NEW JERSEY STATE LEGISLATURE

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

PUBLIC HEARING

In the matter of:

State of New Jersey Commission of Investigation Report on "New-Home Construction in New Jersey"

Computer-aided transcript of hearing testimony taken stenographically in the above-entitled matter before KAREN L. DeLUCIA, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, at the Manalapan Township Municipal Complex, 120 Route 522, Manalapan, New Jersey, on Tuesday, September 19, 2006, commencing at 7:30 p.m.

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APPARENCES:

COMMITTEE MEMBERS:
SENATOR RONALD L. RICE

COMMITTEE STAFF:
ROBERT C. ROTHBERG, Committee Aide
JULIUS BAILEY, Senate Majority

ALSO PRESENT:
SENATOR ELLEN KARCHER
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SENATOR RONALD L. RICE: Good evening. First of all, good evening to you. Let me apologize for the lateness of the hour. I was telling the Senator that I'm going to work with her to see if we can find some transportation funds for 9. I've been traveling 9 for many years in New Jersey and for some reason we can't seem to get 9 right. But we can't get 1 right either, so it's a numerical thing.

Let me just say it's good to be here. And I want to thank the Senator for inviting our committee to come out to visit you tonight. I am the chairman. My name is Ronald L. Rice. I'm a New Jersey State Senator and I represent the 28th Legislative District. The 28th is really now Belleville and Bloomfield, parts of the City of Newark and all the township of Irvington. In the past it included Maplewood and South Orange, New Jersey. Your problems are our problems, New Jersey is one state, but as residents we tend to share the same common problems within our communities.

There are a lot of things we're doing in Trenton as you read about it. And there was a very difficult time but I think the thing that
disturbs me as a person and as a leader, and
Senator Karcher and I had these conversations, is
as we grow economically in this State and we try
to create affordable housing and make housing
available for moderate and upper income people,
there are many, many abuses. And they're starting
to come to light now.

As a result of that, complaints we receive
throughout the State, the State Criminal
Investigation Commission has under the direction
of government and with the direction of the U.S.
Federal Government, meaning the U.S. Attorney
General's office, to start holding extensive
hearings to help us get a grip on exactly what
were the problems as best we could tell and what
were the problems that are unique to the kinds of
things we're doing in New Jersey, as well as those
problems that are common to development of housing
stock in New Jersey where you work very hard to
earn your dollars; work very hard to invest and
have a place you can call home.

As a result of that they came up with many,
many recommendations. Many of the recommendations
we agree with; some we're not so sure. We think
we may have to make them tougher and tweak.
I just wanted to let you know, for those who may not know, and some of these things I've seen at other hearings, is that number one for us to accomplish anything in Trenton is not Senator Karcher doing it by herself. She will argue the case for you but she has to get 20 other Senate members to support her in her efforts to get 21 votes. And sometimes we come up short because the State is big and everyone represents a district with different opinions all the time and sometimes it's hard to get in. But I can assure that we're going to have legislation passed before the 1st of the year, hopefully on both Houses and to the Governor's desk based on the SCI recommendations; based on our collective efforts and what we know. I call that empirical data; we live with this stuff every day. And hopefully it will give back to the consumers rights that they didn't have and also take some of the things that maybe we did not tighten up in the past to make it more beneficial to you as homeowners and families a lot better.

And so tonight I'm here to listen. And I'll probably hold another hearing outside of Trenton and then we'll go back into Trenton and we'll deliberate on the Bills that we have in. We'll
listen to the additional debate on behalf of our colleagues and with our colleagues and ultimately we'll have a compromise that everybody can live with to help the residents of our state.

With that, this is staff here. The things that you say, let me just indicate to you, are being recorded verbatim unless you're misunderstood in terms of the spelling. So please be respectful as speakers. I take the time to come out day and night; I'm up and down the State as to where I am. I want to hear. I'm not argumentative. I'm firm and fair. And this is a learning process for us. We want to make sure that there are things that we have heard -- that there are things that we have not heard during the hearings so that we can make the legislation as beneficial as possible.

With that, I'm going to turn this meeting over as the Chair to your Senator, Senator Karcher, let her Chair this meeting. We'll give you an opportunity to speak and we'll listen and we'll try to respond as best we can.

Once again, thank you very much for having me in your lovely township.

SENATOR ELLEN KARCHER: Thank you Senator Rice.
I know from experience over the last few years what passion you bring to everything that you do; and particularly I've had the opportunity to serve with you on committees. This is a Committee that I do not serve with the Senator on but I have invited him here, he graciously accepted, and he is here to listen. Exactly as he said, he is here to listen; listen to your concerns. You are my neighbors; some of you are my friends; and this is something that we need to as a community come together and be able to solve. The State has taken an active role through their investigation and the development of the SCI report. Those recommendations are for us to have a road map moving forward to make sure that this -- the kind of concerns and complaints that I'm sure we're going to be hearing tonight won't happen again. And we can come up with ideas and resolutions to help you as consumers and homebuyers be able to resolve your problems. Senator Rice has made it very clear that that is our goal; we're here to listen.

And given the hour, I will dispense with my written comments. I will make sure that anyone who needs them, gets them. But with that, I'd
like to call our first witness.

SENATOR RICE: While we're getting the
witnesses together, I'm going to ask staff to kind
of give you a summary of a couple of Bills that I
do have in the Legislature to start the process
that's based on the State Commission on Investigation
report, which is here.

Bob, if you can maybe discuss the contents of
some of the Bills that we have in so that the
public can understand where we are moving and the
fact that these are based on SCI investigation
recommendations, then maybe some of the questions
will get answered just through that process. Then
some of the people may tell us how we can possibly
make the language or make it better if we can get
language accepted and approved by our colleagues.

MR. ROTHBERG: The four Bills that are on the
committee agenda for this evening all have their
basis in a report from the State Commission of
Investigation entitled The Good, The Bad and The
Ugly: New-Home Construction in New Jersey. I have
a few extra copies here. It is also available
online on the Internet at the site that's placed
on the committee agenda, obviously the agenda
there, if you want to read it online.
The four Bills that are before the Committee this evening are S-1824, S-1825, S-1826 and S-2046. The first Bill, S-1824, is entitled The New Homebuyers Bill of Rights Act. And it would establish a Bill of Rights for buyers of new homes combining several of the recommendations from the report. I do not want to belabor the point and keep us here overly long but it would, among some things, prohibit increases in the sales price of a new home without the agreement of the home buyer. Ensure a fair and realistic opportunity to seek mortgage financing. Allow homebuyers to require the holding of escrows for items that are not complete. Make it clear that incomplete items noted at closing through which no escrow funds are held are defects that the builder is required to correct. Require deposit funds to be held in escrow. On and on. It's really a Bill of Rights for purchasers of new homes.

S-1825 is a reform to the New Home Warranty and Builders Registration Act. It would expand the definition of major construction defect to include any substantial failure to meet applicable structural requirements. It would expand the time periods for warranties for existing types of
defects. It would expand the types of detects that would come under the warranty program. It would provide a ten-year warranty for fire safety defects and serious construction defects. Require owners to be afforded the option to have their own contractors correct serious construction defects after their homebuyers have failed. There are several other provisions, including the provision for civil penalties of up to $5,000 per violation for violations of this statute.

The third Bill, S-1826, would revise the State Uniform Construction Code Act. It would authorize the Department of Community Affairs to direct local enforcing agencies that are not performing necessary inspections in a timely manner to allow the owner to have inspections performed by engineers or architects paid by the owner but independent of the owner's supervision or control. This would provide a procedure for getting inspections done properly and in a timely manner whenever a local enforcing agency is unable to do the job properly in a proper time frame.

The Bill would also protect homebuyers by bringing lot improvements within the scope of the protections provided by the State Uniform
Construction Code. The State Commission of Investigation during their hearings heard many, many problems relating to lot improvements which are not currently under the Construction Code. The Bill would increase the maximum penalty that could be imposed upon violators of the Construction Code from the existing penalty of $2,000 to $5,000 in order to promote compliance with the code.

Finally, the Bill will affirmatively require a construction code or sub-code official to notify the Department of Community Affairs if the official believes that a home has passed inspection or received a C of O, Certificate of Occupancy, although the home does not satisfy code requirements. And the Bill would allow the Commissioner to suspend an official who fails to comply with this provision.

The final part of this package, Senate Bill number 2046, would enhance certain protections afforded purchasers in planned real estate developments. Planned real estate developments are housing developments in which some parts of the property are under common ownership and control. The Bill would enhance protections
afforded under current law to those purchasers in order to provide bonds or other securities to ensure proper completion of common elements. Provide new boards elected by unit owners after transition from the developer's control with an engineering survey of the common elements. Provide full financial accounting for the association during the period of developer control. Authorize the minority of the board that's chosen by unit owners during developer control to act on behalf of unit owners and to bring actions against the board itself. At present, there's no mechanism whereby unit owners can act to prevent an association that's still under the developer's control from taking actions that can be detrimental to the current or future interests of the unit owners.

Finally, the Bill would establish procedures allowing homeowners and associations and unit owners to file claims arising under the New Home Warranty and Builders Registration Act for defects effecting the common elements.

Senator, that's a synopsis of the four Bills that are under consideration.

SENATOR ELLEN KARCHER: I'd like to first call
Violet Peterson, and if it's okay, Salvatore and Sonia Giovine together.

Is that okay with you?

I know that you're neighbors. I've been to your homes. I know that this has been an ongoing concern for you.

Would you please state your name and spell your names, as well.

MR. GIOVINE: My name is Salvatore Giovine, G-i-o-v-i-n-e.

MS. PETERSON: My name is Violet Peterson; V-i-o-l-e-t, P-e-t-e-r-s-o-n.

Senator Rice and the members of the Committee, first of all, I would like to thank Senator Rice for taking his time to help my neighbors and a couple from South Jersey. I usually see elected officials taking effort to help only when they're running for office so they can win that election. Senator Rice from a different district and actually helping one of my neighbors, you're rare in the State. We need more people like you. I also want to thank the other Committee members, who are not here, to take their time to hear from the homeowners.

Like the other homeowners in this
development, we have been struggling for six years
to bring our home to code compliance. In
Manalapan Chase all the issues the homeowners
dealt with were code violations.

Senator Rice said in the Asbury Park Press
that the problems in new home construction don't
represent large majorities of the builders and
contractors. But from the SCI hearing and State
Committee's own hearing, we know some of the
biggest developers in the state and country have
created this crisis for homeowners. This is why
the Senators are holding hearings.

If you look at the UCC and the BOCA book,
they look pretty good. But many homeowners with
experience will tell you how the builders, town
construction officers, the DCA manipulate the UCC
and the BOCA book to their advantage. All we are
here was to ask the State, the DCA, the township
to enforce the laws.

What do we want to accomplish tonight?

We want to make sure that established laws
are enforced. Make changes in the laws to prevent
this crisis from ever happening again.

For the record, I want to state that I sent
five email comments, part one and two, with a
I have some additional suggestions tonight.

I read the press release from Senator Rice stating the measure will authorize the Department of Community Affairs to direct inadequately staffed agencies to have developers pay for inspection to perform by independent engineers and architects. This sounds good but in our experience it doesn't work. In our development the builder hired an engineer and the engineer told the homeowners that the engineer would only do what the developer told them because they paid only for that. More to the point, there was no accountability for developer's engineers at all. The township used the developer's engineer statement as God's word. The engineer report only addressed some code violations, not all.

The engineer hired by the homeowners were ignored by the township, the appeal board and the DCA. We have similar stories from homeowners in South Jersey at the public hearing in Glassboro. Any professional hired should write their report to the township because the State authorized this
to take place. Any engineers' report on the homeowner's home should be addressed to the township not the developer who has been charged with the code violation.

What good is that when the developer's engineer writes the report to the developer?

When the township gave the NOV, the township authorized the developer's engineer for inspection, the township told the homeowners to let the developer's engineer in. When things go wrong, the township has claimed it was a contract issue even though the township gave the NOV and the work permits. To avoid this practice, why not the State hire licensed engineer. I was told by the DCA they have licensed engineer on staff.

Senators you know that if the builders build homes correctly and the construction officer did their job, we would not need engineers for inspection at all or waste any of the builders' money.

My personal opinion is that the top management of the DCA is builder friendly. For years they were protecting the builders and local code officials without any punishment. The only way to solve this problem is to get rid of the top
management in DCA. If code and sub-code officers and DCA officials misrepresent the facts and give false testimony under oath, they should be fined and dismissed. In our experience, whatever the code officer or DCA officials say become a fact. There's no recourse for the homeowners to get the truth out.

The Construction Board of Appeals process is also broken. There should be a uniform rule for the board of appeals across all 21 counties in New Jersey. It is a joke there is a mix of made up procedures that are not even followed and the process that change as the time goes on.

When the township cites a builder of code violation, there should be a clear statement of the violation. In our development one notice of violation was given to all 52 homes. To this day it's not clear what was included; what was done; what was not done; what was inspected. The Senate Bill should state that a notice of violation or work permit must be issued separately for each violation. If you have 20 violation, 20 notice of violation must be written out for that home regardless the same violation found in other homes. That goes for the work permits; permits
that were issued for 20 NOV repairs. By doing this, the town or the developer cannot mislead or manipulate the town homeowners by saying that violation is not for your home.

The UCC Consent Form 101 should not be used retroactively or backdated for repairs that be done years before. In our home, the UCC Consent Form was used by the township in 2006 for the repair done two or more years ago. They clearly knew what the UCC Consent Form is for. State officials should not misuse and abuse the UCC Consent Form for their advantage. The DCA website should provide copies of the UCC and international building code for all homeowners to read. Just as the Senator states, since the State is planning to authorize developers to pay for inspection, the State can authorize step-by-step procedures for common building repairs; example stucco application. These repairs should be on the web site so consumers can educate themselves and hold contractors accountable. The name and the contact information for public officials and code officials should be in the website and what each officer in charge of so there won't be any misinformation about who is in charge of the
warranty in the state.

After the improvement in established law and
the new laws who is in the State besides the DCA
will see the building code is faithfully
executed?

Let's go one step forward. If the homeowners
are still in the same situation a year from now,
where will they go to get the code issue
addressed?

We can't repeat the same circle again. We
are tired of hearing from public officers that we
do not have the jurisdiction. I simply cannot
understand why we have the laws but no one has the
jurisdiction. We cannot have one without the
other. No doubt we are in a crisis and the State
cannot function in this way. The State Bill
should require someone to oversee the DCA publish
on the website the official procedure and the
contact information for the officer who do have
the jurisdiction; they have to be held
accountable.

Senator Rice has introduced these Bills with
modest changes to establish law with the promise
to make better but this isn't good enough. As the
Senator mentioned in the Asbury Park Press, we
need laws so that we don't -- this doesn't happen again. After all we have gone through, I should not read in the newspaper about this problem ever again. Then the homeowners have accomplished what they came here to do tonight.

Senator Rice stated in the Press the words of the homeowners will provide fodder he could use during negotiation with law makers should his measures face criticism.

Well, we have generally two ways to bring about social change. Change can be achieved by legislation or inspiration. Law makers are forever changing the laws and writing new laws. But even laws on the books are difficult to enforce unless a majority of the population agrees with them. But when everyone inspire a new way of acting, they will voluntarily change their behavior.

Senator Rice, when the law makers vote for these improved Bills, please invite the homeowners. We the homeowners will stand behind you. The homeowners inspire to support your way of thinking and failure only comes from not trying at all. So let's stand together and make it happen.
Thank you.

SENATOR KARCHER: Thank you.

Would you state your name for the record, please.

MRS. GIOVINE: Sonia Giovine. 36 Molly Pitcher Drive.

Senator Rice and members of the Committee, thank you once again for allowing me to address the Committee.

I spoke before about my situation. The key issue that I have addressed is your Bill and your Bill is time now. The Senator Bill should have strict time limit that favors the homeowner, not the developer or the officials that fail to find the code violation in the first place.

In our case, the stucco violation in our development was first discovered in 2001. It is five years later and still the stucco work is not done. To this day I have not received a complete revised specification for the repair of my house.

I want the Senators know that what homeowners have to go through and get violations addressed in the our homes. I will give you one subject for an example of the stucco violation.

August of 2001 Mr. John Major of the DCA came
to do inspections of my house for code violations. I show him the stucco application; what he respond was that it's not my call. So he did not address the stucco issue in his report.

After the DCA inspection the developer's engineer came to do their inspection for my house but they also refuse to see the stucco again. On October 2001 a code violation for stucco was given for my neighbor's house but none of the other homes were inspected for stucco violations. On August 23, 2002 I hire an engineer to prove my case and gave the engineer report to Manalapan Township but the town ignore my engineer's report.

On August 27, 2003 Assemblywoman Claire Farragher came to my house and saw the stucco for herself. I show her Mr. Connolly's letter dated on October 18, 2002 saying the stucco was a warranty issue. Then Mrs. Farragher wrote to the Commissioner Susan Bass Levin of the DCA, requested a site visit from Mr. Connolly, Director of the Division of Code and Standards.

On September of 2004 Centex Homes agreed to repair the stucco. They gave the stucco specifications for my house and a permit was
issued by Manalapan Township. In October 2004 Centex Homes removed the stucco on my house and in my opinion this was because of the SCI hearing was coming soon. For two years Centex Homes did not finish the repairs of the code violation they started. Now with the help of the Township, Centex Homes simply discarded the approved specifications for the 2004 without a legitimate professional opinion as to why these plans could not be used.

It will take years to get the code complaints changed. It does not matter how much proof you give the construction office, their response always supporting the developer. But our engineer report to the construction office was not mentioned at all to the public.

Senator Rice, to this day I did not receive the revised specifications from Centex Homes to sign my UCC Consent Form for my house. It is very strange how they are repairing these houses without the proper specifications for each home and the town approval of the specifications. The only excuse is that the homeowners have signed the UCC Consent Form without specifications.

The builder can build new homes in a few
months but it takes years to get code violations fixed. No one should take for that a few weeks to get code violations fixed but we have been waiting for years. And Manalapan Township has failed to see this repair and finish them in time.

The laws should include time lines and fines to the developers. And after the penalty and another one time line, they should get another penalty and should be finished until they repair it again and again.

Thank you.

SENATOR KARCHER: Thank you.

MR. GIOVINE: Senators, I don't have a letter but I will be very specific and go to the point.

Two years ago after battling about four years with Centex they agreed to fix my house. The stucco was done wrong and they agree to fix it. They came over my house; they strip my house; they took my lawn; they ripped everything there was. They put all the materials that they suppose to fix the house in front of my house and left. We haven't heard from them; we don't know nothing about it; and every time that we try to do something, they keep postponing, postponing, postponing. It's two years.
They want us to sign a letter of something that it's not our home; it's not in our name with no specification. It's something against the law to sign something that is not yours. And we don't do that; they will not fix our house. They send out letters, they say that if we don't sign, our house is not going to be fixed, which is a disgrace. We don't know what other things to do. We hope that you can help us.

Thank you.

SENATOR RICE: At the last time we met at the State and we said let's get some processes going to try to get some accountability, and we at the State said what you do is specifications, go back there and tell them you want the specifications directly related to your property with your name and your address.

Did you do that yet?

MR. GIOVINE: Yes, we did.

SENATOR RICE: And what did they do? What was their response?

MR. GIOVINE: We didn't get nothing yet. The only letter we got the day after we came to your office was that they were not going to fix the house. Then we got another letter after a couple
days.

MRS. GIOVINE: Read it.

MR. GIOVINE: Enclosed please find a copy of the September 6, 2006 letter from Maria Chetasao (Phonetic), principal clerk typist of the County of Middlesex Construction Board of Appeal indicating that hearing from the motion to dismiss the adjoining Notice of Violation and Appeal will not be heard prior to November 1, 2006.

Another winter is going to go by and our house with nothing on it.

SENATOR RICE: The reason I raise that is because a few days -- I've been in Trenton trying to deal with some other issues, like to 7:00 last night, but on my desk there's a document from the attorney.

MR. GIOVINE: Which attorney?

SENATOR RICE: Your developer in response to that.

I'm going to read it and then I'm going to send it to Bob, who is a member of our staff, and we're going to interpret exactly what that person is saying so it's clear. If, in fact, they are saying what I think they are saying, then I'm going to have the attorney general to intervene.
We have a new attorney general who I think is going to be a great attorney general. And as I said to the staff at that meeting, I don't have time to be playing with folks. Either we're going to resolve the problem under the laws we have or we can't resolve it. And that's why we are changing the laws.

But I want you to know based on our meeting, all of a sudden I got a document this thick on my desk. Once I read it, I'll be in touch with you because I want to get an interpretation. Either the State is going to respond and we're going to compel the DCA to move forward with some things or we're going to ask the Attorney General.

I just want to say to those of you here in case I'm remiss and don't say it before I leave, I'm a firm believer, in looking at some of these documents and hearing some of the complaints, that some of these entities need to be investigated by the Attorney General. The problem I've had is that we're going through a short period of time a change of Attorney General. And so when I spoke with the Acting Attorney General, I said, look, we know about the State report, SCI's report. SCI's job is to go out and hold hearings. If they find
that there are things that are criminal and
indictable, then those things are not -- does not
go any further with the SCI, they go to another
agency; in this case it may be the State Attorney
General or someone else. And that's where I think
the ball has stopped possibly and possibly did not
stop. But the Acting Attorney General, Senator,
could not really tell me if an investigation was
going on and she gave me the legal stuff. But I
reminded her that, number one, I'm a former law
enforcement officer. I'm not asking for
information as to the substance of an
investigation, I just wanted to know if there was
an ongoing investigation with any companies,
period. And that is not necessarily privileged
information, depending on what you want it for.

But I believe there are one or two entities
that need -- we need to go further with on the
prosecutory (sic) side of the investigation by the
Attorney General to deal with. And I stand by my
statement in the Asbury Press that the majority of
the builders in New Jersey, from my experience,
and I've lived in New Jersey for over 50 years,
are good developers; they do their jobs; and the
majority of the subcontractors. The problem
happens to be, as you say, a handful of 
developers, mostly bigger developers, at least
I've been looking at with the problems, where 
there's real no accountability and money may be 
buying them through this process. But we're going 
to try to figure out how to break those barriers. Let me assure you of that. I am trying to get the 

law to where it should be.
So I'll be back in touch with you.
Hopefully -- give me a little time.

MR. GIOVINE: What I would like to know is 
how they can send me a letter telling me that time 
has expired and they are not going to fix my house no 
more after rip it off?

SENATOR RICE: In your case -- let me just 

ask the public, because there may be others and 
you may not be aware of this.
The thing that disturbs me is I'm going up 
and down the State and I'm reading documents and 
I'm hearing the problems of homeowners. These 
problems are different. What I found interesting 
about your case was that the contractor agreed in 
the past, took the problem, acknowledged there was 
a problem, agreed to fix the problem, you agreed 
to work with them and letting them fix the
problem, and it was an agreement that you had to sign the document authorizing them to come back.

MR. GIOVINE: Right.

SENATOR RICE: So what bothered me was they send you a document because the mediator said that they have to give you the specifications of your building.

MR. GIOVINE: Right. Yes.

SENATOR RICE: You get the specifications. You look at them and from your opinion, based on a lack of information, you don't believe those specs are for your building so all you did was ask for the correct specs before you signed permission to come in to do the job.

MR. GIOVINE: Right.

SENATOR RICE: And for someone to argue about that, even -- and I think the document, when I started to read a summary of it, I think someone sent me a letter saying, well, these are the specs for the house because these specs apply to all the buildings, they're the same specs. Well, it seems to me that common sense would dictate, Senator, that if my only beef with this couple is signing a document so I can get my work out of the way, I would have just went to the office and typed your
name and address on the thing and said that's yours. At least I would have got that far and make you feel comfortable.

MR. GIOVINE: We don't have a name or address.

SENATOR RICE: For someone to leave a barrier on something as small as that in correcting a problem as big in a development makes me very suspicious; by nature makes me suspicious. So we'll be back in touch with you.

MR. GIOVINE: Thank you.

SENATOR KARCHER: Actually, I think this behavior was documented in the SCI report. They called it lulling; lulling on the part of the builders. Kind lull you into the sense of we're going to take care of this, we'll just draw you along, but more and more time goes and more and more times goes. And as you said, you're going into how many winters is this now?

MR. GIOVINE: The third winter.

SENATOR KARCHER: Your third winter with the side of your house exposed.

MRS. GIOVINE: Two years ago you came to our house. You saw my house, remember.

SENATOR KARCHER: Yes.
MR. GIOVINE: Not only that, we were promised this summer at the last meeting that we have in New Brunswick that our house was going to be one of the first.

SENATOR KARCHER: It's clear, as Senator Rice said, there are bad actors here. That's what this comes down to, that there are -- the vast majority of builders are fine builders but when you have some bad actors, Monmouth County seems to be a place where we've had this tremendous growth so we might have been more ripe for those bad actors to come in, make a quick buck, do what they needed to do and get out and really have left so many homeowners, 52 homeowners in your development holding the bag, 400 in Wall. I mean, this is something that Monmouth County is experiencing and that's why we're having this hearing tonight.

MR. GIOVINE: What I don't like is why the Township is not doing anything for us.

SENATOR KARCHER: And those are things that are subject to investigation and we will be moving forward on those, as well.

MR. GIOVINE: Thank you.

MRS. GIOVINE: Thank you very much.

SENATOR KARCHER: I want to keep this in the
neighborhood and hear from Mr. Ma. And then after
that I understand Assemblywoman Beck is here. But
if Mr. Ma would come up first just so we can have
some of the neighbors who are experiencing
situations from the same builder.

MR. MA: Good evening, Senators. It's
Michael Ma. 44 Molly Pitcher Drive.

I know the Senator proposed to change the law
and I'm glad to hear that but in my opinion, no
matter how perfect the law is, if nobody is
enforcing the law or nobody is doing their job,
then it's useless.

I can give you some example.

When I purchased my house, okay, right at
almost like nine, ten years ago, and the Township
didn't do any inspection and they admit that later
on. So then later on like starting at 2000, 2001
we started finding all the problems, code
violations on the house. So then we talk to
Township and they won't do anything. So we have
to hire our own private engineer to show the
Township there was some code violation but they
won't take it.

And so finally we get the DCA involved, we
get a few -- but when they repair the house we
find more problem. In 2002 -- 2004 we found
there's a stucco problem. We hired -- again, we
hired a private engineer to inspect the stucco and
then we show to the Township. Township doesn't
want to hear it. At that time the developers was
working with me on my stucco. So they agreed the
stucco is a code violation but they refuse -- they
call it a ring joint and the stone is a code
violation. Here's the pictures original of my
house. I have the stone here and then stucco on
the side and then the bottom part. They only say
the stucco is code violation but not the stone.
But as matter of fact, my engineer says behind the
stucco and the stone is all the cement, there's no
drainage, so that's a code violation. But then
the developer refuse; they don't agree. So after
they took off my stucco they just walk away. They
refused to do that.

And that's how my house looks last winter.
I think the other people can see. And then they
don't give me any reason, they just walk away
because they don't want to fix the stone and the
ring joint. So then we filed a hearing in
Monmouth County but because of conflict of
interest, it was routed to Middlesex County. And
we were hoping we have some justice and
jurisdiction out of the hearing.

But before that let me go back a little bit.

When the Township -- when the builder walk
away from the repair, I call the Township.

Township keep saying this is contractual issues,
not a code violation. Until we gather more
homeowners, you know, fight with the Township and
then we have a meeting with the Township, in that
meeting we have our engineer to provide evidence,
the code to show the Township this is a code
violation, what the code says, but the Township
still insist it's not a code violation. And even
the builder agreed the stucco is a code violation
but Township still insist it's not.

So I just wondering what's the qualification
for the so-called law enforcement to enforce the
official.

And then in Middlesex County appealing, when
we tried to -- we got all the evidence, we tried
to show the board what we have in our site, the
evidence, they don't want to listen to us. They
totally shut us down. And then they just don't
want to talk about it. And they reject our case.
They says you have to -- because we have another
issues from the 2002, which is the other repair, they haven't done it in time, so they said they don't want to hear anything.

So where we get the justice? That's the part I don't understand. So they are suppose to enforce the law.

And then in the meeting our formal Township attorney told us our Township official doesn't know anything about this, they cannot do himself. They suggest we hire either our private engineer or go through the lawsuit. But this is code violation. Why the homeowner have to spend so much money to hire a private engineer to do their job; this is to inspect the house before they issue the CO but they didn't do. So now we have to spend so much money and then we show the Township the code, and even the builder agrees it's a code violation in the hearing. Before the start of the period, the builder tried to settle -- they have a settlement. They say that they agree the ring joint and the stucco, they both are code violation and they agree to repair it. So then why they didn't agree two years ago and they just walk away from my house. And then when we tell them to come back for the repair, they said
they can't because my case hasn't been heard yet.

So now my case was heard on May 25, 2006, now

it's September and they still haven't started the
repair. So I have a feeling my house will be just
like the Giovine's. They probably just walk away
from now to winter.

So that's why I say no matter how good the
law will be, if nobody going to enforce the law,
they're going to let them do whatever they want,
what's the law for?

In this case the Township doesn't do the job
and nobody can do anything. We brought this issue
to the Township and our former mayor even say to
us, why don't you guys just fix yourself and sue
us.

SENATOR RICE: You said your former mayor?

MR. MA: Former mayor, William Scherer.

SENATOR RICE: Definition of former means no
longer.

MR. MA: Well, that's because in our
Township, everyone is just mayor for one year.

SENATOR RICE: Let me, if I can respond
through the Chair, to say to the public here, I
guess the most frustrating -- let me say, I've
been a Senator for 21 years, 16 on the City
Council in the City of Newark, and so I understand this stuff quite well. I understand the hardships. The most frustrating part of my career is being the law maker. Unfortunately, our constitution says separation of power; we write these laws. So the first part of the process to try to help you, we have to make the laws right to give you the protection that you deserve; the protection that's necessary. Once we do that, it's incumbent upon the administration side of the Governor's office staff to enforce the laws.

Now, sometimes we can force them to enforce the laws by using some of the other powers we have; holding up appointments; playing politics in-house; compromise; holding up budgets. And sometimes we even try to administrate by way of legislation but the law says you can't do that but we try to do it anyway to get the enforcement. And so we try to develop relationships.

And what I'm saying to you, yesterday the judiciary committee met to put in place the nomination of the new Attorney General. The Attorney General came from a very strong background and a law firm that deals a lot with this kind of thing and a lot of other things,
too. He's a very capable and sincere person.

Even though he smiles a lot, he's serious. We're just waiting for him to really take place. He was the chief counsel.

As I indicated to you, I'm going to be meeting with him on behalf of the residents I've met with so far; on behalf of the reports; and on behalf of things that my gut feeling tell me as a former law enforcement officer that I don't know why someone would do lulling, if you will, when it's just a matter of saying just put the name in. If those are the right specs, then document it.

We're probably going to have to go back into the law, if we haven't done it already, and make sure that every document clearly identifies what that document go through. Some of the things in the Bills that I have here - homeowners protection, buyer protection, things like that - is number increasing warranty time. But number two, there is some mechanisms for people, and they may not help you directly right now but in the future, where there are escrow dollars so there is no question; we don't have to waste time. Give them time frames and if it's not done, we just do it ourself with our folks because we're going to
use your money, meaning developers, et cetera.

In your case, you will be on my list for a
talk to the Attorney General about that company
that did your development. Like I said, we're
going to be asking the Attorney General to meet
with some of the people, not all, in these
developments, unless they're all in the audience,
and figure out if there's enough substantial
information founded by way of fraternizing the
information, by way of talking to people that want
an investigation. And if, in fact, the
investigation is warranted, there's some
corruption out there, there's some improprieties
that need to go further, grand jury, then so be
it.

Because some of us are tired because we get
locked into the newspaper, the press paint us all
the same, the people paint us all the same because
they're frustrated, but there are some of us, like
Senator Karcher and myself and other legislators
that are very serious and we're tired. We're
writing laws and I'm tired of writing laws I don't
need. So that's what we're going to do.

So your testimony, if you have a written
testimony, I would like you to leave it with us.
If you don't have a written testimony, what I
would like you to do is write up as best you can a
chronology of what occurred with your property,
where you are right now, the things you have done,
and any documents that can back it up. You got
your own engineer; what did the township say with
the engineers and get the suspended hardship. But
also get it to our staff so that we can continue
to empower this and move forward.

MR. MA: Okay. Thanks.

Then also, if I may suggest, I think that
since we're revising the law, I think we should
put the high standard on our law enforcement
official.

In our case, our Township doesn't know how to
do inspection and they don't do it. Even the
attorney, Township attorney told me that. So
every time I call them, they ask the Township come
and do the inspection, they just refuse. And then
the Township lawyer told me they have no kind of
knowledge and experience to do that. And then in
our case -- then the Township ask the builder to
do the inspection. So how can they repair if they
don't do the inspection. So that part I don't
understand.
SENATOR KARCHER: There clearly would be a conflict there and those are the things that -- the recommendations from the SCI report encompass exactly that. That there are not trained individuals at the municipal level to do those kind of inspections. That the code has not been up to date. These are issues that clearly have been brought forth in the report and need to be addressed through legislation, exactly as the Senator has suggested. And these Bills, I'm not sure what Bill number it is, but I know that it was a recommendation to make sure that there's provisions for that kind of training at the local level. Because you don't want to be stuck again with someone coming out and not being able -- or the conflict of interest that you describe.

MR. MA: Okay.

And my house assessed back there's a couple more other code violation and then Township still doesn't want to do inspection. They have the builder come to do -- come to my house and basically it just wasn't inspected. And they were there 2002, whenever they left in 2002, I told them there's a new problem but they refused to do it. Because the Township didn't inspect my house
in the beginning, and now they still don't do the
40 inspections, how can they ensure my house is
safely enough to live in. That's another thing I
don't know.

SENATOR KARCHER: As Senator Rice said, what
you should do is make sure that you document it
clearly from the beginning to the end to this
point, have all that documented, forward it to
me. We'll make sure it gets to the correct
authorities. I think that it's clearly something
in this development that I know about because of
my experience here in Monmouth County knowing the
kind of things that have been going on and the
kind of activities that suggest potential corrupt
activity that it needs to be forwarded on to the
new Attorney General. So if you can do that.

And I just want to suggest as quickly as
possible get those documents together and we can
move forward and make sure that that's one of the
top priorities that the new Attorney General has
when he gets sworn in.

MR. MA: Okay.

SENATOR KARCHER: Thank you.

MR. MA: Thank you so much.

SENATOR RICE: As you leave the table, let me
indicate there are three types of inspectors out there. You have one that don’t know how to do the job; you have one that know how to do the job and not going to do it; and then you have one that does the job very well in accordance with the codes as they should be doing. The Senate passed legislation, which is law sponsored by Senator Connors on my Committee, supported by Senator Karcher and our colleagues that we can terminate certain code officials. That is one thing that municipalities couldn’t do in certain conditions; now they can. In the city of Newark we just had a couple terminated for knowing how to do the job but didn’t do the job, if you get my drift.

And so we have to continue to tighten up those areas, too, to hold people accountable that are doing it. Because your official should be certified and licensed by somebody and we’re looking at that, too. Because there was debate how much interest should the sub-code officials have or what should the city have on board with in terms of engineers; what should that engineer really be in terms of background. So there are other things we’re looking at, as well.

SENATOR KARCHER: Assemblywoman Beck.
ASSEMBLYWOMAN JENNIFER BECK: Good evening.

Good to see you, Senator. Welcome. And Senator Karcher, very nice to see you again.

Senator Palaia and myself had also introduced a package of Bills, roughly 12 pieces of legislation, some which are very similar to your and Senator Rice's package and some which have additional provisions. This obviously is a critical issue. I've only been in office for nine months but can tell you that we have had numerous calls, complaints and letters about the clear corruption that happened in the construction of many of the homes in Manalapan and Marlboro and the abuses that happened to the homeowners here.

I'd like to say before I go through some additional suggestions to the legislation that you put forward, I'd like to introduce my Chief of Staff, Nancy Fitterer. Nancy, if you would just stand up. And certainly I would like to offer the services of my office, as Senator Karcher has, in helping our citizens push these builders to do the right thing. I think it's critical that if mistakes were made, they step up to the plate and they correct them and they correct them quickly.

With that said, a handful of recommendations.
First and foremost, I know one of the things in the SCI report was that it was very difficult for them to do background checks on some of the builders and owners because they didn't have Social Security numbers and they didn't have employee codes. So that is one of the recommendations in our Bill, that at the time they're registering, that, indeed, they have to provide that information to the Department of Community Affairs as part of their registration.

That's A-3211.

Secondarily, for repeat violators, if they're violating the State Uniform Construction Code, that that is tracked and publicized on DCA's website so that any citizen can go online and if they are considering purchasing a home from a particular builder can see what the track record of that builder is.

Third, that an owner is not prohibited from pursuing a lawsuit if they happen to file a complaint or a claim under their warranty, that that is not mutually exclusive. And I think that that is sort of a troublesome area right now, that if you file a warranty claim, sometimes you can be prohibited from pursuing your case in a court of
Lastly, that under the Planned Real Estate Full Disclosure Act that there is a transition of documents, public documents from the developer to the homeowners association that, indeed, that developer shows that they have received all of the proper governmental approvals before they turn it over to the homeowners association. And then, indeed, if owners, while the construction is still ongoing, if they've already moved into their homes, that they are not prohibited from filing a complaint under their warranty; they are not made to wait until the rest of the development is complete.

And I think those are just a handful of things. Clearly the hearings were helpful and the Bill that's been crafted is a good Bill. These are simply recommendations that I think can help sort of fill out those remaining areas.

And I appreciate you letting me have a couple minutes tonight. Welcome to Monmouth County. It's good to see you. And good to see you again Senator Karcher.

SENATOR KARCHER: Thank you.

SENATOR RICE: Thank you Assemblywoman.
Some of the issues you've raised, if not all of them, may be in some of the language we have. Some of them may be in some of the recommendations that we have also that may be incorporated. But we will certainly go back and look at all of what you had to say. And I will take a look at A-3211.

Bob, are any of those in some of the Bills we have already?

MR. ROTHBERG: I believe that your newer Bill, S-2046, has the last piece that she mentioned. I also believe the disclosure piece is in one of the Bills, as well -- I'm sorry, the warranty claim as not being preempted is also in one of your Bills.

We've been looking at these other issues and discussing them with a variety of people and our plan is to amend the Bills to include some of these things.

SENATOR KARCHER: Now we're going ahead a little south and call for somebody I know in Freehold; Barbara McMorrow.

MRS. McMORROW: Thank you, Senator Karcher my name is Barbara McMorrow, M-c-M-o-r-r-o-w.

Welcome Senator Rice and members of your
Committee to Monmouth County.

I don't have any written response. I was delighted to read the article in the Asbury Park Press that you were going to be here. And I'll try to be succinct; I know the hour is late.

The crux of what I'm going to say is that the builder needs to be responsible. And he cannot shirk his duty and give it to the subcontractors; and the homeowner should not have to bear the brunt of tracking down the subcontractors when something goes wrong with his or her home. We pay the builder, we pay the builder a lot of money for our homes, and he should be the one who is responsible.

I'll give you a couple of examples of frustration that I have had.

We have two zone heating in our home and we have a furnace in the attic. It's a gas furnace. And a while ago I was having all my smoke detectors replaced because the builder's one were always in default and so I said rather than doing one at a time, we'll replace all of them. They went up to my attic, they said, you do not have a smoke detector or a carbon monoxide monitor in your attic and you have a gas furnace there, so I
instructed them to put it in. And I went to my township to ask whether or not this was in code and they told me they couldn't discuss it with me. So I offered my CO and it's not listed there. I'm really concerned that we have many homes in Freehold Township or throughout Monmouth County that have two furnaces, because we have dual systems, the furnaces are now located in the attic, and there will not be smoke detectors or carbon monoxide monitors there. I think this is something that we have to look at throughout the State of New Jersey. It will save lives.

The other problems that we have, for example, my upgraded kitchen cabinets fell off the wall and the builder said that's not his responsibility, that was a subcontractor. And I had to go to the subcontractor and I had to work with him and I had to pay money to get new ones installed.

The locks on my sliding door didn't work; they came to see it; they said there's nothing wrong with your locks. And, no, there was nothing wrong with the locks; they hadn't framed the door correctly. They said it wasn't their fault. I had to pay to have new sliding doors installed.

The windows, I did fight with the builder to
have them matching in the kitchen. I thought that
would be nice, since they're right next to each
other, if they looked the same. And we finally
were able to get them to agree to that and they
did come and they did put in a window that matched
so the two of them matched. The problem was that
the glass kept cracking in the windows and when I
brought in an independent contractor, not the
subcontractor that I had to deal with from the
builder, he said this glass is always going to
-crack because your window isn't framed correctly.
So I had to have all those windows in the kitchen
taken out, new windows put in and they're fine.
And I also had to have the windows in the bathroom
taken out because they weren't framed correctly;
it was freezing in the bathroom. And when they
showed me the problem, is that because they didn't
frame it correctly, there was about an
inch-and-a-half to two inches open with no
insulation and the cold air was just coming in.
The windows in the dining room, same problem;
water is coming in. I will have to eventually
replace all 44 of my windows in my home and the
builder said it's not his responsibility.

We have a box bay window on the front, it
goes two stories; all the wood rotted out. And
when I called the builder, he said, oh, yes, we've
been having problems with that. We don't use that
kind of wood any more, we use different material,
but it's not our responsibility. So I had to pay
to have someone come and replace all that to
maintain the integrity of the home.

What really has brought me here tonight in
utter frustration is the basement of my house. We
had water in the basement soon after we moved in
and I did ask the builder to come. And they
always are very nice; let me say that for the
builder. They always are very pleasant when they
tell me it's not their responsibility and they
tell me that I have to deal with the
subcontractor.

There was water coming in the basement so the
gentleman came and he said, oh, yes, in deed, you
have water in the basement and it's because you
don't have landscaping. So we put landscaping in
and we still had water in the basement. And they
came back and they said, yes, well, you still have
water in the basement; it's because your drain
spouts are too close to the house. So I spent
$1,800 putting dry well in on one side to bring
the water out and the water kept coming in through the walls of my basement. It's coming in through the walls; they're saturated with water. I just spent $27,000 to put in a French drain and three sump pumps and it does keep the water off my basement floor. I also had to pay an extra $600 to have dedicated electric lines down there to keep those sump pumps running if we lose electricity. They go to a battery operated -- there's a whole structure down there now. The water still comes in through the basement walls but it goes into my French drain and goes out through the sump pumps. The people who came in to do that -- they did a nice job at my expense -- they said you're in a clay bowl and that's why you have all this water in your basement. What I will eventually have to do is dig out around my foundation and have the basement sealed from the outside. That will be another very expense job for me. By the time I finish, I will have rebuilt my entire home. And I don't feel that when you buy a new home you should have to go through this extraordinary expense.

Now, my husband and I took out a home equity loan in order to pay for all of this. Some people
cannot afford that, and I speak for them, as well. Because there must be some integrity on the part of these builders that when they have built something and there are obviously problems -- and I have many, many other problems with the house that I have been taking care of but they're more minor. You know the roof that constantly leaks because, oh, they forgot to put flashing in. And so now they're fixing that; every time we have another leak, they come and they put the flashing in.

We need very strong penalties. I know that Bill S-1825 speaks to this. I think the penalties need to be stronger. I think when these deficiencies occur and are substantiated, they need to be made public and in a venue where the public can readily access them. And it needs to be timely. Even when I'm listening to people here who are speaking, everything is taking so long. We need -- these are our homes. We need to feel safe in our homes and we need the integrity of our homes to be sound and to be strong.

So we appreciate, I know I greatly appreciate the laws that you have written and I am now looking to you for the justice.
Thank you.

SENATOR RICE: Do you remember who your builder was?

MRS. McMORROW: Do I remember my builder?

Yes. My builder is Matzel and Munford. They were being bought out by Hovnanian and they were building my home.

SENATOR RICE: If you get a chance, would you send us some of the information, testimony you gave in writing to the Senator and to us.

MRS. McMORROW: I absolutely will, Senator.

SENATOR RICE: Be sure that you put who your builder was for me.

MRS. McMORROW: I absolutely will. Thank you very much. I appreciate that.

SENATOR KARCHER: I also want to remark on something that you brought up about the framing work. I think in the SCI report, if I recall correctly, there was something about the subcontractors for that type of Sheetrocking, framing work, there are not standards that they have to be held to as electrical inspections and electrical workers and plumbing. And that's something that I think, I don't know if it's included in the Bills as they're written, but that
needs to be further explored to make sure it is.
Because it's just so easy to subcontract to
unskilled workers who can get picked up that day
and they're told go build that wall.

MRS. McMORROW: And my concern also is the
one about the furnaces that in the attic. I just
see that as a real safety issue. So, yes, I will
give you all of this information.

Thank you so very much.

SENATOR KARCHER: Thank you so much.

Now we're headed east to Morganville and
Felicia Stoler, who will be the poster person for
this issue.

MS. STOLER: My name is Felicia Stoler.

347 Wedgewood Road in Morganville.

In 1999 I bought a home in Morganville. From
the moment that we moved in, we began having
problems. We began a letter writing campaign, or
I should say I began a letter writing campaign to
the builder from the minute I moved into my
house. It's been seven years and we have over two
dozen construction deficiencies with our home,
including structural problems, mold, code
violations and grading problems.

I wanted to quantify some of what we live
through here in terms of what it actually costs people to go through the process after local towns and state officials have really not been able to be of assistance. We've spent over $65,000 in the last two years in attorneys and experts to try to remedy the situation and it's still not done yet.

We built our home on good faith and we were given a lemon. We have two small children that live in a house that has exposed walls, ripped up flooring and siding that's been left removed. I gave Senator Karcher pictures of the way my house has been left for the last two years. It's kind of embarrassing to have other people over for play dates with my children. We've literally been held hostage in our house. We can't get out of it; we can't sell it; we can't do anything with it. Whatever costs the builder thought they would save really costs more at the end of the day. In our case the estimate to repair our home is much more than what it cost the builder to build it in the first place.

The builder can't understand why we're uneasy about living through the repair process. How do you relocate a family, a home and a home business temporarily for months on end with no plan of
repair, with no plan of when you're going to
actually come back into your house. This has been
an endurance event like no other. It's been
dealing with an insurance company that has a
policy of just saying no all the time. They want
to see how many times you keep coming back and
keep coming back; or the other analogy is when you
teach a boy to play football and you just keep
running into them, running into the pack. I've
spent countless hours trying to get our home
repaired over the years.

As our builder has advertised in their
marketing materials, these are the homes that
dreams are made of, but ours has been nothing but
a nightmare. And what kills me is that on a
personal level I do a lot in the community and on
a state level to volunteer my time to give back to
the community, and I feel that the legal system
and the laws really haven't been there to help
people like myself and my family. And yet for all
the time that I've put in, other people would have
just crawled in a hole and gone someplace else or
left. And I'm glad to see that you're trying to
do something to remedy the situation. I did have
the State Commissioner of Investigation at my
house on numerous occasions and our family was part of what went into that investigation.

To chime into what other people said, in addition to the laws that you propose and explaining how it's going to work, I think you need to put some real time frames on what time it will take builders or whoever to remedy the situation because otherwise this lulling effect will just continue endlessly.

That's really it. I know that there are a lot of people here that want to speak. But I welcome all of you to come to my house and see it because it really is the poster child for bad construction.

SENATOR KARCHER: I showed the pictures to Senator Rice. He's perusing them now.

MS. STOLER: It's worse than those pictures. Those are from a year ago. It's gotten worse as the last winter went by.

SENATOR KARCHER: And you told me that the neighbor's house was built --

MS. STOLER: A little too close.

SENATOR KARCHER: How much closer than what it should have been?

MS. STOLER: Well, it's part of litigation.
It's sort of arbitrary of what was on the map and what actually happened. So I don't know if I can really discuss that.

But the problem is also grading. It's funny because I get these little daily alerts, media alerts about problems with my builder, or things that come up with my builder, and it's amazing to me how not just in the State of New Jersey, but elsewhere, but specifically in the State of New Jersey how many stories come up with people having problems with grading. Like that's such a vague area. And we did everything that the handyman for the development told us to do; wait; don't do landscaping; don't paint your house until the cracks stop. Well, I'll tell you what, the cracks, most of the Sheetrock was removed where the cracks were; I've got plenty of new ones now, too. It just doesn't stop.

SENATOR KARCHER: And I actually said to you, I have the reverse problem. My house was fine for ten years and then a development came in behind me and that's when I got the nail pops; that's when I got the cracks. What can I do? There's really nothing I can do because of nearby construction. And they also have their problems to their sites.
But it is so tempting in an area like this where builders come in, they look to this as ready money; get in, get out, let's do it, and left homeowners, a room full of homeowners here, obviously, with long-term consequences. It's not a health consequence; it's not a safety consequence; economically you really take it on the chin.

MS. STOLER: I mean, and the other thing, too, is that it's very expense to go through this process. It's time consuming. I mean, I have a job and I have to take off time from my job to write letters, make phone calls, sit home, wait for people to show up or not show up.

Do you know how hard it is to find an attorney that can handle this or doesn't have a conflict of interest with your builder or to find the appropriate engineer that can do this or to find people to give estimates?

It's just a free for all. And it's also very difficult just to find the people that can help you.

AUDIENCE MEMBER: Who's the builder?

MS. STOLER: Hovnanian.

SENATOR KARCHER: Thank you.
Nat Zaccaria from Four Seasons at Wall.

MR. ZACCARIA: My name is Nat Zaccaria, Z-a-c-c-a-r-i-a.

Thank you.

I've been looking for respite to many of the problems of communities for quite a number of years. I have left the community where I lived eight years. I served on the Board of Trustees for five of those years. And what I hear tonight is obviously a repetition of some of the many things that we lived through. Rather than elaborate on the plethora of deficiencies, I worked with the SCI for a couple of years, as well, while I was on the Board; it outlines quite readily many of the deficiencies that we have all faced. And people who spoke here tonight have said and experienced the same things that we did at the Four Seasons at Wall. I have left there but when I heard of your meeting this evening, I thought I had to come to put my two cents worth in because I felt that the community has been neglected, not only by the developer, but by the bureaucrats that are supposed to be watching out for our interests.

The DCA, to name an agency, has been
deficient. There's a plethora of my
correspondence over the years to them. The
response I received, I didn't receive. I had
written to the FBI, the State Attorney General,
the county prosecutor. I made a statement in one
of my many mailings, I asked if there was a wall
around Wall Township that neither of those three
agencies could penetrate; and I never got a
response from any of those three agencies, even to
that question.

Enforcement is something that should
absolutely be part of the Bills. There should be
penalties to those who should be working in the
interest of the public and that are not. At Four
Seasons 400 attics were constructed and never
inspected, as was attested to during the SCI
hearings.

I also testified under oath in private
session with the SCI working with them for two
years trying to get the problems solved. I
thought that there should be a lemon law so that
when a developer has the audacity to do what he's
done over the many, many, many years to so many,
many people, there should be a lesson to them that
they can't produce a deficient product and have us
live with it. They should be made to live with it and pay us and buy back the deficient structures that they built.

There should be time limits, and this has already been mentioned and I mention it again. The developer should be given a time limit. I'll fix it, I'll fix it, I'll fix it; some of these people are waiting nine years. As a resident of Wall Township, Four Seasons, I was there eight years. The deficiencies that existed at the beginning that we uncovered, many of them are still there. Some of them are being worked on; some of them are not.

The entire industry for me has been one of an incestuous relationship in many aspects with many people being involved. And I'm hoping that perhaps with this legislation somewhere along the line they'll be enough teeth put into whatever you put in writing so that we should have some respite from the miseries. There's no reason in the world that we should be living in homes that are falling apart around us. My home wasn't falling apart, it was rather repaired and I was able to leave the home in reasonably repair. But there are still homes there that need to be done.
One of the things that hasn't been mentioned but I think I should mention it tonight; when you build a home and you are built on a slab and when you punch a hole through the slab so that the tub trap can't be placed where it should be and then that home is left so that your slab has an open hole to the ground below where you go reach into your tub area and you feel the dirt. Now, I wrote to the DCA any number of times and they thought it was perfectly okay. And when they wrote back and told me that it was perfectly okay, I asked them and I thanked them for not being involved in the ship building industry because I can see them sending out a ship with a hole in the hull and considering it good workmanship. They never really responded to that response -- to that letter that I wrote accusing them of that bad theory of allowing such a thing to exist; and it still exists. And I'm assuming that it's not only that community that was built that way; it's probably throughout the state. That is something else that should be, I think, looked into.

Thank you very much for the time that you're spending here tonight. And I hope that we put some teeth in the laws. It's great to have the
law but what we need now is some teeth in the law.

Thank you very much.

SENATOR KARCHER: Thank you:

SENATOR RICE: Senator, through the chair, there are some provisions to address some of the concerns you have in terms of where conditions are such that they cannot be fixed, and they go beyond fixing, that the owner should be made whole by the builder or developer or someone. We are looking at those provisions, which would be what you call the lemon law type of provision. So I just want you to know that the Bill does incorporate some of that language. We just have to take another look at it.

SENATOR KARCHER: We're going to take a five minute break. Because we're using the services of a reporter, we need to just have a break for a short period of time to let her rest. We'll be back in five minutes.

(Brief recess was taken.)

SENATOR KARCHER: Dr. Steve Curtis.

DR. CURTIS: I'm not here for myself. I'm here because the particular builder in this area, Tinton Falls, is going to do the same thing to perhaps another 150 new construction projects and
I'm trying to prevent that.

Let me just start with what I think might make a difference. The townships and the counties, when they hire a contractor, they insist on a performance bond. Why in the world can't a homeowner have the same thing? 5% or 10% of the purchase price on a $100,000 home would have $10,000, not set in escrow, but through a bonding company. If a contractor's reputation becomes unbondable (sic), he can no longer do construction. That money is set aside; it's not run through the courts and cluttering the courts. It becomes an automatic thing where you can have binding arbitration, preferably with two-thirds of the panel being civilians instead of contractors, and just resolve things on the side. The money is there. The bonding companies would love the money. The contractors would all of a sudden be turned from a situation of reflex of greed to reflex of fear that they're going to lose that bonding privilege. Again, it wouldn't clutter the courts. You wouldn't have people having to hire individual engineers. It would pretty much come down to the punch list being respected. When the homeowner finally signs off on the punch list,
then the bond is released. And that can be a very
civilized situation instead of a million different
combinations. If there's money at stake,
especially the builder's money, he's going to
respect what your feelings are. That's not what
happens today, that's why we're here, because he
doesn't give a damn about your feelings.

In my own specific instance I provided a
punch list for what was to be done. Made an
appointment with the -- actually the manager of
the entire -- Nutmeg Construction. And he came to
the door, I had a broken foot at that time with my
foot in a cast; he was on time. Opened the door,
hi, glad to see you. He puts his finger in my
chest, pushes me into the living room, and begins
to tell me in 15 different dialects F you. I'm
not doing a damn thing. You can't make me do
anything. As a matter of fact, you have no idea
who you're dealing with. And you see that area
outside, the condominium area, that doesn't belong
to you, that belongs to me; wait until you see
what I do with that; and he walks out. And he
kept his word. He refused to do one thing on the
punch list. Absolutely nothing. A missing
screen; he wouldn't even replace that. I did all
of the ordinary things, wrote all the letters and so on.

One of the basic problems that all the development has is with the heating system. And the way this was constructed, the basic problem is that the inspectors were out to lunch, a long lunch. And not only did they not see anything, even a civilian would notice that these things are incorrect.

For instance, what they did was they took an 80,000 BTU furnace, which are plain Jane; you can get them cheap and dirty, the cheapest 80,000 BTU unit, and they jammed that same size unit with every house, no matter what the heat demand was. In my particular unit the actual heat demand was only 53,000 BTUs, which means it was oversized. That's not an advantage. As a matter of fact, engineering-wise, what it does is it creates a situation where the heat that's produced in the furnace cannot be delivered to the house, the furnace turns cherry hot and a limiter inside the furnace shuts down the furnace; so the furnace is on for five minutes; off for five minutes. And every time it fires up it's like a Bessemer furnace, boom.
Now, in my particular case, I have a transmission but no reverse. I just simply junked the furnace and brought in my own system, had ducts placed that the builder refused to put in; actually deleted from the original contract. At City Hall there actually were no structural plans for the entire complex. There were topo maps but the actual face, the side, what lumber, what specifications for electricity, plumbing, they were no where to be found. The specifications for the heating system were actually stick figures on a single piece of paper and then a little line through where they deleted that one extra run that was necessary to actually heat the house.

Now, my neighbors weren't as well healed. They have a kid and in those houses in the kitchen in the winter no matter what you set that thermostat on, you can set it on 80, 90, whatever your imagination feels happiest with, the kitchen only gets to be 60 degrees at the floor. The living room on the couch only reaches 64 degrees with this furnace running five minutes on, five minutes off, 24 hours a day. That's why my patience ended in two months and I got a real contractor in and settled it. And I found out
exactly why and what the defects were and
explained them to as many people as I could. My
problem is, again, the 200 or 300 people that are
coming up who are going to be subjected to this
all over again.

SENATOR KARCHER: Would you be able to
document this, write this, put down for us to have
as --

DR. CURTIS: I gave actually -- I'm the tip
of the iceberg. The rest of the iceberg is with
Rachel. It's well documented.

SENATOR KARCHER: Good. Thank you.

DR. CURTIS: The particular builder
advertised that this development was the aspects
of it to be noted were location, luxury and
value. Now, the heating system speaks for
itself. But the first summer there was a new
surprise. I wasn't that familiar with that
particular area and I found out that I actually
live 2000 feet down wind of the municipal garbage
dump.

SENATOR KARCHER: In Tinton Falls?

DR. CURTIS: In Tinton Falls. Shafto Road is
where all these things are. And not only the
municipal garbage dump but there's also a home and
toxic waste facility and, of course, the
ammunition depot. These are things you would want
new people to know. But the builder has you come
in a certain entrance that you'll never, ever see
and be aware of these things. In fact, in his
Nutmeg advertisement he specifies in this new
section that there are, what's his exact words,
cluster of gorgeous trees in the background.
Little did they let these homeowners know that 200
feet beyond those trees begins the garbage dump
100 foot height; pelicans circling.

Mostly what we're looking at is a bait and
switch situation, false advertising and really
deceptive sales practices. For instance, in my
particular plan it said that there was going to be
a refrigerator. And when I got in there and there
was no refrigerator; he says, oh, it was a typo
and it was a mistake; it should have been
corrected. He's still using that same plan that
says there is a refrigerator, because I went to
the new section, and I don't know what he's
telling all these people but I guess it's the same
story he gave me. That was a $1,000, which I
thought would help pay for this end unit, which
was a little bit fancier.
And he also had said that the appliances, the heat and air-conditioning were going to be high efficiency. The efficiency of the air-conditioning unit was a SEER of 10. High efficiency begins at SEER of 12. That's a 20% loss in efficiency from what he suggested starts at 12. The furnace, which was supposed to be high efficiency, was rated at 80%. High efficiency starts at 90, goes to 95 up to 98 I've had furnaces. I put in a 98% myself but other people couldn't afford to do that.

The neighbors next door have different problems because ducts were omitted purposefully. And in the master bedroom they actually had to supplement the heat with two space heaters. And in the summer they have to put in a window air-conditioner to survive in that same bedroom. The people across the street, like I said, in order to feed their kid, they've actually got to put two space heaters next to the height chair, otherwise they live upstairs where the heat goes.

It's all purposeful and it's all meant to save money. And it did save him a lot of money but I don't know, the nerve endings of the people.
The first time I knew I had an inspection problem was when I looked at the electrical panel where I've got this okay final inspection on it. Two feet to the right of that panel was an open electric box; six feet to the left of it was an open electric box; and it made final inspection. So I knew at that point who the building inspectors were working for.

Now, as far as the warranty that was advertised as an advantage but, of course, the warranty itself was never provided until the actual closing. And you really don't read the fine print on a warranty, of course, until you start to have problems. And as somebody else alluded too, it was that if you elect to exercise the warranty, it relieves the builder of all liability. And he just said, would you please just use the warranty, use the warranty. No, sir. Contract law gives me six years to come after you and I'm going to exercise that period and I'm not going to use the warranty.

The only other thing that I can think of, which may be an indecent proposal to the townships, but the townships are the ones that are letting and leaving these inspectors to do what
they do. What if the people who are in this situation like Mr. Ma, if those situations were documented and the situation was such that it was caused by a failure of the inspectors of the township, somebody like Mr. Ma should only be paying 50% on his taxes because he doesn't have a home. And that money that he didn't pay in taxes he can start to use to actually start doing the repairs because the builder is not going to do it. It would give some relief.

SENATOR KARCHER: Did you put your recommendations, as well, in what you gave Rachel, my aide?

DR. CURTIS: No, no, no. These things occurred to me as I was listening.

SENATOR KARCHER: If you could, I really would appreciate it if you could also some way have your recommendations written down, as well. That would be really helpful, I think, moving forward for us. Because the issue of bait and switch, that's something that I don't know that that's addressed in the Bills we're addressing this evening. That's certainly worth looking into. And, as well, what we can do when there is a situation like there is in Manalapan and they're
going to connect the dots that this lacks
regulation on the part of the municipality, look
at what those alternatives are for the community,
where the monies would come from. They certainly
are worthwhile ideas that you put forward and if
you can have it in a document for us, I think that
would be helpful.

DR. CURTIS: All right. I'll talk to
Rachel. But the municipality, losing 50% of that
would certainly have their eyes focused.

SENATOR KACHER: Compel them to make sure
that their inspectors are --

DR. CURTIS: That's a carrot and a switch, I
guess.

Give me a second. Ever since the plane crash
my head doesn't work the way it should. I'm not
fooling.

The final issue, again, I'm here for the
houses that are going to be built. However, that
same region along Shafto Road is also scheduled
for another builder to build another 273 homes.
That particular development, the big brouhaha is
that they're too close to a tributary to the Shark
River. That they're worried about that.

What I'm worried about is the 273 families
that are right next to a garbage dump, a toxic
waste site and an ammunition site and nobody is
telling them. They just talk about the luxurious
trees.

Thank you.

SENATOR KARCHER: We see that situation in my
town of Marlboro. When I was on the town council
we addressed the issue of redistricting the
schools because it was a regional high school
district. And the things that came forward that
people reported that they were not told about
their homes, everyone says you'll be going to the
Marlboro school system, your child will be in the
Marlboro school system; everyone assumed my child
will be going to the Marlboro school system right
through high school. They didn't -- people --
this is a time in their lives when maybe they're
just overwhelmed by the whole process of getting
into their home, some questions might not be on
the tip of their tongue to ask. What is behind
those trees; what school will my child go to 15
years down the road.

There needs to be absolute full disclosure on
the part of the builders. And I've spoken to real
estate -- the Board of Realtors about this and
making sure that within the multiple listings that
we can have other -- more fuller disclosure of
what are the pros and cons. As you pointed out,
they entice you with some fancy words and things
that would make you want to go and plop down your
money and take your chances really is what you're
doing. And we just can't have that continue. And
people are getting pulled into a community that
certainly has other hazards.

DR. CURTIS: The unfortunate thing is you're
talking to a salesman. The builder hires a
salesman to create the voice.

In our particular development the salesman
was the Realtor who was actually on the planning
board, zoning board, environmental board and
appeals board, I think that's all there is, and at
the same time was working for a developer. And
he's in the newspapers. But that's a salesman
that is part of the Nutmeg development.

Thank you.

SENATOR KARCHER: Thank you.

We're going to switch gears a little bit
now. We're going to hear from George Dougherty
from Katz & Dougherty attorneys in support of the
Bill.
MR. DOUGHERTY: Thank you Senator Karcher and Senator Rice.

Quickly may I just say that I lived in Newark for six years while I was at Rutgers and for two years after that when I started with the State Attorney General's office. And at Rutgers, Class of '68, I met a young law student by the name of Alan Karcher. And I followed his career actually when I was a city attorney in Trenton. We had him come to our City Hall where he led a wonderful discussion on what was wrong with our local tax situations. He made amazingly cultured remarks and we failed our campaign sputter (sic). But he was there for us.

SENATOR KARCHER: I heard that every night.

MR. DOUGHERTY: I'm here I guess as a funnel. I'm not going to name my clients or my adversaries. But for many, many years starting in 1988 when I took a case called Generi versus Weichert through the entire court system, up to the Supreme Court my phone has been ringing off the hook with calls for legal assistance; people who read about this case which involved a very small developer who had no business being a developer who had the backing of a major real
estate company who had no business backing him.

And it was my first foray into residential construction.

One of the first things we did in that case, by the way, was to have our clients take a tax appeal. And in 1989, one year after the litigation was filed, these homes which were selling in 1986 for over $400,000 in Lawrence Township, were reduced to $100 valuation, four of them were. I want to just recommend that there are laws available for the distressed homeowner that can be used. We are not totally without our laws and we're not without the support of our court system.

I have taken every opportunity to applaud our judicial system for standing up for the homeowner. The problem is very few people can afford to get into the judicial system and are forced to use the warranty program, which I've likened to a safety net. But it's a safety net that's one inch off of a concrete floor and if you fall into it, you're not getting a lot of safety. You get smashed.

The system has been broken for many, many years. I applaud the SCI for doing a tremendous
job, sorting through and putting together a great
deal of individual anecdotal stories and coming up
with I think an absolute bullseye comment and
request for legislation. And I have to commend
Senator Rice and the Assemblywoman who is there
for doing the takeoff on this and putting this
into effect.

If I didn't change -- if I didn't have one
suggestion today, I would still say you have here
in the package of Bills that I've read a wonderful
start on a new day for the homeowner. The Bill of
Rights; the emphasis on enforcement; the efforts
to race penalties; and the effort to improve upon
what I think has been a very, very poorly designed
system for the arbitration for the warranty
program.

And I'm rushing because I sat in the audience
listening to some very, very interesting stories
and I'm sure there are more of them behind me. I
want to funnel to you what's been basically about
30 years of litigation experience. I'm not going
to name clients or companies. I probably have had
litigation with every major company in New
Jersey. What has come out of this, in my mind,
are several points which are not really addressed;
and how could they be. I'm not sure that these were ever brought through clearly enough through the SCI proceedings. So hot-bun issues, which I'll just tip-off tonight, and I'll be more than happy to produce this in the form of a more scholarly and more comprehensive report that I can give to you and Senator Rice and anybody else who wants it.

Just to begin with, the hottest bun issue, the one thing, if you can do only one thing to make it better for all of the homeowners would be to take ten words out of an administrative code. And those ten words are: This regulation shall not apply to the construction of new homes. Ten words. And these words were brought up during the SCI hearings to then Peter Harvey who was the Attorney General. And he said, I believe on the record of those hearings, that he would make sure that those words were taken out.

Where are these words?

These words are in the regulations which codify the obligation of home remodelers. Home remodelers, when I have to sue them, literally come to court and wind up in tears. I've seen grown men cry when the judge in a settlement
conference has to tell a defendant who is a home
remodeler, I'm sorry, but the Consumer Fraud Act
is very unforgiving. Now, you took that woman's
money and she ordered a certain brand name heating
unit and you substituted it without telling her
and that means that you're guilty of consumer
fraud and there's no defense to it. That's a
simple offense. Therefore, you're responsible for
her attorney's fees; you're responsible for
replacing that unit and/or pay for her to replace
it, and treble damages; three times the cost.

When I have to sue a new home buyer they
point out that they are not going to see me in
court tomorrow or the next day and cry, they're
going to hold me up. And they're going to take my
client and me through eight, nine, ten years of
litigation because they can afford to do it. No
tears. No fear. Because the ten little words in
the administrative code which captures the home
remodeler are: This shall not apply to the
construction of new homes. Take those words out
of the administrative code, and it's the Attorney
General who has the power to do that. The new
Attorney General can do that before the end of
next week. He can do it. Take those words out
and the builders will heel. The builders will
come to heel. Because when they do it, right now
they can take you into the swampland of litigation
or the arbitration programs and they will win
there. Because very few people can afford
attorneys and very few attorneys are willing to go
that distance, especially on a contingent basis.

The other things that I noticed in the
proposed legislation, which again is excellent,
one of the major battlegrounds that we have as
lawyers dealing with construction companies has to
do with when a code violation involves a
structural defect or structural unsoundness.

Homes do not fall apart in a day or two.
They don't fall apart in a year or two. Sometimes
it takes homes ten or twelve years to show the
effects of bad construction. And we should not be
forcing homeowners to have to leave court or leave
the arbitration process simply because their homes
are still standing. And an engineer would have to
swear that, yes, they're still structurally
sound.

Our engineers are experts. When they look at
a problem and see a problem in the making, they
can see a structural design defect or they can see
a bad use of materials or they see bad workmanship. They can say this will not last as long as the house is expected to last. This will not last. This house will prematurely fail. It will not fall down. It will just become shaky and the windows will be tight. None of these things are considered structural failures. And, therefore, I propose that we reshape our laws, both the statutory law and the building code, but most importantly the arbitration because most people will go there, and get rid of the concept of a defect because a defect means it's defective now.

I would talk about a condition which to a reasonable degree of engineering certainty will become a defect in the immediate future or within the useful life of the house. You don't have to wait in all cases for the house to fall down before you know it's going to fall down in the future. And if the builder plays this waiting game, especially with a ten year statute of re-post, it's going to still be standing after ten years, I'm free. He's right.

Change the law so that the action ability starts when a reasonable engineer proves to a
hearing officer or to a judge or a jury that the conditions present will to a reasonable degree of engineering certainty produce that failure at some time in the future before the useful life of the house is up.

Another item which could level the playing field between the consumers and the builders, and it's within your power as legislators to do this, amend the Consumer Fraud Act so that a homeowner is entitled to recover damages and have them enhance, maybe not treble, maybe 50% or 75% or a 100%, not 300%. I think in many cases 300% damages does a disservice to both the consumer and the construction company because it's so much and people look at a $500,000 house and they say, wow, this consumer wants 1.5 million dollars at the end of this case. It makes the consumer look avaricious; makes the lawyer look avaricious and it prevents settlements.

I would recommend, frankly, a study be done to see how many attorneys agree with that and see if we can soften that so that the enhanced damages available under Consumer Fraud remain more moderate and more obtainable in a reasonable case.
But also, why should we not include the quality of life damages that the jury has to fix every day for personal injury. Somebody breaks an arm; somebody has a traumatic accident; juries are asked to fix the reasonable value of the impact on the plaintiff's quality of life. When a jury does that, why shouldn't that damage be added to the repair damages so that the builder is asked to respond to that plus the enhanced portion of that.

As you may know, our law is very clear as interpreted by the courts. You're only entitled to your treble damages on the portion of the repair that you can prove to be the product of the consumer fraud. And I think -- I've seen this so often where the standoff in court is, well, you may have a terrible house here but only part of it is consumer fraud; the other part of it is just bad workmanship. Well, yes, but it's $150,000 in repairs; yeah, but only $25 of it is really consumer fraud. And we battle over these things in court, which is why these cases take so long. I think legislation can clean that up and also add what we call quality of life or non-economic damages.
Just a quick couple other points.

The gentleman talked about his heating system. I have been recently engaged by several communities, different parts of the state; we hint to you that you should have one of these meetings up in Somerset County where Energy Star rated homes were built. There is a major, major problem with that.

I learned, because I called directly down to DCA, and I learned that there is no policeman on the beat for Energy Star. The local building inspector, construction code official, is not allowed to inspect for Energy Star. And only 15% of the homes built need be inspected; the rest are trusted. And I'm running into problems -- being retained to resolve problems in major communities where that system is in place.

Finally, please somebody hold a hearing on this one question. In New Jersey, are we requiring our builders who build along the coastal communities, including Monmouth, are we requiring them to build homes designed to resist wind loads?

I've had a running battle with the director of construction for the state DCA over that
issue. There has been correspondence back and forth; I've kept it. I'll supply it to you. There's an engineer sitting in this room who helped me understand this labyrinthic code. And his opinion was that, yes, our laws require builders to build so that a house can withstand hurricane winds but not our director of construction for the DCA. He said, no, he thought I was crazy to say so. And I said to him, well, then you're saying that homeowners buying homes built along the coastline have no code protection against their house withstanding a hurricane. And that was the end of discussion.

And that's the end of my testimony. I'll be available to you at any time in the near future for any follow-up documentation, anecdotes, war stories.

SENATOR KARCHER: Thank you. Actually, that's one of the issues that the coastal institute is grappling with right now, about building codes along coastal areas.

MR. DOUGHERTY: I think it's more than just a good idea. I think it's the law already.

SENATOR KARCHER: Thank you.

DR. CURTIS: I have a lethal omission from my
testimony.

SENATOR KARCHER: We have lots of folks we still need to get through so I'm going to just continue with people who submitted requests.

DR. CURTIS: Twenty seconds.

SENATOR KARCHER: Twenty seconds; I'm going to start my clock right now.

DR. CURTIS: It's a very simple mechanical principle. If the heating system is inadvertently or by design larger than the heat demand that the house has, it creates extra condensation in the chimney. The chimney rusts out in as little as ten years. You get pin holes, carbon monoxide, carbon dioxide, water, and you eventually will have a roof fire in this kind of situation where you get oversized furnaces. So it's not a favorite. It's like a truck with car wheels; it's going to crash.

SENATOR KARCHER: Thank you.

Damon Kress.

MR. KRESS: Good evening, Senators. My name is Damon Kress. I'm an attorney with McGovern Legal Services. We represent about 40 associations throughout the State of New Jersey; some in Pennsylvania. I just came here tonight to
briefly discuss one situation at Glenbrook Condominium Association, which is in my experience one of the most egregious violations by a developer of building standards and professional practice.

Glenbrook Condominium Association is an eighty-unit development with homes for low and moderate income units of primarily elderly senior citizens. It's 55 and older but it's not a 55 and older active adult community. There's no clubhouse. It's simply low and moderate income housing for elderly individuals. This community was developed by a developer called Glenbrook Estates, Inc., which was a developer created solely for the purposes of developing this development.

Now, after the homeowners took control of the board, they went out, retained an engineer to evaluate the common elements. Looked for construction defects and prepare a report so they can convey a report to the developer and ask for a redress of the deficiencies they identified. While the homeowners' engineer was preparing that report, the developer withdrew all the assets from the corporation, dissolved the corporation, and
then either shortly before or soon after the
association filed its lawsuit against the
developer, shreded the majority of documents the
developer had regarding the conduct of that
developer during its construction of this
development.

Now, I believe these Bills all provide very
useful tools for homeowners in the future but
unfortunately there are homeowners now that have
problems and need assistance from the State in
redressing their grievances against developers
whom they've already purchased homes from and will
not enjoy the benefits of this legislation should
it be enacted into law.

And that's all I came here this evening to
discuss.

SENATOR RICE: Once again, leave that -- get
that information to us in terms of your
development, the developer. As legislators we
have to work hand-in-hand with the
administration. I'm going to have to, to some
reasonable degree, use my gentle persuasions to
see if, in fact, I can get the new attorney
general to start pursuing some of these from a
different perspective in SCI with the different
authorities they have. Okay.

SENATOR KARCHER: Virginia Orbe, Association of Concerned Homeowners.

MS. ORBE: Senators, my name is Virginia Orbe from the Four Seasons at Wall Township. I'm the Treasurer of the Association of Concerned Homeowners there. The organization represents 278 of the 400 homeowners.

The concerns I have are the community I live in is an active adult community, 55 and older. These communities are governed by POS, Public Offering Statement, which is written by the builder and generally protects the interests of the builder. The community is overseen by a Board of Trustees and when we started to have construction problems in our development with electrical panels, trusses, different things, the elected Board of Trustees tried to intervene and the builder wrote back that they could only handle common area issues as provided by the Public Offering Statement; they couldn't intervene or get involved in any individual homeowner issues; thus our organization was started to help homeowners organize and get the builder to fix things.

This year one of the attorneys with the
developer who developed our community sent a
letter to the Department of Community Affairs that
they should not answer any questions or deal with
us in any way because the builder did not want to
recognize an ad hoc group.

SENATOR RICE: Who said that, I'm sorry?
MS. ORBE: The attorney for the developer in
a written letter to Department of Community
Affairs.

I don't think developers should be allowed to
prevent homeowners from organizing to get redress
on the issues that are before them.

The Township has been somewhat helpful.
There was an issue with snow in the attic which
affected over a hundred homeowners and the
builder's initial response to that problem was it
was an unusual event of nature and people should
put down a tarp in their attic if they were afraid
the snow would melt and do damage to their homes.
The town eventually issued code violations for
thirty houses. We've been before the Construction
Board of Appeals for about a year-and-a-half at
this point. Supposedly I thought there was only
supposed to be one postponement in those things
but there have been several, all at the builder's
attorney's bequest. And in June when we met last, the developer was to have to the Township a plan for the remedial action in the homes that was devised by his engineer and a time table of when the repairs were to be completed, hopefully before this winter, and nothing has happened yet. So that Board of Appeals process I don't think works.

And I would ask -- I'm very grateful for what you're doing here and hope that you will be able to do more to correct the situations that exist.

SENATOR KARCHER: Thank you.

Actually, I think -- I'm not familiar with -- that familiar with it, but do you have the legislation that addresses community organizations by Senator Doria?

SENATOR RICE: We have some Bills in along with Senator Turner and there are some other Bills by Senator Doria.

There are people who allege that we aren't seeing these Bills and I explain to the people in Gloucester and Whiting we're going to have a Bill because unit owner's rights are being violated to some degree. Not by all board members and owners throughout the state but there is enough of them.
And so because we can't seem to gander enough votes to pass legislation that makes sense, and because I'm smart enough to know that the Doria Bill is not the correct Bill but he's a good Senator, and the Turner Bill is not where it should be, then there are some third issues that we can't seem to reconcile. I'm kind of doing a semi, not really a redraft, but trying to do some merging and taking out some hardships.

But in terms of the issue raised about the units being on appeal, are they on appeal in the courts or in arbitration?

MS. ORBE: Construction Board of Appeals in Freehold.

SENATOR RICE: Then what we need to do is maybe have information from you as to your location, if you can get it to us. We'll get the State to try to intervene, if they legally can, to try to get the Construction Board of Appeals and those that work for them to get off their little fannies right now and given the problems we have, or see if there's a way the State can get involved with the appeal process. I'll have to check the status in the laws, pass it by the Attorney General or whoever, but there may be a legal way
to help you expedite those appeals.

MS. ORBE: Thank you.

SENATOR KARCHER: Paul Leodori. Community Associations Institute of New Jersey.

MR. LEODORI: Good evening Senator Karcher.

Good evening Senator Rice. My name is Paul Leodori. I'm an attorney, a former Assistant Prosecutor, a former Deputy Attorney General. I've represented community associations throughout New Jersey. Tonight I'm here on behalf of CAI of New Jersey; that's the Community Associations Institute.

Just by way of background, CAI is an arm of the Community Associations Institute which is a national not-profit educational and informational organization which serves America's condominium, corporative and homeowners associations. The New Jersey's chapter of CAI is the second largest chapter in the United States. We have over 2,000 members and many of our members serve on boards throughout New Jersey.

We thank you for this opportunity to testify in support of S-2046. CAI and its membership strongly endorses this measure. This progressive Bill will enhance the existing protections
pursuant to the Planned Real Estate Development
Full Disclosure Act, commonly known as PRED.

Indeed, the issue of transition is a significant
concern to community associations. And in an
effort to better address and protect the rights of
purchasers and owners within these developments,
we respectfully suggest that you consider some
modifications to S-2046 that would elaborate upon
the specific duties and responsibilities that a
developer should undertake prior to and at the
time of transition.

As we heard earlier this evening, there are a
lot of horror stories. We believe that the
experience of the CAI New Jersey members has been
that certain initial unit owner controlled boards
inherit accounting methodologies from a developer
which leave a community underfunded from its
inception. Also, there are many instances where
the financial burden of correcting a developer's
defective construction becomes a hidden and
devastating burden upon all unit owners.

From the perspective of CAI New Jersey we
believe that S-2046 provides a unique opportunity
to comprehensively address the engineering,
accounting, and legal ramifications of transition
and we would make the following considerations with respect to 2046.

We would ask, number one, that the provisions establishing a methodology for the developer to contribute to the funding of an engineering survey of all common elements at the time of transition. As we heard over and over this evening, people have been confronted with the costs of having to do engineering studies. Usually you have a board that has not had the opportunity or the sophistication to deal with these issues. But if there is a fund available, it will be very, very consumer oriented and will meet their expectations.

Number two, we would ask that provisions requiring the developer to conduct either an audit or an agreed upon procedure of the financial records at the time of transition consistent with generally accepted accounting principles. This is actually a very subtle way that the membership of CAI has seen people of community associations caught up in a horrible, horrible situation, a very sophisticated accounting sleight of hand; which, again, we would ask that 2046 consider.

Three, we would ask that there be provisions establishing a methodology for the developer to
contribute to the funding of cost-to-cure reports
for corrections that may need to be made by a
developer after transition.

There's actually two stages that we find in
transition litigation that people suffer from.
The first is finding out what really is wrong with
our community. The second is how much is it going
to cost to fix us. It's an awful obligation to
throw on people that are not sophisticated. It's
their first few months on the board; they're just
getting settled into a community; and they need
the resources to address these issues. And we
believe that if we can attack that proactively and
attack it comprehensively, this Bill will give
everybody in this audience the opportunity to
address these developer issues and have them have
the upper hand; have them get the benefit of a
bargain; have them have the expectations of buying
a new home.

Fourth, we would ask that the provisions
establishing a methodology consistent with general
accepted accounting principles requiring the
developer to establish an equitably funded share
of adequate capital replacement reserves and
operating expenses.
Again, these accounting sleight of hands leave communities holding the bag when the developers have left the state. It's a terrible situation. Again, if we can come up with generally accepted accounting principles for having them to be accountable from day one, it will be a wonderful resource for these people.

Fifth, we would ask that the provisions requiring the developer and the developer controlled board to establish full occupancy budgets to more accurately reflect operating costs and expenses of the association. Again, more accounting sleight of hand. If we can address them proactively, it would put no change to the good developers, but it will sort out the bad developers immediately.

And quite frankly, we want good developers in the State and we want the good developers to be on an equal plane. We don't want our good developers having to compete with bad developers. And that's very important. We think if legislation could incorporate some of those concerns, we will keep the good developers here and we'll get rid of the bad developers.

Six, we would like to see provisions
establishing items a developer must reserve for
prior to transition and the applicable funding
periods. For example, useful lives of roofs and
sidings and things like that. Again, your good
developers are doing the right thing but if
they're competing with a bad developer, the
uneducated consumer is not going to know what the
differences are until it's too late. And to me,
that's the essence of consumer fraud and that's
the essence of what SCI is all about and that's
the essence of what this legislation is trying to
get to. So, again, we would ask that that be a
provision included.

Last but not least, we'd ask that there be
provisions establishing parameters acceptable
under general accepted accounting principles
concerning the treatment of deferred maintenance
funds and requiring a methodology for the
developer to contribute to the funding of deferred
maintenance funds. And what we found historically
is, again, the good developers are leaving a
financially sound community behind when they
leave. The bad developers are not.

So, again, I thank you for your attention; I
know it's very late. But on behalf of CAI New
Jersey, we offer the opportunity to work and
provide as much input as our membership can to
you. And we welcome the opportunity to work with
you and support you ever so strongly in this
wonderful legislation. And I think its time has
come. And on a personal level, having litigated
and seen people like this over the years, I
personally applaud you, as well.

Thank you all very much.

SENATOR KARCHER: In the interest of time, if
it's okay with the individuals who are going to
give testimony, I would like to bring up those
folks who live in Wall, Daniel Fox and Johnny
Mitrione together.

Is that okay?

DR. FOX: John just had to leave.

SENATOR KARCHER: He just had to leave;
okay. So Dr. Fox.

We also have Eric Brophy who represents the
president of the Allaire Country Club Estates in
Wall.

MR. BROPHY: Do you want me up?

SENATOR KARCHER: Maybe not. It's up to
you.

You don't live together, do you?
MR. BROPHY: Not officially. Not that I know of.

SENATOR KARCHER: Since you didn't mark whether you're in favor or opposed, I didn't want to --

MR. BROPHY: We're certainly in favor of it.

SENATOR KARCHER: Terrific. Okay.

DR. FOX: My name is Dan Fox, F-o-x. I very much applaud everything that's being -- trying to be accomplished here and what has been accomplished. The stories I hear are very similar to my own but at this point I would like to just add a few points.

Starting with point number one, currently if the builder states that he's going to do things for you and he puts it in writing in the contract and you have this contract and you believe that this certainly is what's going to happen with your house and the things that he puts in the contract do not come to be and actually are not done, what recourse now and in the future does the homeowner have?

So this is actually a two-part; it's a question.

Is there -- besides taking the builder to
court and litigation, is there any other recourse?

And if, in fact, this was done with another situation outside of building a new home, if you have a contract and someone blatantly lies saying that they were going to give you, for example, an electrical system that's going to supply a 5,000 square foot home and your electrical system supplied a 2,000 square foot home, or having stated it will be natural stucco and it's totally not what they say it is; is there any recourse?

That's a question to the panel.

SENATOR RICE: We're trying to avoid litigation. We're trying to put some things in places that number one, it does not occur in the future. We have present situations and future situations. Moving to future legislation, we're trying to say, look, there's going to be some reserves, some escrows, some set asides, some bonding things done for certain kinds of defects and damages, so we don't have to be chasing people; we don't have to wait; we don't have to go there.

In terms of the court system, we're trying to bring it back into arbitration or back to the
state side first because that's really where a lot of this stuff should have been resolved if you're talking code violations because we do have, you know, the Uniform Code Acts, which changed its name nationally.

Bob, you may respond to that; they're looking for recourse.

MR. ROTHBERG: Basically they lied to you and it's in writing. So that if you were getting a house made of wood and they make it of tinfoil and it's in writing, normally you have a contract and this is not fulfilled and you find out after you moved in; currently is there a recourse besides litigation, which I would imagine --

SENATOR RICE: Hang on a moment. I didn't realize there was a signed -- the question was a signed and binding contract. Recourse may have to very well be because of the quote/unquote, and I didn't write these laws now, "buyer beware". And in most cases the contracts, the contract is reviewed by an attorney representing one side and an attorney on the other side. Sometimes people make the fatal mistake by getting an attorney willing to disclose or not that they represent both sides. So that becomes subjective.
I'm buying a piece of property and I'm given all the information on it and I'm reading it and I find out later that what I'm told in the contract I signed is not really true, that becomes legal because my contract really should be viewed by an attorney. A lot of people don't get an attorney, they review it themselves; maybe that's a mistake. So that's kind of hard for us to legislate against to some reasonable degree.

The question is whether or not we can have some language where one believes that is the case whether or not we can bring them into mediation. I think we'll get barred because the State can't litigate to a private party in those circumstances.

I'm not an attorney but that's my belief.

I've been around a long time and been involved in a lot of things. The way you stated it, that's the way it comes up in terms of how... That may very well be the course. It may be deceptive; deceptive to the point that we can get the Consumer Affairs involved and we can enforce those rules but it is not -- that kind of deception is
where the contract is written and it's clearly written to the understanding that these things going to happen. If they don't happen, it's a thin line what we can do and I'm being honest about that. But I'm not an attorney. Once again, there are attorneys here who may be able to give you some more direction.

We will try to prevent everything we can. We try to do what we can to avoid litigation and the situation you're hearing here because those that are clearly code violations that should never have occurred in the first place because the law is very clear. If I'm going to open the ground up, before I cover the hole I have to have somebody look at it and certify it's okay. If I'm going to put a foundation in, someone is supposed to look at it.

In other words, the law is set up in such a way it almost clearly separates like a puzzle; it has to be looked at before the next piece goes in. That's not happening. And if it is being looked at, it's not being properly certified as to the realities of what's there; the veracity of what's there; the integrity of what's there.

DR. FOX: Thank you.
Number two, why can't we go after these builders and stop them from changing their names and continuing building under a different name so that they can continue doing the same thing to others?

SENSOR KARCHER: I think that's one of the points that was raised in the report. That these organizations create an LLC, they come in, they build your home, and then they disband and really disappear. We need, you know, greater reporting, more accountability, greater transparency. Have that available to the consumer to make sure that people can see who it is they're dealing with and what their track records are. I think that's one of the goals that we need to embrace and make sure that we -- I think Assemblywoman Beck had a very good valid point. That we need to have greater ability by having the Social Security numbers of the builders and those associated with it to really track where they've been and where they're going and how we can get in touch with them once they completed your job.

So those are things that I think are going to be seriously looked at.

DR. FOX: Okay.
SENATOR RICE: Just one of the things that I'm experiencing and to continue to cross my mind are some of the things I use locally on council. Looking how we bar people from the state, period, how can we -- I know what you're talking about, I've experienced that, too. How do you bar a U.S. individual from being a participant in other corporations or partnerships, LLC that's doing the same type of work? We can define that in the State of New Jersey. If you want to do it, you go someplace else. If anyone pick up your corporation, it's clear she can't pick you up. It's things like that we have to deal with. People understand that you're being watched; you're being watched as a little person, an individual person or LLC, or big person, et cetera. And those are the kinds of things that we're looking at how we can be fair about it so we don't harm people's life-styles because somebody don't like somebody but how if, in fact, the issue is valid, it's substantial enough to warrant that type of a penalty with the fine, et cetera, how do we do that? How do we do it for a period of time? Maybe you learned your lesson after two years or three years, because we do bar people
from doing work in the State of New Jersey.

That's the legal method. So we can probably
incorporate some kind of penalty.

DR. FOX: Okay. Thank you.

Another point is the State -- I believe the
state law says that if there's code violations,
the township must enforce it to have the builder
fix them. And in my case the township actually
issued code violations three years after -- we
moved in after three years of writing letters and
a lot of heartache. The code violations were

issued four years ago; they still are not taken
care of.

How do you get the township to enforce the
builder to fix the code violations?

SENATOR RICE: Eventually we want to start
holding municipalities responsible. And even if
you have a mayor and council who have the ability
to bring personnel in and understand the
credentials that we require at the state level,
you don't have to pay them. The taxes go up
annually because you're paying me to do my job
within reason.

The other side of that is that we're going to
have to make sure that we tighten the laws up so
that there has to be responsive and reasonable
time frames. Right now there's too much gap,
there's too much openness. I mean, we can divide
it up, and I can take my city for an example,
which is a booming city, everybody talk about it
but no one come there; I'm talking about the
media, except for the Star Ledger and they beat us
up. We're building all over the place. The
problem is we're building so much, which is a
great thing, but we're so thinned out with
inspectors; we had some that's bad, we got rid of
them; it's hard to hire inspectors. But we're not
using the dollars necessary to bring additional
resource on to keep this going. With our ten
inspectors and they can manage the work load for
100 units and all of a sudden I'm doing three and
four, I can't keep ten inspectors. I've got to
get some qualified people. I've got to keep the
load moving. But it shouldn't take four years in
any respect; it shouldn't take two years in any
respect. At that point the State may have to
bypass the municipality and say its our
responsibility to go in there and take over that
whole code enforcement office, if necessary, and
find out what's going on.
We have to look at that. It may not necessarily be this Bill. There may be some things we can do here. But the reason I speak the way I do because I've lived this. And, in fact, I'm the same Ron Righteous you saw in the paper with Tony Gun, myself and Mike Rameriz, I was the bad guy. I wasn't the bad guy. The problem is I had a guy who's stepping on the old boy's network, crossing out the job right, it's a fine building and the system is trying to hold him back; stopping and slowing him down, trying to bankrupt him - he's still around, by the way - and built it.

And so I've learned during the time that I left the council what's happening behind the scenes and industry and was very shocked about it. To be quite frank, I couldn't work in that industry. I would hurt somebody if I was a contractor, a developer or homeowner. It's a very nasty business. The problem is I'm a Senator and I know it. And I have the authority to say, okay, it's not going to happen to Mrs. Smith any more, Mr. Goldstein or Mrs. Johnson over here. And it's not going to happen to a good contractor or a good developer or builder. And it's not going to
happen to a subcontractor who's doing good. All
of the bums out there, we've got to find a way of
tightening them up, removing them, getting them
out of Dodge, if you will, quote/unquote, while
the good guys are still around and do what the
public expects them to do.

DR. FOX: In my personal case, I've already
spent a lot of money, thousands and thousands of
dollars to fix things in the house. However, I've
kind of stuck firm on this code violation,
especially since the state laws came in and said
that the Township should enforce the builder to
fix them. Ironically I got the Township to issue
the violations, and there were thirteen of them,
and there was about twenty-five other workmanship
issues, which they didn't call violations, but
even the Township admitted it. However, it's been
seven years and it's been over three-and-a-half
years and nothing has happened. And we live in
the town; we have children in the town; we don't
want to fight with the town, if you understand
what I'm saying. But certainly there has to be
something higher up, the State or whatever to come
in and say you're not following our suggestions
and the builder has to fix them.
SENATOR KARCHER: So how long did you live in the home before they then issued the violations?

DR. FOX: About three years.

SENATOR KARCHER: So they're on the hook, though, for having given you a C of O?

DR. FOX: Sure.

SENATOR KARCHER: Then that becomes a problem with municipalities because they don't want to look like they were deficient in some way now they've let you live for three years.

DR. FOX: But they admitted it. I mean, they came out and they said yes. Because I hired my own people to go in, very reputable people to come in and say these are violations and they could not discard them and they had to address them. And they agreed, ironically throughout the time when we had problems they kept sending in the same building inspector who initially inspected the home. What did they think was going to happen.

SENATOR KARCHER: Actually, that was one of the recommendations in the SCI report, or maybe by DCA, that they will not be sending the same inspector out. If that inspector missed it the first time, chances are that they will miss it the second time. It's just inappropriate for them to
be back looking again.

And in terms of the state coming in, we've experienced this right here in this town, not in the residential construction but with the school construction. You may be familiar and read about it in the paper, that the middle school is not opening because there were problems with inspection. There were problems with code violations. Violations on part of the building that had been occupied for many years and was only discovered when they were trying to look into the new addition to the building. I intervened. Got DCA to send an inspector. An inspector will be on site around the clock and available so that when things are done on that punch list, they can have it inspected immediately. Why should the inspector who missed it years ago and all through the summer be able to go and give the okay now.

And I think the DCA is willing and able now to take a much more aggressive role in doing these things in terms of -- I see some head shaking but I know in terms of this not residential construction they were willing to come in. And it's a matter of maybe this squeaky wheel, I went, complained, got 1,400 kids who don't have a school
that they needed to address it immediately. And
they're doing it on that issue. But clearly
you're right, there needs to be some
accountability going upstream that way.

DR. FOX: Thank you.

Two last real quick points that I think are
very helpful.

Number one, I think we need to give a punch
list to the builder and have the time that the
builder is allowed to take care of the punch list
be greater than one year; actually be up to maybe
two years. What happens is you give a punch
list and let's say there's thirty things major on
the punch list. The builder might do every month
one or two things; by the time his year is up and
there's twelve months and there's twenty-two
things left on the punch list and he's "yesing"
you to death and he says, oh, it's after a year, I
don't do anything any more, you have to go to your
homeowners and that's it. And we talked about the
homeowners, that's a joke, because that 210
builder warranty is only if the house is falling
down and is falling into the sea.

So that punch list that you give at the time
of closing, there should be a time where that
builder has to do it. And if he tries to get it
so that the year goes by and then he's off the
hook, I think that needs to be addressed majorly.

The last thing is I think it's a simple find
if a contractor is unlicensed or a subcontractor
is unlicensed. In my particular instance we found
out that there was a subcontractor that was not
licensed. And I don't know if there's any
provisions in the new legislation addressing this,
if a contractor is not licensed or hires a
subcontractor who's not licensed.

What is it, a misdemeanor now or what is it,
anything?

SENATOR RICE: The law would require you, the
new law would require you to register as a
contractor in the State of New Jersey. I'm not
sure -- I don't think it's a misdemeanor. I think
it's a crime of the -- what is it, Bob?

MR. ROTHBERG: Probably a fine or something.
$100 or something.

SENATOR RICE: Well, no. That may be first
violation or something like that. I think it
includes -- it was in legislation. I remember us
passing that Bill into law recently.

While he's looking that up, if I can through
the Chair, one of the things that people write up about me is I'm old military, I'm Marine Corps recon guy, former cop, so sometimes I recognize you need special team members to do special things. And I'm really thinking about having the legislation mandate that the inspector general's office or the State Attorney General's office have to have kind of an inspection squat team. And the inspection squat team would be a small group of people, we can determine by the number of complaints, but that number should be two, three, or four people, so when we get these kinds of complaints, the municipality is not addressing it in a timely fashion, it goes to the State DCA, they're not addressing it, then they move in right away. But if they move in, everybody know that they find some problems. They work right in the Inspector General's office, the AG's office and automatically it's going to kick into an investigation.

DR. FOX: The last comment I want to make is what they try to do is wear you down until seven years pass and then you decide to fix everything yourself. And that's what they want you to do. And then who can fight for seven years and have
unfinished basements and problems and code violations, et cetera. And with time you just end up paying it yourself or taking out loans or whatever the case may be. But hopefully something can happen with the people in the past; and in the future certainly that these could get better.

Thank you.

SENATOR KARCHER: Thank you.

Senator, I'll co-sponsor that Bill with you.

MR. BROPHY: If I can just make a few quick comments. Eric Brophy, B-r-o-p-h-y. I'm the president of the Allaire Country Club Estates Condominium Association, which was a very large part of the SCI investigation. In fact, two of the principals of our builder testified at the hearings, as well as the township inspector, the building code inspector.

I think it's very important that both Senator Karcher and Senator Rice pointed out the importance of accountability. And I think that accountability has to come on two tracks. The first has to be the actual officials in the township need to be held accountable for not doing what they're supposed to do; and that was our case at Allaire. We had a building code inspector who
admitted not doing the inspections. His testimony at the time was that there was too much building going on. In the township there was over 800 units being built at one time throughout the township, which included Four Seasons, and that he just didn't have the ability to inspect all of the units.

As a result, our association suffered, Four Seasons has suffered, and individual homeowners have suffered, as well, profit homeowners because of that lack of accountability of the building inspector and of the township committee, which I think, you know, should have some responsibility, as well. They're the people that hired this person. They did nothing to oversee and to make sure that the person was doing what they were supposed to.

And obviously the other accountability, which I think is for the most part provided for in the proposed legislation, is the accountability of the contractors. Obviously there should be something -- I haven't had the opportunity to review in full all of the legislation but I can say that contractors should be held to a standard that if they're doing work in a township and they have,
say, three or more violations where they can't get the problems corrected in the township within a reasonable amount of time, they should be banned from doing work in that township. And that's something -- the builder that was the cause in our situation was Victor at Allaire, that company, not in that name, but those same principals are still doing work in our township. And how our township can allow them to do the work knowing these problems that have been going on is just outrageous to me.

I also -- something that hasn't been brought up tonight that I think is important is the correlation between the accountability aspect of it and pay to play. Nobody has mentioned that tonight and I think those two go hand-in-hand. Because I know in our situation we had a township building inspector who was formally an employee of the township engineer who obviously contributed to the township committee campaigns over the previous years. That's something that -- the quid pro quo mentality is something that needs to be eradicated completely. And I'm hoping that at some point the legislature can put forth some in addition to a real comprehensive pay-to-play statute that
applies to municipalities that has actual teeth in it. And that coupled with a hopefully uniform municipal ethics reform of some fashion to hold these people responsible for what they're not doing as opposed to what they do do I think is something that's important.

And I'd also like to echo what Mr. Dougherty said earlier, the attorney that spoke before on the Consumer Fraud Act. I think it's important that the Consumer Fraud Act be amended in the way that he suggested. It's one line. It's the last sentence in the regulation. I'm an attorney and I do a lot of this kind of work, a lot of construction work and a lot of consumer fraud work, and if that section were taken out of the administrative regulation, it would go a long way to helping a lot of people. Because holding a Consumer Fraud Claim over a contractor's head is the best ammunition that any homeowner could have. There can be debate over what the penalty should be against that person but that's something for another day. But I would echo, I think that's something that's very important, too. And I hope the legislature would consider doing that, just redacting those ten words.
Finally, I just want to make a comment to everyone here. I can give the perspective of what happens when you do litigate. Our association, unfortunately, was unable to have the township take our side and to come to a compromise and to help us resolve our issues with the builder. As a result, we were forced to litigate with the builder. That was litigation that was protracted for approximately three-and-a-half years. We eventually settled the case for about a third of what the real case was worth. And we were at a point in the case where at a stalemate where we had to make a decision based upon the interests of our association, our members on whether we could afford to continue with the litigation. And at that point we had spent a few $100,000 trying to litigate with this builder who just seemed to drag out this case for years and years.

We eventually settled. A few months after we settled the Supreme Court came along with the DKM case, which I'm sure you're both fully aware of, which allowed the township then to go back and issue code violations against the builder. We asked the township to do that. The township obviously has the wherewithal and the ability to
make their own decisions. They decided that they
were going to issue those violations on very
specific issues. They did that. The builder has
now appealed those code violations to the
Construction Board of Appeals, which again echoes
some of the problems earlier. The Monmouth County
Board of Construction Appeals said we don't want
to make the decision because you had a previous
lawsuit and a settlement agreement and we're not
going to make the decision until you have a judge
make the decision for you on whether or not your
settlement includes these issues.

Now, I don't mean to belabor this point but I
think it's important. We have now, as the result
of the Construction Board of Appeals deciding not
to make a decision, which legally I don't think
they have the right to do, they have to make a
decision one way or the other, but the builder has
now instituted a second lawsuit against us and
against the township on these matters. So now we
are again expending fees, attorneys' fees and
costs having to defend ourselves now in the case
by the builder all because we're trying to get our
association in order.

The fact of the matter is, over the past
year-and-a-half, I think, since our settlement, we've expended probably close to 50% of the settlement, plus we put out additional transition monies probably to the tune of another $230,000, $240,000.

So these are issues that are important for everyone to know that if you do decide to go to the litigation route, it's going to come at a heavy price. And I think everyone is aware of that but I'm just trying to put some numbers on it so that people understand what it's about. We have a 460 unit development, which is a significant size, so it may be more costly than for others, but it's something that's important, I think, to note.

And I hope that you can take the suggestions that I've made and hopefully take them back to the rest of the Senate and get something done to hold these people accountable for what they're not doing.

SENATOR KARCHER: Thank you.

SENATOR RICE: I know there's several attorneys here. Anyone else, but typically put out to the attorneys, some kind of way we have a process in this country and in this state that's
constitutional driven. But even with the
constitution, there must be a way that we can
legislate the expedition of some of these
processes.

See, I think what's really strapping is that
it's not whether you go into mediation versus
courts versus this sometimes, because sometimes if
you go into mediation you got to go to court
anyway. You're hung up for two years for somebody
to hear your case then people change around.

We need to think, Senator, about how we can
in these kind of cases eliminate these four and
five years process of appeal. You want to appeal,
fine, appeal it. You know what, then, judge,
you're going to hear them all. My point is that I
don't know if we need to have special judges of
the law and mandate that. I don't know what we
have to do. We need some type of way --
everything we do in the world there are
violations; we know that. But in these kinds of
situations, no way an association should have --
first of all, it starts off with the phases where
the owner owns it, you have to really pay to fight
with your own association; that's one scenario.
Then when there's a turnover you have problems;
you got to fight the city; you got to fight the
owner. So you're really fighting two giants. You
say, okay, I'll take them on but the process
starts to weaken you over a period of time.

So just if you have any thoughts about that,
please get them up to us right away. It may be
separate legislations. I don't have a nocturnal
brain so I can't really figure it all out right
now.

MR. BROPHY: Senator, I would be more than
happy to submit something to you but I can -- just
quickly for the record I can just give you two
quick suggestions.

When you file a civil lawsuit in this state,
you have to file a Case Information Statement.
And on that document you have to check off what
track it's going to be on and it depends on the
type of case. The shortest track now is 180
days. You can create a fast track that you can
shorten that time period in half and make it a
ninety day period fast track case for these types
of construction defects.

Now, if that can be incorporated into the
law, I think that would be a very quick way to get
it resolved.
The second way that you may be able to do it is that if these types of cases are instituted, you would also have to check off that type of case and then it can be assigned to a special master who can direct the case and manage the case on a fast tract.

I think it's very simple to do. I'll be more than happy to put that in writing, if you want, and submit it to you. But those are very easy ways that it can be resolved, just put it on fast track.

SENATOR RICE: If you do that, I would appreciate it. I'll consult with Senator Karcher. She has a very good legal mind and comes from good legal stock so maybe we can do something.

I would love to do something, Senator, in that vein with this legislation to be passed.

MR. BROPHY: I would appreciate that. Thank you.

SENATOR KARCHER: We're going to take a lull for about five minutes. And we have three more people to testify then we need to get the Senator back on the road to Newark.

(Brief recess was taken.)
SENATOR KARCHER: Senator Rice's family is going to think we pitched a tent for him here. We have Vito DeMonte from Renaissance at Manchester. You're up.

MR. DEMONTE: I live in a community, 1,900 home community, Renaissance at Manchester built by Centex -- Calton, not Centex. It began ten years ago; they're finishing the last few houses now.

I just want to make two points. We've heard so many detailed descriptions of problems and I can't top it; I can't even come close, to be honest with you. But there are a couple of issues that I see, at least one of which has been touched on already.

As was discussed earlier we have these overworked, sometimes under-prepared but generally overworked building inspectors in a planned community like Renaissance with 1,900 homes; and Ocean County is plastered with these communities. I lived in Monmouth County for forty years; I'm rethinking my move.

But you've got the building inspectors who are overworked. So they're coming around and looking at the same houses they see every day so the inspections go pretty quickly. Now the
assumption is that that particular house, they
issue a CO, that particular home is approved. So
when the time comes for the performance bond
remittance back to the builder, the individual
property owner's problems don't exist any more
because they got a CO so everything is okay
according to the town engineer.

The problem is that these problems keep going
on. You report the problems to the property
management office of the association. And I don't
represent the association, I represent the
individual homeowners of the association because
I'm talking about individual homeowner problems.
You take your problems to the property management
office; they refer it to the landscape committee,
who in turn says, well, we'll give it to the
transition committee but the transition committee
is only working transition of the common
elements. That's all the POS allows them to do.
So performance bonds have been returned for the
first two sections of Renaissance but yet there
are still problems that homeowners have.

So I don't know if you can legislate having
the town to assure -- ensure that all the problems
are resolved on those individual homes, as well as
the common element problems in a planned community. But that would be my one point.

I guess my other point is that the builders are not -- a comment on S-2046. It appears to offer protection in a planned community to the association but perhaps should have some tie-in to the individual homeowners, as well.

SENATOR RICE: Sir, what happened in 2046, I believe -- Bob, you can look at the legislation. In concept what we tried to do there is -- a lot of these units are built in phases. And what we're saying and what happens is the issue you're talking about is the issue where the developer -- the owner is actually on the board until everything is complete; until it's three phases.

This legislation says, no, that's not going to happen any more. This legislation is saying that when you complete phase one, you're going to turn that over to those unit owners with their own elected board. Then at that point the board has the capacity to identify problems and get them resolved through the legislation, which means that the developer or the owner, if you will, for lack of a better word, lose the control they now have until the end of that process. That's in general
what this is doing.

Bob, you want to explain a little bit more.

MR. ROTHBERG: That's effectively the purpose of 2046, to empower the minority -- the unit owner representatives during transition with some power. And to -- well, it says in the case of a defect in the common elements or other property administered by the association, it allows a claim under new warranty to be filed by an association at any time within a year following termination the developer controlled the association.

MR. DeMONTE: For the common elements?

MR. ROTHBERG: For common elements, right.

Or during a period prior to termination the developer controlled the association may be filed in the name of the association not later than forty-five days after expiration of the warranty period by members of the board who are elected by the unit owners.

So the idea of 2046 -- there's one other point.

An owner or a group of owners of a unit or units in a planned real estate development may not later than forty-five days after expiration of the applicable warranty period file a claim in the
name of the association with regard to any defect
in the common elements or other property
administered by the association that effects only
the units belonging to such owner or owners.

So those are provisions of 2046.

MR. DeMONTE: So the individual -- a group of
individual homeowners can file, you say, on behalf
of the association?

SENATOR RICE: The minority -- in your phase
you're going to have the unit -- the homeowners --
I hate this language, unit owners. They're really
the owners of the building. When I say unit, I'm
talking about the owner of that piece of
property. I'll call you tenants, for lack of a
better word, but you're not tenants, okay.

You're going to be able to have your own
association but you're still the minority of this
big umbrella piece. When that phase is completed,
in fact, what happens is you'll have the authority
as a minority group and this big piece to start
making some decisions and correct some things
yourself with the authority or power you need as
an elected board. And the transition phase,
either the board can do it as a board or a
committee of that minority elected board.
Yes, that's what's happened under this legislation. Because we know what's going on and it does not make any sense if I'm finished and I'm over here, you may not even start that other piece of project for another nine months or a year and in the meanwhile you're controlling everybody's life, we're moved in and having problems. That's the intent of this.

MR. DeMONTE: Okay. Good. Thank you very much.

SENATOR KACHER: Thank you.

Bringing us back to Manalapan. Heloisa Greene and Jeannie White.

MS. GREENE: Hi. My name is Heloisa Greene. H-e-l-o-i-s-a, G-r-e-e-n-e.

I am asking the legislature to try to clarify and revise the codes of construction in a way that does not lead to interpretation by anybody else. That to be there in black and white is what it really means. Because they say that's not what the code means, that's something else.

So that make sense?

SENATOR KACHER: I think that's a part of the recommendations, that the code has not been updated in ten years and it doesn't reflect some
of the changes in development in its construction, materials and techniques. So I think that is something that is recommended. I don't know if that's something that has been seriously considered. It's not in this legislation we're talking about this evening. But I know that it is a recommendation and it is something that is --

SENATOR RICE: In terms of updating the uniform code, yes, there's language -- Bob. Staff is a little lazy here tonight. He's trying to take notes, too.

We have some language dealing with updating the code, right?

MR. ROTHBERG: Not exactly what you're talking about.

MS. GREENE: I give an example.

Say something in the code that every structure that you fix if it have studs, you cannot cut those. If you cut them, you need engineer design approve and signed by engineer to do it. I recently had my house fixed, they come to fix it. It was constructed by Calton Homes. It been like five or six years that I been fighting for it. And they cut the studs under the windows on my first floor and put all the studs on
the side as braces without engineer approval
drawing for it. And the code says they can do
that and they cut it. And they show the guy that
was doing the job and he said no, the
interpretation is not that. That's not what it
means.

So I'd like the codes to be very specific and
be very clear. So somebody like me that does not
have engineer degree can understand.

SENATOR RICE: If I hear you correctly, you
had the specs there and there was an element of
the building structure that should have been put
in a certain way according to the specs and
certain things should be used based on the cut
sheets. And rather than putting those things
there, someone decided to fix it the way they
want. It was not a modification. It was not a
modification to the drawings or the specs. It was
not approved by an architect or engineer.

Let me just say this to you. I'm not so sure
we need to change the codes. The codes are clear
right now. You have to do things according to the
code. Depending on what you're doing, there are
certain types of materials you have to use within
the specs that have to meet code. There are what
they call cut sheets out there to determine the specifications, whether they have the right dimensions, the right weight, the right whatever is required. If anyone was to change or substitute what the architects have put into the specs, they have to have a architect or engineer sign off on those changes. If not, they cannot modify those plans. They can't use their own volition, if you will, on something that's substantive like that.

So they either do that by going back and modifying the drawing. They do that by having the architect or engineer sign off in writing on that one way or the other. So it's not the code. It's someone violating the, quote/unquote, the rules and regulations and the authority on doing what they want. But when the inspector come, they should pick up on that. And if the inspector came and didn't pick up on it, the inspector would have to certify it's okay.

MS. GREENE: The inspector say it was okay but didn't have engineer approval for that change. I have a piece of the code here.

SENATOR RICE: If the inspector passed this without it being signed off by an engineer or
architect, that's not a code change, that's an
enforcement change.

MS. GREENE: So the inspector have the right
to say it's okay?

SENATOR RICE: He has the right to say it but
he's also accountable, particularly when the
architect or engineer come back and says that
building is not going to hold. We didn't
authorize that.

MS. GREENE: I'm sorry. I don't understand
you.

SENATOR RICE: He has a right to do
whatever he wants to do. It doesn't mean he's
right in doing it.

My point is that if what he did is in
violation -- if what he did is not signed off by
an architect or engineer or it creates a problem
for that structure, for example if I have to put a
beam in and I don't put the beam in and the
inspector comes and says okay but the architect
put it on the plan, the engineer put it on the
plan and instruction is that thing is going to
fall, I'm here to say they can't be held
accountable. And that happens with some
inspectors, by the way. And that's why a couple
inspectors in my city were terminated recently;
lost their license, in fact, for making decisions
that weren't valid.

MS. GREENE: That inspector, Mr. Marini, he
was in my house like maybe a year or two prior to
that time and he said that everything on my house
is just maintenance; my painting, my caulking.
But I was there for three years and I had problems
with my stucco. It actually was deteriorating.
It was falling apart and everything was
maintenance. And the same guy went back to
supervise the job again. The same guy that told
them that everything was my fault was there two or
three years later doing the job. It should make
the same guy come back.

SENATOR KARCHER: I mentioned this earlier.
You're right. You're absolutely right. The same
person who has come out to inspect the job and
either missed it or has a different, as the
Senator pointed out, has a different
interpretation, right or wrong, you would think
wrong in this case, but should not be back there
again. Those are things that need to be
addressed.

MS. GREENE: Another thing was they agree to
fix our homes, to change the facade and put what
we had there before but they're putting what they
want to put. They're not trying to match what we
had before. So I had stones very close together
in front of my house, rock stones and now they are
like little soldiers. It's not what I paid for.
Not what I chose. But I don't have a way
to fight it. I used to have one inch to
one-inch-and-a-quarter between the grout line in
the stones; now I have seven, eight inches in
several spaces. And I mention, look, why don't
you take that small stone for that big one there.
No, we not change it. That's not part of it;
nobody is going to see. The construction killed
my landscape. It's half dead. I give it six
months to see if it going to survive.

SENATOR RICE: We may have to at some point
in time talk to the State, to the authorities. We
may have to figure out and tighten up the rules
where that's to be clear that the inspectors, when
they go to a location it's clear they're dealing
and inspecting as per the code required. That
they know what they're looking for. Not to sign
off. May have to make sure they're laying that
down next to the plans or the specs.
Because when you go to a construction site,
first of all, when you follow the plans in your
specs, there's more than one copy on file in town
hall, or in our case city hall in the office.

Number two, when you go to an open
construction site there's a construction trailer
there normally with those designs and plans. So
it seems as though the inspector should be working
with the plans, with the site superintendent or
with whoever is in charge there, and know how to
read those blueprints, if it's a blueprint he's
reading, or whatever document it is. Know
scaling, if it requires scaling; know dimensions,
if it required that.

And so we may have to look at that in terms
of what happens. They sign off anyway, but we may
have to find a way to get more accountability to
make sure.

The issue about the same inspector going out;
that's a two-way street with me. And that's why
you don't really see anything in the legislation
with that. Because we're getting the opposite.
What we're getting is the inspector went out and
did the job right, believe it or not, and you know
what, the telephone ring politically you're no
longer assigned to the east ward, you're now going
to the west ward; and she's going to go out and
inspect and the comes back approved. That's how
the number one person in charge got in trouble,
for moving around like that, moving inspectors
around like that. So that's a two-way street
depending on the relationship with the developer,
the builders and with the town, if you have a bad
town or bad developer you get to. I've known
inspectors retired now that worked every ward
around because he was already writing and the
phone kept ringing. They couldn't get rid of him
because he had more licenses than most of them.

So he retired. But the thing is that you got to
watch that two-way street piece.

I like it the opposite. I like to say you
had the job, they transfer you over here, you
going back on that job. I like continuity because
now start to get the complaints, then you're going
to be held accountable. At least I know where my
problem is.

You understand what I'm saying?

MS. GREENE: Yes.

SENATOR RICE: But in terms of the codes
themselves, we have to go back and revisit and get
more accountability on the inspectors. But I'm
not so sure that switching inspectors is the right
way to go. I understood your concerns but also I
understand that they don't really work in the
field, they just talk to people. I've actually
been out there on a daily basis with this stuff
and I spent six years on the council and I knew my
inspectors; I knew what they were capable of; I
know the politics of my town; and that's why I
left that one alone.

Senator.

SENATOR KARCHER: Okay.

MS. GREENE: Are inspectors required to do
any tests as an inspector, because they should
know the codes?

They never show up with any blueprints. They
never compare the drawing to what is there. I
never saw it in nine-and-a-half years I been
there, he compare any drawing with what they
seeing.

The first year I was in the house I had one
inspection and it was found that the walkout
basement sliding door was holding the weight of my
two other floors. So it was caving in. So they
came right away and fixed that. Put a big piece
of wood there, piece of beam. And then they put
two more metal ones in the basement also to
support the other side of the house on the family
room and the room upstairs. That was in the first
year. Then we start to find out all the other
problems and the braces. My house had no braces.
So on the main part of the house I count it was
150 pieces of two-by-four that went up. So there
was no braces before. And I did not count what
they did to bring access to the garage.

So that was like four or five years I live in
the house and now they did that job and really
it's a mediocre job. It's not a job that would
pass by any standard by a house that was worse.

SENATOR RICE: Is it completed now?

MS. GREENE: Well, actually they are trying
for three weeks now to fix a little cut that they
made in the wood that they cannot know what kind
put in use. They tried three or four things and
they are standing. Every day I wake up with some
guy standing there in front of my door.

SENATOR KARCHER: But, again, it's the same
type of story we've heard throughout the evening.
You paid for your dream home and it's turned into
a nightmare for you. And even when they tried to
remediate it, it wasn't done to the standards.

You said about the stones in the front, you paid
and expected a house that would have this kind of
stone work and now you have to, when they're there
inspecting you, to accept stone work that is not
what you had paid for and came to expect for your
home.

    Thank you.

MS. WHITE: Hi. My name is Jeannie White. I
live on Molly Pitcher Drive in Manalapan Chase.

Now, my home took a lot longer to build
because we custom built it because I have a
multiply handicap child. Calton Home said we'd be
more than pleased to build it for you. They wrote
us up in the newspaper back in November of '96,
how they're going to help this family with five
children.

    Well, they've neglected to install the house
with the proper electricity. I have a daughter
who is on an oxygenator and when I turned it on,
it browned out my house. And one of the Calton
guys came to my home and said so buy your daughter
a generator. Let me tell you how fuming that
was. That really was one issue.

    New Jersey Central Power and Light had to
come and say your house wasn't adequate enough with the power in it. We had to call an outside electrician in Manalapan here to put in a whole other panel. I'm 5'4" and I can't reach the panel in my basement; okay. My husband is 6'7", so my panel is up high. We have a nine foot basement -- our basement is nine foot high. Because the electricians forgot to bring the wiring down into the basement but that passed code. That's one issue.

Never mind that she's disabled that I built a handicap in-law suite on the side of my house, which has a ramp that walks up, just goes up to it; the walkway in the past nine years sinks. Sinks. So your Manalapan school teachers trip all over it. You have therapists, my private duty nurses, family members that can't get the wheelchair in and out of the house; but that was done by code.

I have issues of never mind the electricity with the alarm system, but the builder doesn't have to stand behind an alarm system guy or the township. So I paid the builder $10,000 for a home theater system and alarm system, and guess what, no one is responsible because he never put
wires in. I have holes in my ceiling with wires for speakers but nothing there. But no one can stand by it because by law, no one has to stand behind this guy, which is bizarre.

Getting back to, you know, other little things with the house with the access panel. My daughter is in a lift that goes in the ceiling. We paid extra money to put trusses in the ceiling. They even forgot to put the access panel so we can put her in the lift. So there's no access panels in the house. I have six bathrooms in my house. You can't turn a hair dryer on and have the oven on at the same time without blowing the fuses. But GFIs weren't in there. So the house didn't come with a plug for a refrigerator because that's an extra item.

So I paid over a half a million dollars for a house that didn't have adequate electricity, adequate flooring. They had to take the side of my house off and re-beam underneath my house because it was sinking. So I'm a little stressed that I have these things going. The alarm system is nothing. My thing is that my kids aren't safe. The carbon monoxide alarms go off when they want. So they came in and said just dismantle it;
you don't have one. So I really think the builder
should step up and fix these things. The town
said they didn't have to.

Now, they've done some things but my next
issue is that they're replacing all the stucco.
I'm last on the list now because I have two
entrances to the front of my house. The front
doors stoop needs to be replaced and all my stucco
and stone. But I have a ramp that goes to the
side to the front of the house, like you have your
living room -- the best I can describe it as you
know you see people with conservatories, I have a
handicap room there. Well, that stoop has to be
done but there's no way that the builder wants to
deal with it because how am I going to get my
daughter out of the house, I need a ramp to get
her out. So they say live with it or take it up
with an attorney. I went to the town, the town
says go to the attorney. I just feel like I'm
jerked around. I have better things to do than to
be jerked around when it's blatant. So write me a
ramp for my garage, I'll ramp around my garage, or
I'll ramp around the back of my house, but fix my
damn house and let me get on with my life. It
really is monotonous; you know what I mean. It
just shouldn't be and they shouldn't be allowed to
get away with this. Never mind Violet helping us
know some of these other things.

But it's 11:25 at night; I can't even think
of half the things.

The alarm system, they told my 80-year-old
mother-in-law the alarm system goes off, I was all
the way over at the intensive care unit at Robert
Wood Johnson, take the scissors and just cut the
wires, it'll shut off. So I called the Manalapan
Police Department to go there and see what you can
do. It's a fire hazard to me having all this
wiring in my house and not working. I think it's
ridiculous. I need someone to step up to the
plate and just fix it. I don't want heads, I just
want it fixed and let me live my life.

SENATOR RICE: Let me ask you a question, if
I can, through the Senator.

Your house is obviously still in this
condition; is that correct, basically?

MS. WHITE: When the guy made the mistake and
said to me go get a generator, he ran for it.
Thank God he ran fast. Now, it's sad, because
people in Calton, you go to church with them, you
do business with them, there are attorneys.
There's people -- everybody knows everybody in town now; we're here a long time. Some things got fixed but they're not a 100%. I have electrical shorts all the time.

SENATOR RICE: Let me get to the ramp.

Was the ramp ever fixed?

MS. WHITE: Several times. Matter of fact, when I went to court in November, it came up mention again; next day Jackhammers at my house, they fix it. They fixed it but it's hodgepodge. It keeps sinking. What they need to do is rip the whole damn thing out and pack --

SENATOR RICE: I'm trying to get to that.

That is an ADA issue. What I'm saying is the house may be falling apart but the State should be there like night and day on that ADA issue because now you're talking federal law, too. That's why I'm asking.

When I come to these meetings, I ask strange stuff sometimes but I have a reason. If I can't make a move this way, maybe I can make a move this way. I need to get that in writing right away, okay, because we need to get the State out there and compel them to look at the whole house but compel them to take advantage of the ADA
issue. You understand what I'm saying?

MS. WHITE: Okay.

SENATOR RICE: Once again, now -- this is Calton.

MS. WHITE: Calton now Centex.

Another thing, too, what they would do, they would tell you they'd fix it then they change people, then -- it's monotonous and after a while you get fed up. You know what I mean.

SENATOR KARCHER: It's a full-time job, obviously. You've got nothing better to do than to wait around for someone to come --

MS. WHITE: Wear my shoes for a day; I guarantee you'll throw them back at me.

SENATOR KARCHER: The issue with the electricity, have you had anyone out to say this is specific to your home and not an overall load issue for this area?

Because that's something that I've been trying to explore because there's high growth in this area. We experience blackouts, brownouts throughout western Monmouth County. And I think it really is some other issues that we need to explore with BPU and what the overall capacity is. And that's something --
MS. WHITE: With mine, when it happened and I made a big thing of it and my husband kind of, he approached it a little bit aggressively that day, they came and put two panels in. But they still couldn't put the panels in correct, okay. My panels are up in the sky because they didn't bring the wires down. The guy came in and replaced it, I had someone in Manalapan, I wouldn't have Wagner Electric walk back in my house again, we hired someone else, and the builder did pay for it but what an inconvenience. But things still aren't a 100%. I'm still tripping things. I'm every once in a while paying $95 for the guy to come in and go, yeah, this is tripped and you're going to need this. I said what is this; he goes uhhhh, we're doing the best we can.

SENATOR KARCHER: I know this isn't any comfort but it is something that is happening across western Monmouth County. We are looking into that issue separately.

MS. WHITE: This shouldn't happen to me.

SENATOR KARCHER: No, it shouldn't happen to anybody and it shouldn't happen particularly when you've got the child --

MS. WHITE: I paid extra. I paid extra.
They charged me a fortune.

SENATOR KARCHER: And a number of families across this county and across this area that are on supplement oxygen, senior citizens when this happens and they don't know; severe asthmatics lose their air-conditioning. It is something we're aware of and we're trying to address. But you'll have the energy company come in and show you maps and say we're doing this, we're doing that, don't worry about it. But clearly it needs to be addressed, it needs to be a little bit more aggressive at the State level on BFU to provide that. Those are requirements as we build-out more and more of this area, that they can handle the load.

MS. WHITE: Well, that was my main thing.
The other thing they gave me extra sewer line and forgot to clog it up. So we're moved in, all of a sudden it rains and things happen, everything is coming through the line into my basement.

These are stupid things that the builder has done. Never mind there are no brackets in the lolly columns not being right. They took the side of my house off. Eighteen men were at my house in one day – I don't have pictures with me because I
didn't come prepared tonight - to put beams across my hundred foot home. They took the whole side of the house off. Everything in my basement, all the toys, 75% of it had to be thrown out because the guys forgot to cover it. I mean, they're toys and I can lose that, but still it's a lot of money.

They ended up destroying everything. I finally put carpet in, I paint the walls, they come in, they take off the side of the house, they run through, put beams. This is absurd. I don't how it passed code. I don't even know how the Township did. I don't know how the builder can get away with this. Everybody involved. I walked in, yeah, it looks great; okay, they said the homeowners think it's fine. I feel like I don't know enough.

Then they wouldn't allow my husband have a project manager to come in, say can we have a friend because we know somebody in construction, we'll pay him to come in; no, you can't come on the property. But you can send this alarm guy and this home theater guy in and no one here can we be protected from him. It's against the law for me to even walk on the property when the house is being built but why is it all right for them to
send this guy and he ripped us off $10,000 and I
still don't have any recourse. He has another
stranger come in but other people can be but you
have to stay off the ground.

So where do we stand? Just fix my house.

SENATOR RICE: If you would document at least
some of the things, that ADA will stand out for
us, get it to us. I'll try to work with Senator;
I'll try to work with the Committee to get someone
in. I'm trying to get some movement. I can't
work with everybody by myself individually but
there are some issues that are coming up that I
think will give us an opportunity to give us some
movement going and take advantage of what's
there.

I believe the issue that's being addressed in
my Bills relating to inspections of the property,
as well as having copies of the specifications
without cause, I think that magnitude, they can't
tell you you can't go on the property. When my
father built our house up in Pennsylvania, we went
up any time we wanted. About half the time they
weren't there.

MS. WHITE: Right. I drove up and down
Washington taking pictures from the back but they
didn't want you over there. You know, I'm not
looking to make waves. They tell me not to, it's
dangerous, you don't want to get hurt.

SENATOR RICE: You have to check the
property; okay. We're changing that.

So if you can get back to us, we'd appreciate
it.

MS. WHITE: How do you get rid of this alarm
guy? How do you get someone like him to get
recourse?

SENATOR RICE: The thing is that I'm not sure
but if you can give it to me in writing again, let
my mind work a little. I may come up with
something; I may come up with nothing. But we'll
take it back and let all our heads get together.
Sometimes more minds are better than one then we
still don't have an answer. We proved that quite
a bit with the 120th legislator but sometimes we
do have an answer.

MS. WHITE: Well, my thing is just -- my main
concern is getting my daughter in and out of the
house where I can do it. The other stuff we can
work with. But it's late and I'm really tired,
too.

SENATOR KARCHER: And you've got five kids.
MAYOR KLEINBERG: Good evening. My name is Dr. Robert Kleinberg. I'm the Mayor of Marlboro Township. I would first like to thank you both for staying here tonight and listening at this late hour. I'll try to keep my comments short.

Basically I never was involved in politics. I was a homeowner just like everyone in this room that you spoke to. And actually if you lined up the people in front of me and say pick out the mayor I probably couldn't even do it at the time. How I got involved in politics was through the experience with my own home.

I built a house, a custom built house about eleven years ago with a builder in our town and when I closed on the house I noticed from the initial walk-through I had leak problems; there were puddles on the floor. And like everyone else who testified here tonight, they said the builder said they'll fix it. I had no reason to believe the builder wouldn't fix it. And in the beginning the builder would come; and then as time went on, he would come less; and then I would have to chase him. And when he sold out the development I could never find him.
One day I figured with not accomplishing
anything with the builder directly, I'll go to
town hall. It was the first time I ever went to
town hall in Marlboro. And basically township
employees couldn't care less about my problems.
They were telling me I'm the only one with the
problem. The problem was pertaining to the stucco
in my house mostly. And that I'm crazy and I'm
the only one and why am I bothering them. Okay.

One day I'm in my home, I believe it was
around 1999, because the lawsuit that I'm
embroiled in has gone on way before I was mayor.
I have eight years it's pending this lawsuit. And
one day I saw a show, it was Dateline NBC, a show
that forever changed my life. It showed all the
inherent problems with the synthetic stucco that's
being clad on many homes across the country and in
New Jersey, specifically in Monmouth County. And
that they were saying that there's class action
significance with this; there's class action suits
all across the country. And that the systems were
prone to failure.

Well, armed with this new evidence I go
running down to town hall to speak to the building
inspector, to speak to the engineer; they couldn't
care less. And it dawned on me that, gee, this is a very big problem like everyone here who testified. Their home is their biggest asset and what it is - I've heard people speak here tonight that it puts their lives on hold. And that's exactly what it does when you're living in a house that you can't fix, you can't enjoy, you can't sell; you're stuck in it. You're a hostage in your own home. So I decide I'm going to call some lawyers.

And the one advantage of being the last one to speak, I got to hear everyone speak and a little bit of my story is in every one of their stories. Try to find an attorney in Monmouth County who will sue a builder who is not in conflict with one of the officials or engineers; it's nearly impossible. So calling up some people who wanted $50,000 up front and $200 an hour, and who wanted $20,000 up front and $500 an hour; I realized I'd go broke if I ever paid an attorney on an hourly basis. So this is one of these things in life that I figured I got screwed on and I'll put my tail between my legs and move on because there's nothing I can do. The builder didn't want to do anything; township officials
didn't want to do anything.

So basically what happened was, one day it was when the ex mayor before me was going to jail one day because he pled guilty to taking bribes, he knocked on my door, Scannapieco that is, I was living in the Township for years at the time, about 12 years, I didn't know him, he knocks on my door, I go who are you. I'm Mayor Scannapieco; what do you think about living in Marlboro; quite frankly it sucks; come look at my house. So I bring him in my house and he goes, Doc -- and I had ceilings that literally have collapsed. You can walk in my house today, Senator Karcher, I invite you to come, that you can see the Sheetrock, the tape between the Sheetrock just dangling. It's been going on for almost eight years -- well, I've been living there for twelve years, the suit is about eight years, but this has been going on for about eleven years. And he says, Doctor, this is terrible. I'm going to get the building inspector here; I'm going to get the township engineer. Been there, done that. They don't care; they don't want to come. Finally they reluctantly come and they look at it. You know when you do a deposition and they ask you a number
never say an exact number, always say
approximately. Well, I called them a lot of times
and I can say definitively he never called me
back, the mayor.

So now I figured, gee, I know there's two
parties, one party controlled the mayor's office
and one party controlled the town council.
Everyone talks about checks and balances in
government with different parties, whatever. So I
figured, and this is way before Senator Karcher
was there, so this is not meant in any way against

Senator Karcher. So I figure I'll go to the other
side and you figure they'll kind of help me out;
they couldn't care less either.

It made me realize way back in 2000, way
before there were all the articles in the
newspaper, way before the indictments in Marlboro,
it made me realize we had a three-party system in
Marlboro. We had the Democrats, the Republicans,
and we had a third party, the political insiders
which sublime the other two and they were making
all these back-door deals. And as we're all
seeing in the newspaper, I was right on the money
because that's what it was.

Now, going back to all this. Senator
Karcher, I don't know if you realize, but when you were council president we had the same building inspector, the same building inspector I was dealing with all along. Well, one day I decided I never see this guy when I became Mayor, where is he, Mr. Cavalieri. They told me, well, Mr. Cavalieri leaves at 11:00. I go what do you mean he leaves at 11:00, he's a Township employee, I figure everyone works 8:00 to 5:00, maybe 7:00 to 3:00 something like that. Well, he had special hours given to him by Mayor Scannapieco. He worked from 4:00 a.m. to 11:00 a.m. That was his official township hours. Well, then we start looking at his disclosure form that he has to fill out for the State. He neglected to write that he was the plumbing inspector for five other municipalities. Well, it gets better than that. When we were trying to throw Mr. Spalero out of his house, we had three township employees who came and says that they were given specific instructions from Mr. Cavalieri that we don't stop, this is a quote from other employees, we don't stop Spalero developments in our town. So you figure you're the Mayor, fire him. Well, guess what, guys, I can't fire him, he has to fire
Because everyone keeps on saying when they come up to the microphone that the township doesn't do the job; it's the township's inspectors; what I came to find out that I didn't know when I was a resident but I know now, the building inspectors work for the State. They're DCA employees. I can't tell a building inspector to do anything. They don't work for me, they work for the State. So I don't know how I'm supposed to make building inspectors do more when I don't have any authority over a building inspector.

SENATOR RICE: Let me ask you a question.

MAYOR KLEINBERG: Sure.

SENATOR RICE: Who hires your building inspectors?

MAYOR KLEINBERG: The township hires the building inspectors but once they're there, we're stuck with them. Just because they're not doing the job, I can't get rid of them.

SENATOR RICE: No. You're not stuck with them. If they don't do the job, you can get rid of them under the Connors Bill. I fought. The Bill came through my committee. I needed that Bill and Senator Connors sponsored the Bill. And the Senators on the issue know many, many years
because we couldn't get rid of certain code
officials. And I didn't know it. I spent sixteen
years -- the only reason I knew it is I was Deputy
Mayor not too long ago and we was having a problem
and a Representative said if that's the case, then
just fire the guy. He said I can't, he's in the
union, he's a code official. I can document him,
it takes time, and then I can go to the State.
And that's when I fast tracked the Connors Bill.
So I would hope, if we can, Julius, take a
copy of Senator Connors Bill that we just passed,
get it to the Mayor right away so he's aware of it.

Because read that Bill, and if you have any
questions, give Bob a call at the State, he'll go
over the law, it's public law now, with you to
make sure that the concerns you have fall under
that legislation. They know you can fire them
under certain conditions now. Because, see, when
you don't catch up on the laws right away, they
watch their turf. They know it. They just figure
that maybe you haven't figured it out yet or the
Bill may not apply to them direct under the
circumstances. But I think you should be aware
of it.
MAYOR KLEINBERG: Is this just for code officials or is this for other employees?

SENATOR RICE: This was particularly for sub-code officials, okay, because of inspectors that were problematic.

MAYOR KLEINBERG: Because we had one incident with an employee who was a township employee for seventeen years; he admittedly stated that he hasn't worked in the last fifteen years from the time I became Mayor. It took me almost a year to get rid of him through the Department of Personnel.

SENATOR RICE: That may be a different situation than the stuff we're dealing with tonight but the Bill we're talking about is directly related to this. The other thing is civil service; we can address that another time. But I just want you to be aware there is a Bill. It's a Bill that will help you. It's a Bill we needed for years in municipalities.

MAYOR KLEINBERG: If I may move on,

considering the late hour.

What happened was after I finally got an attorney, which I did finally get, there was a whole thing, actually, with the Howell Warranty.
The Howell Warranty -- I applaud you because I saw one of the changes you want to do is define what structural integrity means. It's one of the most confusing things, I believe. When homeowners buy a new home and they get a Howell Warranty they believe that they have a ten year warranty, like a car bumper-to-bumper warranty and the first year is really where all your rights are. And the builders know that better than the homeowners. And every builder tells the homeowner, don't worry, I'm going to fix it. And by the time -- people say, well, why did you wait two years, why did you wait three years; no, I didn't wait two or three years. They told me they were going to come, I trusted them, and they never did it. By the time they finally tell you they're not doing it or you realize they're not doing it, you lost the time limit for remediation, which is unfair. Up until now basically that according to when I went to Howell, this is about seven years ago, they told me that if I would get -- this was specifically about the stucco. They told me if all my ceilings were to fall off, all my doors were to fall off, all my windows and the sides of my house, as long as I had the floor joists and
beams, that according to the 1979 definition of structural integrity and load bearing, it's structurally sound, which the average person never explained that wouldn't know.

Going back again to my own house. I had approximately a dozen Uniform Construction Code violations, which I found out; however, in Marlboro Township passed with flying colors and they gave a C of O.

The driveway, there's an ordinance in Marlboro that there has to be five inches of stone under two inches of blacktop. Guess what? In my house they forgot to put the stone, they just poured the blacktop atop. Of course the thing collapsed.

The grading, the grading on my house has absolutely no resemblance to what the Planning Board approved; however, it was passed.

When you go back to a township like we had in Marlboro years ago, because it was so corrupt, they intentionally kept -- files are missing, papers in the files are missing. There should be something to limit the amount of engineers who could work on these files because it was intentional chaos. Because it was so chaotic, you
can't even follow anything; it becomes that hard.

And that's another issue we're dealing with in the township. What people don't seem to understand, which I didn't understand until I was the Mayor, everyone says, well, why doesn't the Township do anything about it; why can't the person who's being wronged pay less tax? It's almost impossible to hold the township liable for anything. I'm not saying this is right. I'm just saying you can have officials who stray, who have done terrible things. I mean, all of us, I don't know -- Senator Karcher, I don't know you well, but I'm sure any one of us who are elected officials, you hear these heart wrenching stories; we would want to fix all these things for these people. The law doesn't allow.

You know when we go to court with the builders, you know there's things we know for a fact intuitively, we're so right on the money, doesn't mean we're going to win in courts in Monmouth County. We had a case where had the engineer sitting in the audience at the time, Mr. Schultz saying when residents were coming to me as the Mayor saying, why do we have so many drainage problems, Marlboro Summit. And ask
Mr. Schultz in an open forum, was there a better way known to do this; yes. Well, why did you approve it this way; well, it saved the builder money.

Now, what happened was when you go to court they're saying, well, this is the wrong forum. Let the individual homeowners fight with their builder. You can't hold up a bond release. We have to give back bond releases.

We actually had, just to show you conflicts of interest in this State, how sickening it is. We had a township engineer, he was the principal in a major engineering firm that did a lot of work in the town representing applicants. Scannapieco then appoints him to be the township engineer. He still retains shares of the company. And he was allowing -- while he was the township engineer he was allowing that company to do bond releases and inspections, and approving applications, doing final approvals himself on applications where he started out as the applicant's engineer. Additionally we found out he had a social relationship. That particular builder, according to township employees, didn't have to go through the regular inspection process. And you know
what, doesn't matter in this State because they're
allowed to do it apparently because nobody said
they can't do it.

This is the frustration. I want to help
people. I've been in Mrs. Stoler's house; she's
not lying. She has no Sheetrock on her walls; you
look through it. The problem we had with the
Montgomery Township case that came down that said
townships were allowed to go after on a later date
and go after the builders and give them
violations; well, there's a lot of problems with
that.

First of all, we also have to give a
violation to the homeowner, also. That's one
problem. And then what happened was once you do
this, as someone testified earlier today, once you
go through this, once you file -- if you have any
lawsuit pending, you can't do anything. The State
tells you that if someone has a lawsuit because
they've been dealing with a builder for five
years, ten years and at a loss, they don't know
what to do, they finally get a lawyer and
institute a lawsuit because there's a statute of
limitations. The bottom line is once you do that,
it precludes you from any other remedy with that
Uniform with giving the violations. So that's a problem.

I can go on and on. I know it's late.

One thing that I did think about a lot that I think would be a very good thing, in the State of New Jersey we give everybody a license. I'm a chiropractor, I need a license; lawyers need a license. We even license dogs in the State of New Jersey. What we should do, we license plumbers and electricians, why not license contractors in their area of specialty. You're a stucco applicator, get a stucco license where there should be a minimum competency exam. If you're a framer, get a framer's license.

SENATOR KARCHER: That was recommended by the SCI report and I mentioned that earlier that that needs to be addressed.

MAYOR KLEINBERG: I think that would be a great thing so this way, look, if I mistreat a patient, what am I afraid of, they'll pull my license is the ultimate thing. So the whole thing is this way it gives accountability. And just like the State has sought fair to do with let's say insurance producers that if you're convicted of doing something wrong by the Commissioner, if
you're found guilty of something by the
Commissioner, what happens, you lose your
license. If it's an organization, I believe you
can't apply for ten years for a license. If it's
an individual, you can't apply for five years. I
just think it would be a good thing to have some
accountability and that we can get back to them.

The last thing I'd like to say, Mr. Attner, I
was reading the article in the paper today and he
said something today that I actually called him
today to tell him I agreed with him. You really
can't legislate morality, and that's what it comes
down to. We can pass the legislature, we can pass
all the laws in the world; if people are going to
be corrupt, people are going to do bad things, it
doesn't matter because you're going to have some
smart attorney and some smart politician who will
want to be corrupt to figure how to circumvent any
law that you put out there. We need to have
honest people in government.

I thank you all for listening. And may I say
good night.

SENATOR RICE: The individual you said, you
don't have to respond, we are leaving it's getting
late. We're going to look at the case. You're
right, we're law makers, you know that. We're
going to write the law as we see fit. I'm just
not one. I try to do what's right. I think if we
going too far beyond, pretty soon we're going to go
so far from ethics that you're not going to have
anybody working for anybody, anybody married to
anybody, et cetera. But we have to have ethics.
I think we need some enforcement of laws and
hold strictly people liable for their actions. I
think that's the problem. Politicians would say
to the people in the communities, well, we'll just
dissipate it, play it tight. There's always a
politician at election time will say and we can
add this piece, too. We can add to infinity,
unless we enforce what we have. It's the same
thing with some of the other laws. So you're
right. Some of this is state responsibility. And
somebody has to oversight municipalities when they
get a continuum of complaints, if you will.
But I think it's a new day now. You have a
great Senator representing this district. I'm
saying that. I know that because I work with
her. See, one thing about me, I like to travel
the state because I get to hear people talk about
us and talk about me and my district. And I say
you know what, you can talk about this man but I
happen to work with him and I know him. So maybe
you see him differently, but I know the job that
we have to do that you have to do as Mayor.
People don't know the job. You have to do a job
there. The people work for you know what you're
doing. The Senator and I have to do jobs in
Trenton. There's a lot going on that the public
don't know about that we're trying to help them
with. The media never give us a break. We get a
one liner. They interview you. They change
everything you say and the public buy that. So we
know that. But we also spend this kind of time,
most of us who are committed, to hear from people
like yourself.

So we're going to go back and see what we
have. Anything you can give us in writing in
terms of some of the things you said today; take a
look at changing this; take a look at changing
that. Please make sure that staff have your
number; they can get that Bill out to you.
Let me thank everybody from my perspective,
Senator I want to thank you, too, for being so
patient and kind to invite me down here. I've
learned a lot. I've got to reinforce a lot of
things that are in the Bill. I got some good notes here on comments that came out that we want to go back and take a look at trying to put in the Bill. We may have, like I said, a squad inspection force soon to oversee the overseers of the overseers. But we're going to do something to help you. Thank you very much and good night.

SENATOR KARCHER: I just want to thank Senator Rice for coming out this evening to the heart of Monmouth County. I think it was a very productive evening. I want to thank everyone who held on to the bitter end here. And I do hope we can put together some meaningful legislation that's going to help you and help those who are going to be coming after you.

Thank you.

(The hearing was concluded at 12:00 a.m.)
CERTIFICATE

I, KAREN L. DeLUCIA, License No. XI01888, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify the foregoing to be a true and accurate transcript of my original stenographic notes taken at the time and place hereinbefore set forth.

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Karen L. DeLucia, CSR

Dated: September 27, 2006