner mentioned, of the construction
22 code, and the New Home Warranty Act, to lot
23 improvements that are not covered by the Municipal
24 Land Use Law bonding.

25 In a conventional subdivision it

1 would be the lot, the drainage on the lot, the
2 front porch, the sidewalks, the driveway, and
3 things like that, the standards would be a part of
4 the construction code, and inspection for
5 compliance with the standards would be a part of
6 construct code process, and the ability to get
7 things that are done wrong corrected would be
8 provided for the warranty law and the warranty
9 fund. The cost of public improvements in a gated
10 community where sometimes even the streets are
11 private, I heard of one municipality that required
12 even sewers to be private, would be too much for
13 the warranty program, and that's why I think there
14 should be some sort of additional financial
15 security covering those if they are not covered by
16 the Municipal Land Use Law.

17 Again, the condo issues and kind of
18 unlevel playing field occurs when the condominium
19 association is taking over most of the building is
20 the common element, and all of community's
21 facilities are of common element. There is sort
22 of unlevel playing field we have in that
23 circumstance and the Commissioner outlined our
24 recommendations on that, and I will stop and see
25 if you have any questions for us.

1 COMMISSIONER SCHILLER: Thank you,
2 Mr. Connolly.

3 MS. GAAL: Given how comprehensive
4 the presentation has been, perhaps it would make
5 more sense for the Commissioners if you have
6 questions to go first.

7 COMMISSIONER SCHILLER: Okay. Well,
8 maybe we will begin with Commissioner Cary
9 Edwards. He's is got a big plate there,
10 Commissioner.

11 COMMISSIONER EDWARDS: I think I
12 should compliment the Department and Mr. Connolly
13 for what I perceive as a major movement in the
14 approach of the Department over the years, and you
15 and I worked together Mr. Connolly, for
16 twenty-five years, even longer than that,
17 including adoption of the warranty program when we
18 first started looking into this the Commission's
19 perspective, it reminded me of a task I assumed
20 back in 1985-'86, involving the Division of Motor
21 Vehicles.

22 MR. CONNOLLY: We helped you just a
23 little bit with that.

24 COMMISSIONER EDWARDS: Yes. The
25 Division of Motor Vehicles was a regulatory agency

1 that didn't understand it had a consumer
2 requirement attached to it and collapsed because
3 of that, it collapsed from a practical standpoint
4 because of bad management and a lot of other
5 things. But in the process we ascertained that
6 the division had more of a consumer responsibility
7 than it did a regulatory responsibility, and
8 somehow we had to arrive at a marriage of both.

9 And I have always kind of believed
10 that your office and your operation was mired in
11 the regulatory side of what they did and not in
12 the consumer side of what your responsibilities
13 were. I know you exercised them very quietly,
14 based on what are your perception of the law would
15 be to the best you have could for homeowners at
16 any given point in time depending on how the law
17 was moving at any particular time.

18 From my perspective it is a
19 recognition of maximizing the regulatory powers
20 that you have for the benefit of the consumer, and
21 marrying the regulatory piece and the consumer
22 piece which I see deeply reflected in all of your
23 recommendations, and something I do see as a very
24 doable and achievable, Mr. O'Keefe was here
25 earlier recognizing a department of housing

1 because of the inability, he says, to have
2 properly represented a very important part of our
3 society, which is individual homeownership, for
4 every citizen in New Jersey and we should have a
5 department of housing, et cetera.

6 Having said that, and clearly
7 applauding all of your recommendations, one of the
8 things that happened in the Division of Motor
9 Vehicles, which I found, that's going to be my
10 first major question, was that after we put it
11 together and gave it a consumer bent, and it was
12 delivering the consumer product, over a period of
13 about eight or ten years that eroded as it has a
14 tendency in government to do when funding dries
15 up.

16 Give you an example, we set up a
17 consumer hotline and toll free number, and we had
18 one hundred twenty operators answering just a
19 million phone calls a month in that process. And
20 when I left in 1989-1990, there was one hundred
21 twenty operators.

22 When Governor McGreevey asked me to
23 come back and asked me to take a look at motor
24 vehicles as it was transferred to Department of
25 Transportation, it had fifty-eight operators

1 handling twice as many phone calls, and all that
2 meant was nobody was answering the phone. And the
3 funding had eroded over altered period of time as
4 it absorbed into the bureaucracy of the Department
5 of Transportation.

6 That leads to my first major
7 question. One of the problems that existed
8 in -- that you clearly pointed out in your
9 regulatory role you only have three people in it,
10 and now you have twelve. The issue was an
11 important one, we have highlighted it with about
12 three thousand different new home construction
13 problems that have been articulated before us by
14 homeowners, and the funding issue which has
15 created some of these problems over the years,
16 budget cuts, I know Commissioner, you are looking
17 at a ten percent demand to reduce your budget
18 right now because of a \$5 million shortfall in
19 this year's budget.

20 How do we deal with the issue and
21 how are you funded presently, and how do you
22 propose to provide enough resources to deliver the
23 consumer protection piece of this and not just the
24 bare bones of regulatory requirements of your
25 statutory responsibilities as they get

1 interpreted?

2 MS. BASS LEVIN: Well, I think that
3 there are at least two ways to look at this, and
4 then I will ask Bill to share his thoughts. While
5 certainly a part of this is funding, a part of
6 this is also approach, and I say that because
7 coming from municipal government to state
8 government I see very clearly the difference when
9 things are sort of on the ground versus a much
10 bigger bureaucracy, and I think it is important to
11 recognize that we set a tone for whether this will
12 be a consumer friendly agency versus a regulatory
13 agency.

14 And one of the things I said from
15 the first day I came to DCA, so it is interesting
16 that you say this, is we need to be looking at our
17 agency as a resource, and not purely as a
18 regulator. Yes, we have regulatory requirements
19 and that's an essential part of what we do, but we
20 need to make sure that every person in the
21 Department understands that our responsibility is
22 first and foremost to the citizens of this state.
23 And that's something that we need to remind
24 ourselves of each day, that it's not just about
25 filling a form or processing a piece of paper, but

1 there is a real live person who will be affected
2 by what we do.

3 In terms of the funding piece, to be
4 sure that is critical all throughout state
5 government, many of our programs that we are
6 speaking about today, though, are in fact fee
7 supported, and so therefore it is in some ways a
8 question of management.

9 One of the things I said to Bill
10 when we started on this initiative is you need to
11 tell me how many people you need to make this work
12 right, we will then work on the funding pieces of
13 this, the fact that much of it is fee supported
14 makes it easier to manage. There are in fact
15 parts of this that are not fee supported and so
16 they become much more difficult, but part of this
17 is, and this is where I will turn it over to Bill
18 is understanding where you need people at any
19 particular time and understanding how you can best
20 train people so that they can do different parts
21 of jobs.

22 In our private home warranty plans,
23 for example, while there is only one full-time
24 person assigned to just do private home
25 warranties, there are three other people where

1 parts of their responsibilities involve the
2 private home warranties. So that is very much a
3 management issue.

4 Someone with Bill's years of
5 experience in this certainly helps make these
6 changes that we have implemented much more
7 realistic because he has the history of what has
8 worked and what hasn't worked.

9 COMMISSIONER EDWARDS: I would
10 suggest pursuing the fee issue more profoundly and
11 I would like to get more information based on how
12 that structure is for you so we can push that in
13 the report in our recommendation in our report too
14 that the fee based support for the operations, to
15 the extent that they are capable of being so done
16 are in fact done. I would think to some extent
17 you could even find some support in the industry
18 to do, that rather than the option we are thinking
19 of imposing which is to bring the Consumer Fraud
20 Act and go back to litigation and treble damages,
21 which is in the construction field is already in
22 field of alterations and additions and that's the
23 kind of alternative, as I see it.

24 If the homeowner warranty can't be
25 made to work, if the inspection system can't be

1 made to protect the citizens, if the production
2 builders can't be brought on line, then we are in
3 trouble, and I would be very interested to see the
4 fee structures that support and those that don't,
5 and what those budgetary constraints are at
6 another time.

7 And I know Bill has fought for fee
8 dedication for a long time, I am a recent convert
9 to that after having watched motor vehicles fail,
10 they have that fee guarantee now, I think, so it
11 is at least a proportionate fee guarantee.

12 Let me go on to another issue which
13 is the registration and licensing, and this breaks
14 down into two or three different areas, whether
15 they call it licensing or registration or
16 certification, the language that supports it is
17 what's important.

18 MS. BASS LEVIN: Of builders.

19 COMMISSIONER EDWARDS: Of builders
20 we are talking about. There is licensing and
21 approval of homeowner warranty companies, there is
22 licensing and approval of builders there, two
23 types of builders, there is production builders
24 and there are your traditional building system,
25 there are subcontractors, and there are the

1 registration certification of skilled workers and
2 tradesmen within that confine can be dealt with.

3 I am talking about all of those, it
4 only exist right at the registration level and we
5 don't really revoke peoples' registration on any
6 regular basis except for warranty program, Bill,
7 if I am not mistaken, but I think over the years
8 registration hasn't not been used for that
9 purpose, but the power enables us to do that.

10 How do we get to a licensing
11 registration or certification program that has
12 real teeth to it for each of the categories that I
13 have spoken to? I will give you an example as to
14 on the production level, production people,
15 builders, as to why I think it is important.

16 Presently with a production builder,
17 whether it is Holiday City, whether it is
18 Hovnanian or Four Seasons, at Wall or the others
19 we have seen fail, there's been a number of
20 components that made them fail, a combination of
21 bad inspector, bad builder, bad municipality, lack
22 of resources, and bad property, in many instances
23 it came together all at the same time.

24 When I am a homeowner, and I am
25 buying a house from any one of these builders, I

1 walk in and see a very nice model, I sign a
2 contract. I am not permitted to inspect the house
3 myself, based on the contract's provisions which
4 are take-it or leave-it contract provisions. I am
5 required to take the homeowner warranty they
6 signed up to, I can't contest that, I have no
7 place to go to look to for protection, the builder
8 himself is not registered, no one can modify that
9 contract, and perhaps if we were to license
10 production builders we could also do similar kinds
11 of things that you do in regulating the
12 condominium association agreements, and
13 developer's responsibilities when they build a
14 condominium with production builders.

15 We were told yesterday that
16 production builders were nationally responsible
17 maybe ten years ago for four to five percent of
18 all homes built in the United States, now they are
19 up to 25 percent. They are predicting within the
20 next five to ten years building 50 percent of the
21 new homes, and perhaps if we licensed them and
22 their supervisors who are on the scene and their
23 subcontractors, we can also through that process
24 get into their contracts and their requirements,
25 at least minimum requirements and consumer

1 guarantees they have to give to every homeowner
2 who walks in, which includes arbitration rights
3 and includes homeowner warranty rights, when they
4 get things, what they are required to do that are
5 far more consistent, and if we don't license them
6 we don't have the vehicle to walk in and make
7 those particular requirements, and I would elicit
8 your comments with reference to licensing, and
9 that's the one level, any of the other levels that
10 I think we are probably going to recommend.

11 MR. CONNOLLY: I am a registered
12 architect and a licensed professional planner.
13 There is no difference, because the laws are
14 essentially the same. And as I pointed out, the
15 builder registration requirements in the New Home
16 Warranty Act provides the basic framework of
17 licensing. I think of all of the recommendations
18 that the Commissioner mentioned go to sort filling
19 that out so that the obligations go well beyond
20 simply having a home without defects, but cover
21 all aspects of the conduct of the building
22 company.

23 Whatever their numbers are in
24 national, in terms of the trend towards large
25 products builders, New Jersey leads, not trails,

1 because the overall land costs and whole
2 environment in New Jersey for development really
3 means you need a lot of financial resource to be
4 successful in the building game. It's not an
5 accident that none of those people you talked to
6 know how to swing a hammer, that's not the hard
7 part of the business any more. The hard part of
8 the business is getting approvals and raising the
9 capital, but to the extent now that we have begun
10 to sort of reflect the core function which is
11 swinging the hammer and delivering the good
12 product to the consumer.

13 I do want to correct one thing that
14 was said this morning. Mr. O'Keefe couldn't
15 recall a builder having their registration
16 revoked. At present time there are nine hundred
17 and seventy-one builders in the revoked status.
18 Perhaps they are not members of the New Jersey
19 Builders Association, that's the only explanation
20 I can offer.

21 MS. BASS LEVIN: Or they don't tell
22 him.

23 MR. CONNOLLY: But I think if you
24 sort of piece all of the recommendations together,
25 and the way we propose to enforce them, utilizing

1 that registration requirement, even down to their
2 failure to honor their obligations to a
3 municipality, I think we'll have a system that's
4 very workable, and we have begun to do that, with
5 DKM taking away the one big tool, builders are not
6 continuing to work with us because they are nice
7 guys, some of them are nice guys, but they are
8 continuing to work with us because we made it very
9 clear that a willful violation of the Uniform
10 Construction Code means they are not a builder.
11 And if we have given you a list and you don't
12 correct it, that's willful. That's black and
13 white.

14 COMMISSIONER EDWARDS: And you have
15 put out regulations to accomplish that particular
16 goal, noticed them in this world, are you prepared
17 to do that?

18 MR. CONNOLLY: Havir Hovnanian when
19 she talked, actually you have the correspondence
20 with us left out the letter she received from Mr.
21 Stephen Denholz, which lays that out very clearly
22 that's what will happen to you if you don't
23 correct this stuff. She kept talking about trying
24 to reach an understanding with Mr. Mraw, she
25 remembers Mr. Denholtz because that's when the

1 hammer fell.

2 COMMISSIONER EDWARDS: Any comments
3 with reference to using that particular vehicle as
4 a way to get into the contracts and including the
5 developers agreements --

6 MR. CONNOLLY: Absolutely. The home
7 buyers bill of rights that the Commissioner
8 described to you would be enforced through that
9 mechanism if those rights are not being properly
10 accorded to home buyers.

11 COMMISSIONER EDWARDS: To what
12 extent do we have the power to control the
13 arbitrators in the private system? I know you
14 described certain views --

15 MR. CONNOLLY: I think we have more
16 than we have exercised and we are going to do so.

17 COMMISSIONER EDWARDS: Do you think
18 it warrants a review of having arbitrations
19 handled by state arbitrators, who we know how well
20 trained they are, what their capacities are? Is
21 the private sector capable --

22 MR. CONNOLLY: There are actually
23 only two panels of arbitrators, if you will. One
24 is maintained for us by the Department of the
25 Public Advocate, it's not a department any more,

1 but the office of disputes and settlements and
2 wherever the Public Advocate's Office is right
3 now, and one of the private plans uses that same
4 panel of arbitrators, the other two major private
5 plans used the one in Texas that you described, I
6 think it's entirely feasible to have them all use
7 the public panel.

8 I think it would take some kind of
9 legislation, because it is sort of intruding on
10 private business relationships, but from a
11 practical and sensible standpoint it is very
12 doable.

13 COMMISSIONER EDWARDS: Some
14 recommendations were made to us about the county
15 and or regional inspection offices as opposed to
16 the municipal inspection office. I have my own
17 feelings about that, but I will let you tell us
18 yours.

19 MR. CONNOLLY: We tried very hard to
20 encourage the counties to become involved early in
21 the Uniform Construction Code process, with very
22 little success. New Jersey is a state made up of
23 five hundred sixty-six municipalities, you are
24 very much swimming against the tide of history, I
25 think, to try to say traditional municipal

1 functions should be moved to other levels of
2 government.

3 With so many municipalities being
4 small, that presents management problems, but I
5 think those are something we can deal and I don't
6 think anyone has mentioned that the insurance
7 industry, the Insurance Services Organization
8 rates building departments, they have rated every
9 building department in America, from one to ten
10 one being the best and ten being the worst and,
11 91 percent of New Jersey building departments rate
12 four or better when measured against their peers
13 all across the country.

14 COMMISSIONER EDWARDS: Four is not
15 Wall Township, is it?

16 MR. CONNOLLY: I couldn't tell you
17 off the top of my head what Wall Township is. 43
18 percent of the building departments nationally
19 rated below a five, not a single New Jersey
20 building department rates below a five, and that's
21 sort of an a objective analysis. That doesn't
22 mean that everything is as it should be, as you
23 well know, but it means given where we started
24 with so many small building departments, the
25 Uniform Construction Code system has made it

1 possible in many of those municipalities, with the
2 support that we provide to those municipalities,
3 to do a pretty good job on behalf of our citizens.

4 MS. BASS LEVIN: There may be an
5 intermediate step, though, rather than looking at
6 this just from a municipal versus a county, what
7 we see particularly with smaller towns, is that a
8 town may have a building inspector that is also a
9 building inspector some place else, and
10 essentially that building inspector negotiates his
11 or her own deal with each municipality.

12 Perhaps a more effective way would
13 be for the municipalities to have shared services
14 agreements, where the municipalities agree that
15 they will share one full-time building inspector,
16 they pay one full-time building inspector salary,
17 and then divide up the days of the week.

18 If you looked at towns ten years ago
19 the mere thought of shared services was enough to
20 send most of them screaming and running. The
21 trend, though, certainly is towards shared
22 services, we in fact provide grants to towns to
23 look at that and we are encouraging towns to look
24 at building inspections as one of the services
25 they could look at for shared services

1 arrangements.

2 COMMISSIONER EDWARDS: Presently do
3 we have any regulations or controls on the
4 building inspectors who work in multiple towns?
5 There is a great debate going on as to what degree
6 multiple responsibilities or multiple
7 jurisdictions, one type of inspector you can have.
8 I happen to support it, but I only support it if
9 it is done within a certain framework. Do we have
10 the framework for that?

11 MR. CONNOLLY: Well, what we do, and
12 like many things, three people instead of twelve
13 make it difficult to keep up, but we track
14 everywhere that an inspector is employed, and then
15 we know how many work in three towns, four towns,
16 six towns.

17 COMMISSIONER EDWARDS: Which isn't
18 bad necessarily.

19 MR. CONNOLLY: But we have been
20 going through them starting from the top, looking
21 at each one of those inspectors that is employed
22 in multiple towns, and examining the amount of
23 work they have, because it affects their
24 abilities, whether they are a nine town or five
25 town building department, looking at and applying

1 our work load staffing relationship ratio which we
2 developed over many years to them, and if they
3 have too many towns we tell them they have to get
4 out of some.

5 COMMISSIONER EDWARDS: Do you have
6 standards for that?

7 MR. CONNOLLY: Yes, we have a long
8 standing system for evaluating how many inspectors
9 are needed in a given municipality based on the
10 work load that's either present or contemplated.
11 Some of the inspectors this morning referred to
12 those work load analysis that we do. We do them
13 when they are requested but we also do them when
14 the municipalities shows up as having a wide
15 disparity between the amount of income collected
16 and the amount of money spent on the building
17 department.

18 COMMISSIONER EDWARDS: Well, I would
19 very much like to see those standards
20 standardized, because we deal with the issue of
21 well, they work in five towns, and they are doing
22 drive-bys in three, and not really doing real
23 inspections, and those kind of allegations, and I
24 know that's true in some instances, we have
25 documented that, but it is not true in most

1 instances, and being assured that there is a set
2 of standards and a regulatory world that's
3 actually looking at them and collecting the data
4 and actually using it, was not in my view of the
5 Department's resources they didn't have the
6 capacity to do it on a regular basis, or it didn't
7 exist, and I wasn't sure if it did or didn't.

8 MS. BASS LEVIN: We'll be able to do
9 it better at least in realtime, as Bill says, when
10 we have Permits New Jersey up online. We can
11 certainly provide you that information if you have
12 certain towns or inspectors that you are
13 particularly interested in, you could certainly
14 provide that us to at a later date and we could
15 review our records to give you information
16 specific to the inspectors or towns.

17 COMMISSIONER EDWARDS: Under the
18 Public Right To Know Act and the data that you are
19 collecting, is that data at all protected? You
20 indicated, Bill that you needed statutory
21 authority to potentially disseminate the
22 information about builders to make it available on
23 the Internet to the public, and under the Public
24 Right To Know Act I thought it might be available.

25 MR. CONNOLLY: I thought it was

1 accessible under OPRA, but I was talking about
2 making it more accessible and more available in
3 terms of web sites and things like that, but I
4 think some clear legislative intent would be
5 helpful.

6 MS. BASS LEVIN: The legislation
7 would help address the privacy issues that could
8 be raised, if the legislation addresses it
9 specifically it would be easier.

10 COMMISSIONER EDWARDS: But there are
11 privacy issues that need to be protected, to be
12 fair.

13 MR. CONNOLLY: If you want to check
14 a builders track record you really should not have
15 to submit an OPRA request, it would be better if
16 you didn't have to.

17 COMMISSIONER EDWARDS: Do we have a
18 hotline for complaints, do we have a toll free
19 number that people can call?

20 MR. CONNOLLY: Actually we do, our
21 Office of Regulatory Affairs gets dozens of calls
22 every week from homeowners, contractors
23 complaining of about building departments, from
24 building inspectors. The number is on our web
25 site, it is only answered during the daytime, so

1 it's not a true hotline that's answered 24 hours a
2 day, but how you contact us is out there pretty
3 well, and we do get a lot of contact.

4 COMMISSIONER EDWARDS: You do. I
5 was thinking more of a putting a homeowners
6 consumer protection, whether it be inspections and
7 additions and publicizing, so it's available and
8 then staffing it so someone can answer legitimate
9 questions and pass those complaints on.

10 MR. CONNOLLY: The Division of Codes
11 and Standards the telephone is always answered, I
12 prohibit voice mail or menu choices or anything
13 like that. The number that I mentioned is in the
14 booklet that each homeowner gets with their
15 warranty, but it's clearly not enough, and that's
16 why the Commissioner is talking about doing the
17 pamphlet that will come to them at a time when
18 maybe they are better able to deal with a little
19 piece of information that will give them the same
20 fundamental information.

21 COMMISSIONER EDWARDS: That's all I
22 have.

23 COMMISSIONER MARINIELLO: I want to
24 thank you both first for coming down, and for the
25 obvious amount of time that you have spent putting

1 together your presentation and recommendations. I
2 know that we pride ourselves on the amount of time
3 that we have put in, and certainly this, is at
4 least Mr. Connolly it has been largely your life's
5 work over the last twenty-five years, and I
6 appreciate your insight in particular, it is very
7 helpful.

8 There is so much material and the
9 hour is late, so I would like to just concentrate
10 on a couple of small things and they actually hit
11 on some of the things that Commissioner Edwards
12 talked about.

13 It is my belief after listening to
14 many of the homeowners, and after sitting in on
15 some of the testimony from DCA employees, that
16 your Department has a PR problem that can be fixed
17 without any legislation, and Commissioner, you
18 talked about that, how we get the public to
19 appreciate what it is we can and can't do, but do
20 so in such a way that they are left not feeling
21 helpless and that the state is not paying
22 attention to their claim.

23 Mr. Connolly, you and I briefly
24 talked after one of the previous hearings about
25 how some people might argue that some of your

1 departments are misnamed, and there is probably
2 three thousand complaints we have had, and I bet
3 most of them feel that the department known as the
4 Bureau of Homeowners Protection might not be
5 appropriately named, because they believe after
6 talking to the few people that you have employed
7 there, and obviously you have limitations that you
8 have to work with, not feeling satisfied, not
9 getting calls back, for example, sometimes taking
10 months before they hear back, where -- and I know
11 this as an attorney I always have that one client
12 that calls every single day, and I dread getting
13 that call, and I am sure that some of those people
14 who work in the warranty departments who get those
15 calls all the time from the same people trying to
16 find out what's happened with them, it can get
17 rather frustrating, but I would suggest that at
18 least part of the problem would be alleviated with
19 the continued emphasis in the Department on the
20 consumer end that Commissioner Edwards was talking
21 about.

22 And I sat through some of the
23 private hearing testimony from some of the
24 employees at DCA, and I will tell that you if you
25 read those transcripts you wouldn't notice that

1 sense that there was void in the consumer end of
2 this process, but if you sat there and listened to
3 it you would, and paid attention to what was
4 actually being said and how it was being
5 presented, you would see that, and I think that's
6 probably the feeling the homeowner gets on the
7 phone sometimes, not all of the time, I am sure,
8 but sometimes, and one of the things that I think
9 that Department really needs to work on is that,
10 which is something that can be helped without
11 legislation and without more funding, just
12 something that's a constant reminder to those
13 people. And I see that your emphasis is changing
14 in that area and I appreciate that.

15 A couple of the things that I wanted
16 to talk about. We had some testimony yesterday,
17 and we have had it quite frankly in our prior
18 hearings, about the incompetence of some of the
19 inspectors. Commissioner Edwards mentioned Wall
20 Township.

21 Yesterday we had a construction
22 official come in here and tell us that one of his
23 inspectors who holds a building and fire subcode
24 is incompetent and there is nothing he can do
25 about it, the man is tenured and no matter what

1 he's tried to do he can't seem to get rid of him.

2 I don't know how much of that is
3 true or not in terms of A, his incompetence, or B,
4 the process by which he would have to go forward
5 to move the man out of the position, but I do know
6 if he is coming in here and telling us that's a
7 problem, and he is still utilizing this gentleman
8 to go out and do fire inspections, not in a
9 residential when he can avoid it, but that the
10 fire problem isn't any less important in a
11 commercial building than it is in a residential
12 building.

13 So what can you tell us about the
14 system as it currently stands on how a department
15 would go about removing a tenured official and
16 what help can you provide Wall Township or any
17 other department that has this official in there
18 that clearly has issues?

19 MR. CONNOLLY: Not much longer in
20 the case of that individual. But in general code
21 officials know, we get complaints from
22 construction officials all the time about
23 employees of theirs that they feel don't meet
24 minimum standards. We investigate those sorts of
25 things, we have investigators trained and

1 qualified to identify those kinds of problems and
2 then we do take licensing action against them.

3 It is also important to understand,
4 though, that the municipality has some ability too
5 to deal with questions of laziness or neglect, or
6 those kind of things as well. It is a
7 partnership, but that kind of abdication, I have
8 an employee that can't do a job and there is
9 nothing I can do about it is just wrong, and we
10 will deal with that.

11 MS. BASS LEVIN: Let me just, if I
12 could emphasize that we have taken action against
13 individuals to revoke their license, to require
14 them to get training. As you heard from Bill
15 earlier, there are some nine hundred revoked
16 licenses, we do it all the time. I know that I
17 personally have gotten calls from people and I
18 send them to Bill's shop and action is taken.

19 But for the municipal employee who
20 says there is nothing I can do and throws up his
21 hands, and doesn't bother to make a call anywhere
22 or doesn't bother to report the person to our
23 agency, then shame on him.

24 COMMISSIONER MARINIELLO: I agree
25 with you, and I said earlier that I am not sure

1 after listening to him talk yesterday that he took
2 the proper steps that I feel like he's done enough
3 to bring the attention to the right people,
4 specifically on the municipal end because I can
5 imagine what the Wall Township attorney is feeling
6 today regarding the potential liability of the
7 town knowing that his construction official just
8 testified that the fire and building inspector is
9 incompetent.

10 MS. BASS LEVIN: And this is one
11 instance where tenure is very different. If the
12 license is revoked it doesn't matter if he has
13 tenure, he can't be a building inspector.

14 COMMISSIONER MARINIELLO: Does that
15 tenure issue not involve itself when you are
16 reviewing it, versus maybe when a municipality has
17 to review the individual?

18 MR. CONNOLLY: Anybody, whether
19 tenure or civil service status, or whatever they
20 have, can be dismissed for cause. It is not
21 always the easiest thing in government, but it can
22 be done. And if the failure in the case of a code
23 official is a technical failure, failure to meet
24 an acceptable level of performance in terms of
25 knowledge and application of the code, then it is

1 our responsibility to take them out, but it is
2 certainly the construction official's
3 responsibility who is aware of that sort of a
4 problem to advise us so we can investigate.

5 COMMISSIONER MARINIELLO: Just
6 moving on a moment to the warranty and the
7 arbitration. I sat through two hearings of
8 arbitrators, both of whom told me similar stories
9 in terms of what they encounter on the basic
10 arbitration, and what they are paid for a basic
11 arbitration, and they both advise me that
12 essentially they are paid the same amount of money
13 on an arbitration whether it be ten items that are
14 being arbitrated, or fifty.

15 One of them told me that he spends
16 about a half hour at the home, this is a half hour
17 to review the problem initially, first he reviews
18 it, makes some conclusions, goes there, measures
19 all of the different items, I am talking about
20 even fifty items or more, he is in the home a half
21 an hour, and then he makes a determination and
22 whatever he feels one way or the other. The
23 homeowner is left feeling this gentleman was here
24 for a half an hour. I have been working on this
25 problem for months, I didn't see him take out the

1 measuring stick or sometimes they are just
2 eyeballing it whatever the case may be, but for
3 the amount of money that they are being paid to
4 perform the arbitration it's not surprising.

5 At same time there was another
6 gentleman that came in and said how specific and
7 how every one of his arbitrations he takes out the
8 level, he measures everything, he is very
9 thorough, sometimes he spends five and six hours
10 at a time doing one of these arbitrations, and I
11 suspect that either he's not being forthright or
12 he is broke, because there is no way for the
13 amount of money that he gets paid that he can do a
14 thorough job, and that may be true in an item of
15 maybe two or three or four, I am sure maybe you
16 can do that in a short period of time for that
17 amount of money, but some of these homeowners have
18 very substantial lists, and I suspect that maybe
19 there ought to be some changes in the fee
20 structure for some of those arbitrators to allow
21 them to really do the job thoroughly, because
22 right now whether they are or not, the perception
23 of the homeowner is that they are not.

24 MR. CONNOLLY: I agree with you.
25 The arbitrators that are used in the state plan,

1 and we do have a fee schedule based on the number
2 of defects claimed, there are steps, it doesn't go
3 defect by defect, but there are steps, and there
4 is a higher payment for claims that include
5 additional defects.

6 You sort of have to balance that
7 against people ripping you off by just taking a
8 lot of extra time, but there is no question that
9 you can't pay the same amount of money for every
10 arbitration. We don't in the state plan, and
11 that's something that we need to look into, and
12 that information needs to be shared with us as to
13 who we are talking about here, we will look into
14 it and deal with it.

15 COMMISSIONER MARINIELLO: That's all
16 I have from a question perspective. Again, I just
17 want to thank you, you have covered so many of the
18 areas that we have been looking at, and whether
19 those areas came to you via our investigation or
20 your own audits, it is a positive step for the
21 people of New Jersey to see particularly two very
22 high level authorities like the two of you come in
23 here and express to the people of New Jersey and
24 this Commission how important this issue is to the
25 both of you, and I thank you for it.

1 BY COMMISSIONER FLICKER:

2 Q. I too would like to say thank you, I
3 spent one whole day talking to Director Connolly,
4 not too long ago, and was incredibly impressed
5 with the amount of time and obvious effort that
6 went into some of the recommendations that he
7 outlined at that point.

8 So I am not going to back over a lot
9 of the policy issues, given the time and the
10 weariness that we all I am sure are suffering.

11 I am just want to ask a few
12 individual questions that arose I think today and
13 yesterday from some of the witnesses.

14 I think we heard today from a number
15 of inspectors who said while they are aware of
16 actions taken against individual inspectors, they
17 were not aware of any penalties placed on any
18 municipalities for failing to up their staffing
19 levels when complaints were leveled.

20 Mr. Connolly, did you hear that
21 testimony, were you aware of that, and is that
22 accurate.

23 A. Yes, I addressed that a little bit
24 in my remarks. We have a death penalty, we can
25 shut down a municipal building department, but

1 other than that we don't have any real remedies
2 other than trying very hard to convince the local
3 officials that they need to support their building
4 department, and we are often successful in that,
5 but it is very labor intensive.

6 Q. What were your -- I know from the
7 criminal sphere we have a lot of things between a
8 complaint and a death penalty. What are some of
9 recommendations that might be a little more
10 palatable?

11 A. I think the most important one was
12 what I talked about, giving us the ability to
13 insert additional inspectors either our own staff,
14 or licensed architects or engineers, until such
15 time as we can get the underlying problems
16 resolved.

17 Q. Well that brings up an interesting
18 question, because yesterday we were told by I
19 think the construction official from Wall that
20 when faced with another large development that he
21 anticipated coming into his town, he actually
22 called DCA in order A, to retain the services of
23 DCA, or B, be allowed to outsource or hire third
24 parties to do inspections, and he was told that he
25 couldn't do that. Does that sound accurate to

1 you?

2 A. He is allowed to outsource
3 inspection labor. He is not allowed to hire a
4 third party agency which is another subcode
5 official which then creates sort of parallel
6 accountability on the municipality. We believe
7 there can only be one building subcode official
8 that should be responsible for whatever is going
9 on in that building department.

10 But using outside sources of various
11 ways of hiring people either part-time or by
12 contract are by temporary services or options, it
13 takes a little bit of effort, but it can be done
14 successfully, we do it ourselves all the time to
15 deal with people workload situations.

16 Q. Do you have enough of a pool of
17 architects and engineers and experts that you can
18 indeed supplement the building departments when
19 there are peak loads?

20 A. There are about thirty thousand of
21 them in the state and that's why I feel that
22 that's a large enough pool that we can get
23 reasonable numbers.

24 MS. BASS LEVIN: They wouldn't all
25 be DCA employees. We have a small pool of DCA

1 employees but, again, given budgetary restraints,
2 we have fewer employees than we would need to
3 satisfy everyone's needs, so we do this by a
4 combination of DCA employees that we do make
5 available and hiring other licensed code
6 officials.

7 Q. And we heard a great deal from the
8 building inspectors about the fact that they were
9 called to the scene to do inspections when indeed
10 the homes were not ready, and we had one testify
11 today that he was out there sixteen times one
12 house.

13 Do you have some recommendation for
14 us as to how to address that?

15 A. I could, and that is a very common
16 problem. We experience it ourselves, that it
17 isn't ready for inspection, because they are using
18 the inspectors as their quality control staff. I
19 think that if we certify all of the supervisors,
20 it was pointed out several times I think one of
21 the builders pointed out well, he couldn't get his
22 framing contractor back, he could get his
23 electrical contractor back because that was a
24 licensed company.

25 The certification that we are

1 talking about would be essentially the same thing,
2 it would make it much easier to get them back and
3 if they are doing that they would be subject to
4 sanctions and penalties and warnings and what have
5 you until they cut it out, because it is their
6 responsibilities to build the building properly,
7 not the inspector. The inspector is a police
8 officer, and is there to monitor and do a lot of
9 things to try to catch people that are not obeying
10 the law but the fundamental responsibility to obey
11 the law is with the builder and with their
12 technical staff.

13 Q. One final area that apparently is
14 age old in New Jersey, but came up time and time
15 again in our hearings, and that is funding of the
16 local departments, and of course, the departments
17 wish to be funded by rider. What is the position
18 of DCA on that?

19 MS. BASS LEVIN: We would defer to
20 the legislature.

21 COMMISSIONER FLICKER: Do I gather
22 that that is very controversial and it has been
23 tried before, or at least the legislation has been
24 tried before unsuccessfully.

25 MS. BASS LEVIN: Bill and I have had

1 this conversation.

2 A. There is an eternal tension between
3 program managers like myself and money managers,
4 and it occurs at every level of government, and
5 well probably be talking about it ten or fifteen
6 years from now too.

7 I mean as the Commissioner said --

8 COMMISSIONER FLICKER: I certainly
9 don't want to open Pandora's box that will take us
10 into fifteen years hence, so with that I will say
11 thank you to both of you again.

12 COMMISSIONER SCHILLER: Like all
13 good things in life, something has got to come to
14 an end, but one of the things I mentioned to the
15 Commissioner when I was talking to her a minute
16 before at the break was that, you know, it is a
17 rather large plate, community affairs in general,
18 and this is also a very significant plate in it
19 touches so many people in New Jersey in terms of
20 consumers, and I was most impressed with the
21 responses that we have had already from the
22 Commissioner, and there is a new game going on in
23 town, and apparently if we can get half of the
24 things or most of the things that you were
25 projecting, I think we'll then send a signal to a

1 lot of people that there is going to be
2 accountability for the homeowners in New Jersey
3 that will be enforceable.

4 I think Commissioner Flicker in her
5 opening remarks said you are the bulwark, you are
6 the Commissioner that I think really protects the
7 citizens of New Jersey, especially in this area.

8 Mr. O'Keefe I think was recommending
9 a department of housing, which I think is like
10 everything else, you can create all kinds of
11 animals, but if you have an animal that's willing
12 to change and an animal that's going to do its
13 job, you can't get what you already have,
14 Commissioner, and I want to commend you personally
15 on the responsiveness in answer to that.

16 The key for us to do is get that
17 done, get all of things that you want done and
18 hopefully the things take we can help you
19 accomplish and hopefully recommend, I know the
20 staff has worked or tried to work with you very
21 hard in terms of keeping you abreast of all of
22 things that have happened, obviously Mr. Connolly
23 has well monitored the hearings and kept his
24 finger on the pulse, and I think we are
25 forward looking in this and the buck does stop

1 with you and I think you recognize that, you took
2 the bull, and I think between you and Mr.
3 Connolly's experience I see the goal line very
4 strong out there.

5 What I liked about everything that
6 was said here today, most of all, it was a
7 positive forward looking, not a flagellating
8 looking back and moaning and groaning even though
9 many homeowners had to suffer through some things
10 to get us here, we are here, and we have to thank
11 those homeowners for helping to bring so many
12 things to our attention, the building inspectors,
13 the good decent ones that work throughout New
14 Jersey who bring so much to the fore here, all of
15 those people, your own staff who brought forward
16 things that we all learned from our mistakes and
17 we build on those mistakes and build on what we
18 learn and we are going forward, and I know the
19 Commission on the recommendations that you have
20 already made, I know this Commissioner sees the
21 great light and I am really pleased with all of
22 that.

23 We could sit here and go back over
24 all of the questions again, but I think you have
25 touched on so many areas that address so many of

1 the problems, I know I am pleased, and I think the
2 staff is pleased, and I think jointly we probably
3 have to take the biggest step now and work on the
4 legislature and the governor to get these things
5 pushed through and get them done so those are
6 clearly tools that you can use to enforce them. I
7 think you have all of the capability in the world,
8 and you have demonstrated that I think in other
9 areas, and I think you are demonstrating it again
10 in this response to the cry of homeowners who have
11 been crying in the wilderness for awhile, but we
12 appreciate that and I appreciate that and I would
13 have a ton of questions but I think you have
14 answered a lot of or begun to answer a lot, and I
15 appreciate your coming down.

16 MS. BASS LEVIN: We certainly look
17 forward to working with you. If you have other
18 questions as you proceed, we will certainly be
19 available to your staff, and provide whatever
20 information you might need as we move forward to
21 continue to work on this.

22 COMMISSIONER SCHILLER: We want to
23 thank you for your appearance and testimony here
24 today, this will conclude the proceedings.

25 Before we officially adjourn, I have

1 just a few closing observations. First, on behalf
2 of my colleagues on the Commission, my thanks to
3 the Deputy Director Charlotte Gaal and the entire
4 SCI staff for the hard work and dedication that
5 drove this inquiry. We also would like to express
6 our gratitude to the many private citizens many of
7 them sitting here, and public servants who offered
8 their assistance to the long and difficult and
9 entirely worthwhile process.

10 The record is clear and convincing,
11 the facts we have established in this process
12 implicate issues that demand the attention of
13 every responsible elected official and public
14 office in the state.

15 As was said, we are encouraged by
16 some of the proactive and progressive steps taken
17 to date by elements in both the industry and
18 regulatory community in response to our findings,
19 but we believe it has been demonstrated that more
20 can and must be done, and I think the Commissioner
21 has demonstrated that tonight.

22 In the coming weeks the Commission
23 will wish a issue a report that will include a
24 wide range of detailed recommendations for
25 systematic reform in every area of our extensive

1 inquiry. I have said many times this is not an
2 academic exercise, we do not conduct
3 investigations merely to compile an investigative
4 record with a limited shelf life. Our job is to
5 provide expert fact based guidance to New Jersey's
6 governmental leaders, providing the justification
7 for reform to achieve a strong, practical, and
8 effective statutory and regulatory structure. The
9 goal is to contribute to the creation of systems
10 that truly serve the best interest of everyone who
11 builds, buys and resides in new homes in New
12 Jersey. They all have a stake in the quality and
13 integrity of new home construction and inspection.

14 Now is the time to meet this goal,
15 demand for new housing in New Jersey has never
16 been greater, and this Commission has taken the
17 lead in setting the stage for change. It is
18 imperative that reforms and corrective actions be
19 targeted where they can have the most beneficial
20 impact and those institutions and entities and
21 individuals have the most direct hands-on
22 responsibility for actually constructing and
23 overseeing the construction of homes of decent and
24 acceptable quality. Home buyers of New Jersey
25 deserve nothing less.

1 Focus now must shift from
2 factfinding to recommendations to action and in
3 that regard we respectfully submit that the
4 governor and legislature have the power to place
5 these vital issues front and center and to resolve
6 them in the best interest of the citizens of New
7 Jersey. This cooperative venture with Department
8 of Community Affairs will certainly bring us
9 there, and we thank you for your time and
10 attention, and these hearings are now adjourned.

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1 C E R T I F I C A T E

2 I, Colleen Spaeth, a Certified
3 Shorthand Reporter and Notary Public of the State
4 of New Jersey, do hereby certify that prior to the
5 commencement of the examination, the witness
6 and/or witnesses were sworn by me to testify to
7 the truth and nothing but the truth.

8 I do further certify that the
9 foregoing is a true and accurate computer-aided
10 transcript of the testimony as taken
11 stenographically by and before me at the time,
12 place and on the date hereinbefore set forth.

13 I do further certify that I am
14 neither of counsel nor attorney for any party in
15 this action and that I am not interested in the
16 event nor outcome of this litigation.

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Certified Shorthand Reporter
XI00609
Notary Public of New Jersey
My commission expires 7-16-08

Dated: _____