STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION
PUBLIC HEARING

IN THE MATTER OF:
NEW HOME CONSTRUCTION
ISSUES FR#9-4

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

BEFORE:
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KATHRYN FLICKER, Commissioner
JOSEPH R. MARINELLO, JR., Commissioner
W. CARY EDWARDS, Commissioner

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PUBLIC HEARING

(Exhibits 189, 93-A2, 93-C4, 93-D1 and 93-D2 premarked for identification.)

CHAIRMAN SCHILLER: Good morning and welcome to the hearing for the State Commission of Investigation. Today the State Commission of Investigation opens hearings on abuses in new home construction and inspections. Today and tomorrow, and again early next year, as our work in the area continues, we will put a public face on one of the most troubling and problematic investigations we have ever pursued. It has often been said that the purchase of a home is the single largest and most important investment an individual or family will make in a lifetime. Indeed, as the cliche goes, it is an ultimate expression of the American dream. But more and more these days, that dream is being shaken and shattered by graft, by greed and incompetence and by the failure of government to fulfill its fundamental duty to protect the health, safety and property of its citizens. Imagine spending hundreds of thousands of dollars and walking into a nightmare punctuated by sagging walls and floors, cracked foundations, missing joists, bad wiring, collapsed ceilings, leaking
pipes or mold so toxic it can make you sick. For a moment perhaps, you wonder why you are the unlucky one, until you find that many of your neighbors are in similar straits with their new home. Or maybe you put down a substantial deposit for your new home only to watch the builder go out of business taking your money with him. You assume that there is no way anyone could ever be left hanging like this, not in New Jersey, not in this day of sophisticated rules and regulations and government oversight. But that is a mistaken assumption. Soon it becomes apparent that the system for filing complaints, for pursuing warranties and for attempting to enlist the aid of municipal and state authorities to address latent defects after issuance of a certificate of occupancy seems designed only to make matters worse.

During the course of these proceedings, the Commission will present sworn testimony and documentary evidence to show that a genuine and dangerous consumer crisis is at hand and make no mistakes, I do mean dangerous. Builders large and small, their bottom lines increasingly defined by speed and volume rather
than quality and craftsmanship, are churning out second rate structures assembled by supervised subcontractors using unskilled, untrained laborers.

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

As we will demonstrate over the next few days, there is a startling lack of proper and appropriate oversight, enforcement and follow through on these matters at both the state and local levels. This is a phenomenon rooted not
only in misplaced government priorities but also
in influence pedaling, conflicts of interest and
compromised ethics. It is also apparent that,
given the campaign cash that is spread around
regularly by elements of this industry, pay-to-
play is alive and well and functioning at its most
insidious place.

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

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

MS. GALL: Thank you. The first witness today is the Attorney General for the State of New Jersey, Peter Harvey.
CHAIRMAN SCHILLER: I would also like to introduce the Director of Criminal Justice, Vaughn McKoy, who will be sitting at table with Attorney General Harvey.

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

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

As you pointed out, Mr. Chairman, your home is probably the single most important investment that a person makes in one's life and there is nothing more frightening than to acquire a dwelling in which you intend to place your family and that dwelling is laden with defects and encumbered with all kinds of problems that cost literally thousands and sometimes tens of thousands of dollars to repair. So I want to
thank the Commission for giving me this opportunity to make a few remarks concerning the systems in place in New Jersey that are designed to protect consumers who are building or purchasing a new home.

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

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

This is a remarkably complex problem and it directly impacts tens of thousands of New Jersey citizens, some of whom are here today. Economic development in our state that is borne of new home construction is a good thing. This is a state of eight and a half million people, we have a lot of homes and we have a lot of families who wish to live in New Jersey and they wish to live here for good reasons. New Jersey offers some of
the greatest cultural institutions, some of the
greatest educational institutions and some of the
best quality of life one can find in America, so
we encourage growth and building in New Jersey and
certainly new homes help shape communities and
ultimately shape perspectives about life.

Many municipalities across the state
depend on their ability to develop new tax
rateables, even as we undertake a comprehensive
effort to control suburban sprawl. The potential
for economic development and growth, in turn, will
depend largely on consumer confidence. It goes
without saying that the purchase of a new home as
I pointed out earlier for most of us is the single
biggest investment that we will ever make.
Building or purchasing a new home is stressful in
the best of circumstances. Few citizens feel
comfortable or confident in being able to protect
their own interests and so they depend upon the
state and local government to make sure that they
get what they pay for. In fact, our only
guarantee, our only objective guarantee that we
are getting what we paid for in the context of a
new construction is state and local government.
They come in and inspect the structure to make
sure that it won't collapse around us when they
move in and they come in with expertise that the
common man and woman simply does not have to
determine whether or not the plumbing is adequate,
to determine whether or not the electrical systems
are adequate, to determine whether or not there is
mold behind the walls and other kinds of problems.

While many people watch television
programs such as This Old House and fancy
themselves as weekend warriors, few of us are
capable of being our own general contractors or of
monitoring the activities of general contractors.
Instead, we rely upon a system of checks and
balances, including a system of government
inspections that is designed to make certain that
new homes are well built and up to code. When
buying an older home, many purchasers recognize
the need to hire their own inspectors and often a
mortgage company will insist on this neutral and
detached examination of the older home to be
purchased, but with respect to new homes, we rely
principally upon local government inspectors.
Needless to say, new home purchasers are concerned
not only with quality but, of course, safety.
When new homeowners tuck their children to bed at
night, they should not have to worry about
whether, for example, their electrical system is
substandard and will catch fire in the middle of
the night. They shouldn’t have to worry whether
or not water has leaked behind the walls that are
freshly sheet rocked and will produce mold spores
that will cause their family to get ill and
sometimes for years without a family even knowing
the cause of the illness. These kinds of dangers
are tragedies waiting to happen.

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

I urge the Commission, and I’m sure
the Commission has already thought this through
and intends to do this, to carefully examine the
systems, the basic systems that are used in this
state to hold professionals accountable and to
also look at the systems that ensure that a home
will, in fact, be well built. It is in the system
analysis that I think we will find the best
opportunity to correct not only flaws in
workmanship but also to provide homeowners with an
intelligent opportunity for remedying quickly
those flaws so that they are not encumbered with
complicated administrative and judicial
proceedings.

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

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

Let me outline what I think is the
problem in a nutshell, at least in my view. There
are three specific problem areas. First I think
that the Commission should examine the problem of
lax oversight by local building officials and
inspectors, whether due to negligence or official misconduct.

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

Third, and finally, we believe you'll have to examine the problem of builders who default or simply walk away from construction sites leaving would be homeowners and entire neighborhoods in the lurch. I think you will find, for example, that your bankruptcy laws are too easily abused and exploited allowing a builder
to hide behind corporate shells. A builder under default or under even indictment can simply reorganize and begin to build a new project under a new name. In fact, it was well-known in the organized crime field that the so-called bust out schemes are commonly used by mobsters to set up businesses and when the businesses could no longer pay their receivables, they would simply collapse, go into bankruptcy and the inventory would be shifted to a brand new company under a brand new name operating in the same manner. I don't mean to suggest that that happens in the building trade, but it emphasizes the kind of problem that a homeowner has when dealing with a company that goes out of business.

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

This Commission is about to tackle a
remarkably complex problem and it’s also a
multi-faceted one that demands a comprehensive and
multi-faceted suite of remedies or solutions. We
need to deal, for example, with the wide spectrum
of inappropriate behaviors ranging from
indifference and laziness to incompetence and
negligence, to outright graft, bribery, corruption
and even extortion.

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

I strongly urge the Commission to make specific recommendations on how to improve or augment our current system. We need to examine, for example, how we can take full advantage of the
Consumer Fraud Protection Act. Under the current regulatory scheme, the Consumer Fraud Protection Act only applies to contractors engaged in the remodeling of existing homes and does not apply to all new home construction. Perhaps it should.

I should point out at this point that the Consumer Fraud Protection Act is designed to address the problem of deception, misrepresentation, unconscionable commercial conduct and so-called knowing admissions. That Act or regulatory scheme is not designed to address faulty workmanship. Perhaps it should.

One of the benefits of the Consumer Fraud Act is most of you -- perhaps all of you know on the Commission -- that a successful claimant not only will win his or her case but get triple damages as well as costs of hiring an attorney as well as costs of suit. That is a powerful weapon we have found in the Consumer Fraud Act and in the consumer affairs area to have people come to the table and work out their differences much sooner rather than later because when a company is facing triple damages and attorney's fees and costs, it is a disincentive to continue a losing battle simply to try to outlast the other party because
as attorney's fees mount, the other party is ultimately going to have to pay them.

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

I am told, for example, that the rights of homeowners under our current home warranty program are not clearly defined or spelled out. In fact, I reviewed the legislation, the statute before coming over and it does provide a great deal of ambiguity as well as administrative process that is terribly complex.
for the average homeowners and I think we need to
look at that new homeowner's warranty statute.
Although, it creates a fund, for example, that is
governed by the State Treasurer, there are
separate administrative procedures that apply when
making a claim against that fund that range from
litigating a case before the Office of
Administrative Law to a mediation and conciliation
process conducted by the Department of Community
Affairs.

I might add that the statute
provides that where a homeowner makes a claim
against a builder and it happens to be wrong, the
homeowner pays the attorney's fees. It's written
as the losing party pays the attorney's fees but
that's a certain deterrent to any homeowners that
is fighting a multi-million dollar builder without
the ability to hire experts and other kinds of
witnesses that you need to prove what could be a
valid claim. We need to make certain that
homeowners get the same type of protection that is
afforded to large corporations and governmental
units who insist that performance bonds be posted
to insure the contractors perform their
obligations fully and competently.
In conclusion, I want to thank the Commission for giving me and, indeed, the Office of Attorney General the opportunity to comment on the importance and timeliness of this inquiry. I think that among the tasks that the Commission undertakes, this could very well be its most important because it directly affects thousands of persons in our state and what you recommend will have an impact on the day-to-day quality of life of every one of our citizens. Thank you.

COMMISSIONER EDWARDS: Thank you very much for that presentation. I understand as well as or perhaps better than most the complexities of the Attorney General's Office. You have been, as we've gone this far in the investigation, your office has been very cooperative in supplying us with a significant amount of our facts and our data. The public should understand that the magnitude of how you complain and the solution of this particular problem are dramatic and we look forward to that not only through the Division of Criminal Justice and the Prosecutor's Offices but the Division of Consumer Affairs which is under your jurisdiction. You are also the civil lawyer for the DCA and all
of the inspection processes that are run by the state and as we move forward to generate some remedies and solve these problems, I assume and I'm -- I know that, in fact, that you will be helping and participating with us to enlighten us perhaps on some of the more practical problems in finding those particular remedies.

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

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

ATTORNEY GENERAL HARVEY: I believe that the inspector is, second to the builder, the most important player in new home construction. Homeowners are told repeatedly before they can move in, the house has to get a certificate of
occupancy, the house has to be inspected. Most homeowners cannot afford to pay for the kind of inspection, the thorough inspection that a particular construction may require, so they must, by necessity, rely upon the honesty, the integrity, the forthrightness of inspectors that are hired by the municipality. It seems to me that there ought to be not simply criminal liability, but there ought to be some civil responsibility for home inspectors where they know or should know that a house has defects in it that were perceptible at the time of closing.

Now, I'm not talking about the kinds of defects that a home inspector wouldn't ordinarily see or couldn't, by virtue of the type of inspection being performed, be disclosed or revealed, but I do think that home inspectors are to be held to a little higher standard. I also think that the towns themselves, we might want to look into whether or not the towns should have some rights against the construction companies that build defective homes in their township. That may provide the town with an opportunity to bring an action because ultimately all of this construction, all of the clean-up work from a
faulty construction puts that town in a difficult position. It puts the town -- unfortunately, it hurts the town's reputation in terms of persons wanting to move there and buy the homes there, it de-values the value of the home, of course, and the property which means there are less tax revenues for the town on that particular property. If you have a home that should have cost a half million dollars and the house, because of its defects, is now worth $250,000, there is a certain level of assessment that the town was expecting that it's not going to get. So I think that we have to look at some civil remedies that attach to the home inspectors and those should be pursued certainly by the homeowner and perhaps certain other remedies ought to attach to the municipality against the builder.

COMMISSIONER EDWARDS: Yes. Thank you.

CHAIRMAN SCHILLER: Thank you very much, Attorney General. I think your triple threat approach may be very, very seriously considered for the civil and criminal remedy and bolstering the inspection is well taken and I'm sure many of the homeowners sitting out there can
empathize with that and understand that perhaps
you are offering a very good suggestion on
bolstering what we already have. Thank you very
much for taking the time out of your busy

schedule.

ATTORNEY GENERAL HARVEY: Thank you
for your time.

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

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

MS. SOWNEY: Debra Sowney.

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

MS. SOWNEY: I'm an investigative
analyst.

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

MS. SOWNEY: Nineteen and a half
years.

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

MR. GLASSMAN: Good morning. My
name is Peter Glassman. I am a special agent with
the State Commission of Investigation. I have been with them two and a half years.

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

MR. GLASSMAN: At the Hudson County Prosecutor’s Office for approximately eleven years.

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

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

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

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

MS. GAAL: And when did we start it?

MS. SOWNEY: July of 2002.

MS. GAAL: Now, the homeowners that we spoke to initially, were they all from just one development?
MS. SOWNEY: No. They resided in several different developments in different municipalities.

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

MS. SOWNEY: Yes.

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

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

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

MS. SOWNEY: Yes.

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

MS. SOWNEY: Forty-one.

MS. GAAL: How many subpoenas did we issue?

MS. SOWNEY: 185.

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

MS. SOWNEY: 119.

MS. GAAL: And how many subpoenas
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called for people to testify?

MS. SOWNEY: 66.

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

MS. SOWNEY: Yes, we did.

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

MS. SOWNEY: 195.

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

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

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

MR. GLASSMAN: Yes. We went to County Prosecutors' offices, the Attorney General's office, we went to the DCA office, we contacted consumers and homeowners, we went to
code official associations and we attended and
gathered information at state and federal court
proceedings.

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

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

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

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

MS. GAAL: Now, one of the issues you've just highlighted is essentially staffing
issues in the local construction code offices, am
MR. GLASSMAN: That's correct. One inspector indicated that to do a proper inspection, he could only do about five in one day. His municipality required him to do at least 20. Combined with the fact that many of the municipalities use only part-time inspectors and because inspectors and code officials often work in several municipalities at once, depending on how many and the size of development they have going up, there could be staffing issues. We also discovered one municipal inspector who works in five towns and in some of the five towns he serves as the sub-code official for building, plumbing and fire.

MS. GAAL: Almost an impossible task?

MR. GLASSMAN: Yes.

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

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

MS. GAAL: You mean they just drive around?

MR. GLASSMAN: That's correct.

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

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

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

MR. GLASSMAN: Yes, we did.

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

MR. GLASSMAN: In both cases, it seemed that an original certificate of occupancy was issued and that a copy was made of it with the address of the home that they had planned on
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closing prematurely and the mortgage company
accepted a copy of the CO which occurred in those
cases.

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

MR. GLASSMAN: In one of the
development, there was approximately three and
the other there were approximately 19.

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

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

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

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

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

MS. SOWNEY: There is definitely a

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

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

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

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

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

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

MS. SOWNEY: Yes.

MS. GAAL: Ms. Sowney, in terms of the cost and financial impact, have we also noted
that there are some significant issues and problems with respect to gated communities and those would be communities where the homeowners' associations have to ultimately assume responsibility for the upkeep and maintenance of what have traditionally been municipal functions, such as sidewalks, roadways, curbs, drainage systems?

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

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

MS. CAMPBELL: Yes, they are.

MS. GAAL: In the area of engineering specifically, is there much in New Jersey by way of regulatory oversight of engineers?
MS. CAMPBELL: From what we have found, absent the filing of a complaint with the State Board of Professional Engineers and Architects, there is no ongoing regulatory oversight of Professional Engineers.

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

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

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

MR. GLASSMAN: Under the Uniform Construction Code for the past 20 years, a builder has been or was liable for code violations after a CO was issued. As it stands now with the current court ruling, once a certificate of occupancy is issued, the homeowner will incur additional costs.
expenses if the home has code-related defects
because the builder cannot be held liable.

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

MR. GLASSMAN: Yes.

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

MR. GLASSMAN: Yes.

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

MR. GLASSMAN: That's correct.

MR. GAAL: And who is it from?

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

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

MR. GLASSMAN: That's correct.

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

MR. GLASSMAN: It basically says
that the homeowner is now liable after the court
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decision for any code violations that are
discovered after a CO has been issued and the
builder is no longer liable or cannot be issued
notices of violation for any code violations that
are found after a CO is issued to the homeowner.

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

MR. GLASSMAN: That's correct.

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

MR. GLASSMAN: That's correct.

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

MR. GLASSMAN: That's correct.

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

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

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

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

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

We have heard a lot of testimony and horror stories of people who have invested their life savings in a new home and have spent years
fighting the system without any success. It's been very stressful and emotionally devastating to these homeowners.

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

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

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

MS. SOWNEY: Yes.

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

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

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

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

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

MS. SOWNEY: No. We found that all types of housing were affected. I mean we looked at an affordable housing complex. We looked at adult communities, typically 55 and over, and some
developments we looked at homes that were in the three to four hundred thousand dollar range and sometimes even more.

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

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

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

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

MS. GAAL: Were those builders issued Notices of Violations fined or suspended?
MR. GLASSMAN: Yes. Fines have been minimal or nonexistent especially in contrast to what it has cost the homeowners to get their problems remediated.

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

MR. GLASSMAN: That's correct.

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

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

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

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

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

MR. GLASSMAN: Yes, we did.
MS. GAAL: And what did you find?

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

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

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

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

MR. GLASSMAN: That's correct.

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

MR. GLASSMAN: Yes, we did.

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

MR. GLASSMAN: Yes, we did.

MS. GAAL: And what did you find?

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

MS. GAAL: Were they disclosed?
MR. GLASSMAN: No, they were not.

MS. GAAL: Undisclosed?

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

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

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

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

MS. SOWNEY: Yes.

MS. GAAL: Did you prepare it?

MS. SOWNEY: Yes, I did.

MS. GAAL: And what does it depict?

MS. SOWNEY: It's the projects that we examined by county. Each dot represents a different type of scenario that we investigated. It could be either a builder default issue, a warranty issue or an inspection issue.
MS. GAAL: So we hit how many counties was it?

MS. SOWNEY: Fifty-eight.

MS. GAAL: Seventeen?

MS. SOWNEY: Seventeen counties.

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

MS. SOWNEY: Yes.

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

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

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

MS. SOWNEY: We're going to discuss this in detail at tomorrow's hearing, but it appears that there are no protections in place for the homeowner if the builder they place their deposit or money with goes bankrupt or goes out of business or becomes insolvent. Even if they resort to litigation, the company often has no
assets; yet the same individuals can form another
company and continue building under a different
name.

MS. GAAL: And we found instances of
that?

MS. SOWNEY: Yes.

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

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

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

MS. CAMPBELL: Yes.

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

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

MS. GAAL: I'd like to begin first
with an overview of the issues. Can you provide that for us?

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

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

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

MS. GAAL: Can you give us an overview of the issues, just a general overview of the issues at the arbitration process level?
MS. CAMPBELL: Yes. If a homeowner cannot correct a defect at the builder level, they can file for arbitration through the new home warranty process. We learned that the arbitration process does not always provide a level playing field for the homeowner.

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

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

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

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

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

COMMISSIONER MARINELLO: You touched on several issues. I have a question regarding
this Exhibit 143 talking about that recent
Appellate Court decision.

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

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

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

MS. SOWNEY: Drive-by inspection is
when an inspector actually -- they don't get out
of their car to do the inspection. I think the
term probably would be synonymous with an
inspection not being conducted.

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

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

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

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

COMMISSIONER FLICKER: Let me ask
you something else. If I am a prospective home buyer, is there any comprehensive list anywhere that you found that would tell me the number of complaints filed against a developer or the number of complaints filed against any municipal official anywhere?

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

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

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

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

MR. GLASSMAN: Not that I am aware of.

COMMISSIONER FLICKER: Is that an
area that we think should be addressed?

MR. GLASSMAN: Absolutely.

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

MS. SOWNEY: That's correct.

CHAIRMAN SCHILLER: I have no other questions.

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

MR. GLASSMAN: Thank you, Commissioner.

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

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

MICHAEL A. PIERCE and SANDER KELMAN, sworn.

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

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

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

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

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

MS. GAAL: When did you purchase your home?


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

MR. KELMAN: Just under $270,000.

MS. GAAL: Who was the builder?

MR. KELMAN: K. Hovnanian.

MS. GAAL: Are you involved at all
MR. KELMAN: I am currently the chairman of the Concerned Homeowners of Four Seasons at Wall which is a voluntary organization independent of the homeowner's association and its Board of Trustees.

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

MR. PIERCE: Michael Alan Pierce.

MS. GAAL: What is your occupation?

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

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

MR. PIERCE: Yes, I do.

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

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

MS. GAAL: In other states?

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

MS. GAAL: Are you self-employed?
MR. PIERCE: Yes, I am.

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

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

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

MR. PIERCE: Yes, I have.

MS. GAAL: And in what disciplines?

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

MS. GAAL: Now, back to Mr. Kelman.

Is Four Seasons at Wall what can commonly be described as a gated community?

MR. KELMAN: Yes, it is.

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

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

MS. GAAL: Okay. At some point are the homeowners of such a community required to
take responsibility for certain aspects of the
developments?

MR. KELMAN: Sure. Beyond

responsibility for our individual homes and
grounds, once what's called a transition takes
place whereby the common properties are converted
from the responsibility of the developer to the
homeowner's association, all of those common
responsibilities become the responsibility of the
400 homeowners in the development.

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

MR. KELMAN: Exactly.

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

MR. KELMAN: Not to my knowledge.

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

MR. KELMAN: That's certainly my
understanding.

MS. GAAL: Do you know when some of
the homeowners first noticed what they thought
were some problems at Four Seasons at Wall?

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

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

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

MR. KELMAN: Yes, they did.

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

MR. KELMAN: Well, some were in the
roadways, some were besides the roadways.

Generally they indicated that something was
failing underneath and that the ground that had
previously supported the surface of the ground was
yielding into a previously open area.

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

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

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

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

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

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

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

MR. KELMAN: Actually, I'm not.

MS. GAAL: Did you have a sink hole
near your home?

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

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

MR. KELMAN: Well --

MS. GAAL: Did you see it
personally?

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

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

MR. KELMAN: Yes, they are.

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

MR. KELMAN: Yes, it is.

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

MR. KELMAN: I was or -- have not
been a member of the Board of Trustees, but it is
certainly my understanding that it was to look
into these and other problems.

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

MR. KELMAN: Yes.

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

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

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

MR. PIERCE: Yes, it was. I had a
number of areas that I was investigating. I did a
small investigation into the common complaints
with the homes which involved the roof trusses.
When I tried to find the proper documentation for
the roof trusses in the Building Department, I was
unable to find the proper drawings. I also
requested information from the township for some
of the engineering infrastructure, various items
that had to do with the storm water system, things of that nature and I did not find adequate information.

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

MR. PIERCE: To the township municipal building.

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

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

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

MR. PIERCE: I started actually the first -- the first sink hole I looked at involved a 48-inch storm water line. This 48-inch line had fractured and caused the sink hole directly above it. It was a very large sink hole, approximately 18 to 24 inches deep and about at least five to six square feet. After that point, I investigated that particular defect and prepared a report for
the Homeowner's Association. A number of sink holes appeared after that which I investigated and from those investigations I started to -- I made the recommendation that we perform a video inspection for the storm water system.

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

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

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

MR. PIERCE: Yes, yes, and many of the defects were located very close to the ends of
the lines so they would have been readily visible
to an inspector if the inspector happened to look
down the line either from a manhole or a storm
water inlet.

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

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

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

MR. PIERCE: Well, depending upon
where the line is, there may be a storm water
inlet or a manhole which would provide access to a point where the line has a -- it's usually they're placed every so often for maintenance and also at places where the lines will take a turn in direction and the manhole is accessed obviously from the top, either a manhole lid or actually a storm water inlet grate. The inspector or worker would remove the grate and there are supposed to be manhole runs which would facilitate entering the structure.

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

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

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

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

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

MR. PIERCE: It's approximately
25,000 linear feet of storm water lines. Of that, approximately 15,000 feet is a high-density polyethylene plastic line.

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

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

MS. GAAL: Now, I'm going to -- we
have a small excerpt of that video. It's a composite and I think the best way to approach it is we'll play each little piece of it and I'll just ask you to tell us what we've just seen.

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

This is actually a 15-inch high-density polyethylene line that is located at the rear of Mr. Kelman's home. As the camera moves in, as you can see, we're very close to the end where the storm drain was. You can see this projection at the top wall of the pipe. It looks like a tonsil. This is actually a collapsed
section of pipe. We were unable to get the camera beyond this point so in order to do a proper inspection for the line, we had to pull the camera out, remove it to the other inlet structure and then go in the opposite direction back to this defect.

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

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

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

MR. PIERCE: That is correct.

MS. GAAL: Just going, shine a lamp?
MR. PIERCE: Correct.

MS. GAAL: Okay. Would you continue?

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

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

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

MS. GAAL: What is this?

MR. PIERCE: This is another fracture on a -- I believe this is an 18-inch high-density polyethylene line. This is probably either at a fracture -- I didn't see this section. This is an abridged tape from our video inspection.
tape, so I didn't see the section leading up, but what's significant with this picture is you can see the camera is located at six feet and you can obviously see a problem at this connection and you can see what appears to be debris coming in from the outside of the pipe. At a distance of six feet and this, I believe, is an 18-inch diameter plastic line, if an inspector had lamped this line, I believe this defect would have been readily visible.

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

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

Those wires there are the actual wire reinforcement for the concrete pipe. They
obviously are going to be subject to corrosion and failure because there is no concrete protection.

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

MR. PIERCE: It is not.

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

This is an excessively wide joint in a high-density polyethylene line and you could see from the counter at the bottom of the screen 7.6 feet. Again, this is only seven feet in from a man way. This appears to be a very wide joint and we also found in the system that there were a number of joints that were manufactured on site. Generally, this plastic pipe is supplied with a manufactured end similar to a bell and spigot end.

We found on this project that in certain cases the storm water lines were made up of short pieces and they just butted the pieces together in the field. We found that many of these joints were leaking and infiltrating soil.

MS. GAAL: In some of the scenes we see ponding in the lines. Can you tell us
something about that?

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

What is significant about this
defect is when a contractor were to check the line
out to clean the debris, the device that he uses
to run through the pipe could have fractured this
gas line which would have filled the storm water
line with natural gas, high-pressure natural gas
and we could have had a catastrophe. Fortunately, we did the video inspection, we identified this defect, notified the gas company and they made a repair of the -- they moved the gas line and replaced this section of pipe.

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

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

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

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

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

MR. PIERCE: The lack of manhole rungs tells me that proper inspections were not done on this storm water system.
MS. GAAL: Because if someone had gone down there, they would have seen there were no rungs?

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

MS. GAAL: Are they required?

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

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

MR. KELMAN: Absolutely.

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

MR. KELMAN: To my knowledge, we have not yet. It is still under review by consultants, not only viewing on footage but also
the contingent operations that need to be dealt
with nearby utilities in order to repair.

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

    MR. KELMAN: No.

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

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

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

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

    MS. GAAL: Was yours affected?

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

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

    MR. KELMAN: Certainly.
MS. GAAL: Okay. And to date, have the truss deficiencies been corrected, if you know?

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

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

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

MS. GAAL: Assuming something had to be removed and replaced, what are the problems
with doing that today?

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

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

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

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

MR. PIERCE: Yes.

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

MR. PIERCE: Yes, I did.

MS. GAAL: In your opinion, does it
meet the Uniform Construction Code guidelines?

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

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

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

MS. GAAL: Which means what?

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

MS. GAAL: Did you also inspect the concrete sidewalks and aprons throughout the
MR. PIERCE: I did.

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

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

MS. GAAL: Mr. Kelman, did you as a homeowner or did the other homeowners have problems with their sidewalks and driveway aprons?
MR. KELMAN: Yes. They tended to sink, crack depending on whether it was near the sidewalk or near the garage. My understanding is that the foundation beneath the surface was not what was called for in the plans and that they simply couldn't withstand the passage of vehicles over it.

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

MR. KELMAN: Yes. I'm sorry.

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

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

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

MR. KELMAN: Yes. There are many, and I mean probably throughout the development hundreds of literally eruptions in the pavement.
where you can see it looks like a cherry bomb went
off underneath the asphalt. There's an eruption.

MS. GAAL: Like a little volcano

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

MS. GAAL: And these are in the
streets?

MR. KELMAN: Yes.

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

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

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

MR. KELMAN: I don't really know.

These also occur in the private driveways.

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

MR. PIERCE: Yes.

MS. GAAL: And what is depicted
there?

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

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

MR. PIERCE: That's correct.

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

MR. PIERCE: Correct. It's a bulge in the granular base material. We found that there was a material that was expanding in the
granular base and that was causing the pressure
which would actually lift four inches of asphalt
so that the defect was visibly apparent on the
surface.

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

MR. PIERCE: That is correct.

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

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

MS. GAAL: Thousands?

MR. PIERCE: Yes.

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

MR. PIERCE: Yes, they are.

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

MR. PIERCE: No. Other than the
ones we opened up for investigation, we patched
with new asphalt.

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

MR. PIERCE: Yes, that's correct.

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

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

On this particular project, we found that all the granular base appears to be a recycled material. It was not -- it did not meet the DOT standards for the recycled concrete aggregate that would be applied to a dense graded aggregate. I did a number of tests and I also had another engineering firm conduct similar tests.
All of the samples we analyzed failed the New Jersey DOT standards for this dense graded aggregate.

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

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

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

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

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

MR. PIERCE: Well, this recycled concrete aggregate is supposed to be 90 percent by weight Portland cement derived. We found that
it's -- that's one of the problems is that it's
not just Portland cement concrete. We found other
materials and we found that what was causing these
eruptions appeared to be a reactive material.
We've had a number of commercial labs analyze it
and we've also taken it to two universities,
Rutgers University and Lehigh University, the
Department of Material Science. They have been
doing tests -- actually, they're still working on
tests now. They have identified it as a product
similar to an industrial waste product.

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

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

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

MR. KELMAN: Yes, there were a
number of problems uncovered early on. First,
there was general concern about the use of
aluminum wiring throughout the homes, but, in
particular, there was no antioxidant material
applied to the aluminum wiring which is really my
understanding is required if you're going to use that.

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

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

MR. KELMAN: Yes, they had.

MS. GAAL: And were COs issued?

MR. KELMAN: Yes.

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

MR. KELMAN: That's correct.

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

MR. KELMAN: Yes. Last February, there was a fairly significant snowstorm. People began reporting that they had snow in their attic. An announcement was made if you had snow in the attic, please report it to the manager for the Homeowner's Association. Eighty people reported...
having had snow infiltrate the attic space of their homes. That varied from a dusting to one homeowner who removed 36 buckets of snow.

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

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

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

MR. PIERCE: Yes, I did.

MS. GAAL: And how was it discovered?

MR. PIERCE: Over the winter or early spring we noticed the growth of algae at one
of the storm water outlet lines. We took -- this line had been prone to infiltration. It happens to be a line -- actually, the line that we showed before, the horizontal elliptical line is connecting two storm water basins in the community and we noticed that there was always a heavy discharge of infiltration water. This would be water that's coming in through the joints of the concrete pipe. We noticed a growth of algae on the discharge of this line so that told us that there was something feeding the algae growth and in the wintertime the ambient air temperatures are fairly low so you don't expect to see green algae growth coming out of the storm water line. We took a sample of the water or I should say we had a certified New Jersey state testing laboratory take a sample. They analyzed it and they found fecal coliform in the sample. Upon receiving that report, we scheduled the video inspection company and we ran a video inspection of the sanitary line and we found a fracture in the line very close to one of the manholes -- in fact, within four feet of a manhole.

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

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

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

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

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

MR. KELMAN: Yes, I do.

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

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

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

MR. KELMAN: Well, water draining across the sidewalk from the lawn virtually every
day even if there's been no rainfall. I mean we
do have sprinklers, but the water is generally
very --- well, appears to have petroleum compounds
in it, the usual kind of rainbow effect. Looks
actually more viscous than water. That's what I
see.

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

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

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

MR. PIERCE: Yes. This is an
example of this sheen that we've noticed
throughout the community. I've identified at
least eight areas where this -- we've had this
occurrence. It's typically related to the soil
moisture level. Obviously, with higher rainfall
and/or an increased irrigation, we will find this
occurring throughout the community and at various
MS. GAAL: Did you attempt to find out what it is?

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

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

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

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

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

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

MR. PIERCE: There are deficiencies
with the landscaping. The trees that were
supplied, the landscaping plan that was prepared
for the community was not followed by the
developer. There were changes in -- aside from
tree locations, the size of the trees installed,
the species of the trees installed did not meet
the original plan. We found problems with the
actual installation practices, the trees were not
installed according to the landscape architect's
recommendations. We also have been finding
problems with the turf. We found that the soil,
the topsoil was not installed in accordance with
the design plans.

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

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

Briefly, the model home I have --
there are five models in Four Seasons. The model
I have is the Danbury. I have a basement.
Basements are relatively infrequent at the Four
Seasons at Wall. The depth of the garage in a
Danbury without a basement is 19 feet from the
inside of the door to the far wall. In my garage,
it is 18 feet and there is a three tread stairway
protruding three feet out into the garage toward
the door. Therefore, when I attempt to park a 15
foot car which is not a long car in there, the
bumper rests over the second step of the stairway.

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

MR. KELMAN: Yes, I do.

MS. GAAL: And what is it?

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

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

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

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

MR. PIERCE: That is correct.

MS. GAAL: And do either of you have
any estimate of cost to correct deficiencies that
you can give us today other than what we've
already said?

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

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

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

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

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

I'd like to know, Mr. Pierce, has
any of this material been shown to the local
building inspectors?

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

CHAIRMAN SCHILLER: And when was that?


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

MR. PIERCE: Yes.

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

MR. PIERCE: Yes, they have.

CHAIRMAN SCHILLER: And when were they shown that?

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

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

MR. PIERCE: The developer made a
few repairs at certain locations in the system
where there were collapses or major defects, where
there was a visible sink hole and an immediate
danger to the community.

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

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

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

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

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

MR. PIERCE: Correct.

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

MR. PIERCE: We've certainly tried
to get information that we needed to do our job.
We were not successful in all cases. They have --
supposedly, the developer has been making
corrections to -- or repairs to the trusses and I
believe the local construction officials are
supposed to be monitoring that.

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

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

I asked the -- when I was inspecting
it, I wanted to see what the instructions were to
the contractor and I inquired of the Municipal
Engineer to see the specs for the HDPE pipe and to date, we have not received any and the specifications that I have a copy of for the development do not include any reference to high-density polyethylene pipe.

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

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

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

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

MR. PIERCE: I inspected -- the Homeowner's Association had me inspect -- asked me
to inspect a number of homes because they felt
there was a common problem with the trusses. I
inspected roughly 10 percent of the community
which was around 40 homes. There are 400 homes in
the community. I found significant structural
defects in all 40 homes.

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

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

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

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

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

COMMISSIONER FLICKER: Mr. Kelman,
have any of the homes been resold?

MR. KELMAN: Yes.

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

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

COMMISSIONER FLICKER: Thank you.

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

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

(Resumed at 11:49 a.m.)

CHAIRMAN SCHILLER: Ladies and
gentlemen, please take your seats. We're running
a little late so we're going to push the schedule
back a little bit, but we'll try to move along as
quickly as we can and I'll ask Ms. Gaal to call
the next witness.

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

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

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

GREGORY H. KIRK, sworn.

BY MS. GAAL:

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

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

Q. And by whom are you employed, sir?

A. The Township of Wall.

Q. What is your position there?

A. I'm a Construction Official and a

Plumbing Sub-Code.
Q. And how long have you been employed by Wall?
A. I believe it's 1996.
Q. And is that a full-time position?
A. Yes, it is.
Q. And what licenses do you hold?
Q. Do you work in any other municipalities currently?
A. Yes, I do.
Q. Where?
A. The Borough of Belmar, Borough of Spring Lake, Borough of Manasquan and the Borough of South Belmar.
Q. And what positions do you generally hold in those municipalities?
A. Belmar, I am plumbing and fire; South Belmar, I'm fire; Manasquan and Spring Lake, I'm plumbing.
Q. Now, as the Construction Official, what are your duties? In other words, are you generally the administrator of the office?
A. Right. I'm more or less the
Ordinarily do you go out and personally do inspections?

No, I don't.

Are you familiar with the Four Seasons at Wall development?

Yes, I am.

And I think you were sitting here a few moments ago during the testimony that preceded yours?

That's right.

And during the construction of that development, were there any significant problems that came to your attention?

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

And who was rushing? Who was rushing whom I guess I should say?

It was actually the community developer was rushing his contractors, his subcontractors. He was also rushing the Building Department begging for inspection, begging for COs, pretty much just a rush.
Q. Now, the term you used community developer, to whom are you referring?
A. On every project, the developer, this one being K. Hovnanian, would assign a community developer to the project.
Q. Would that be someone that might be called a project manager or a superintendent on another builder's project?
A. Yes, I would believe so.
Q. During the actual construction, were deficiencies found on inspections?
A. Many deficiencies during construction were found, yes.
Q. Many? Was it a frequent occurrence?
A. Yes. It was sheathing problems, roof trusses, of course, there were plumbing problems that were turned down inspections that had to be repaired and then we'd go back and reinspect them.
Q. Were there situations where your people went back and re-inspected and the problems were still not fixed?
A. That I'm not aware of.
Q. Okay. So there were a number of deficiencies found during the process?
A. Yes.

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

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

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

A. Yes, there were.

Q. In what areas were the problems found?

A. Mainly the trusses.

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

A. Yes.

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

A. Well, from what I understand of them, 95 percent of the trusses were minor repairs meaning the braces might have been missing or clips being missing or nails or something like...
that. The other 20 percent probably the trusses
themselves might have been cracked, might have
been broken during installation.

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

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

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

A. Not on your normal construction, no.

Q. What do you mean by that?

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

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

A. Certainly.

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

A. During construction, my best
estimate would be that plumbing, there may have
been eight inspections out there in one day, there
may have been 10 to 12 building inspections out
there in one day, there may have been 10 to 12
fire inspections and electrical inspections.

Q. And is that just an overwhelming
number?
A. Yes.

Q. Now, when our staff reviewed the
files at your office, we didn't find documentation
of rejections of the inspections in the files.
Can you explain that for us? In other words --
A. When you went through the files, you
found no rejections?

Q. We didn't find notations of
rejections during the inspections. Is it --
A. I can't explain that other than
maybe they gave the contractor a verbal right then
and there.

Q. Okay. Is it possible they did it
verbally in the field?
A. Yes.

Q. Is that the preferred method of
handling rejections?
A. No, it's not.
Q. In other words, it should be noted on the cards?

A. It should be noted on the cards.

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

A. Yes.

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

A. I'm sorry to hear that.

Q. Were you aware of that before today?

A. No, I was not.

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

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

Q. How about the community managers or...
the community project managers you mentioned? Was there any turnover?

A. Yes, that was another problem.

Q. Go ahead.

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

Q. And was that significant in your opinion?

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

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

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

Q. The push was on for the COs?

A. Yes.

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

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

Q. Were the closing dates picked before
the COs were issued?

A. That I don't know.

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

A. No.

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

A. Yes, it did.

Q. Did the homeowners hire their own engineer?

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

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

A. Absolutely.

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

A. I did not, no.

Q. Did you readily recognize that there
appeared to be a problem?

A. Yes.

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

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

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

A. Yes, they did.

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

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

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

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

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

A. Yes.

Q. Did they notice any problems that
you know of?

A. No, they did not.

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

A. Yes.

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

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

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

A. I have an opinion.

Q. What is your opinion?

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

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

A. Oh, I definitely think they're all well trained.
Q. So you don't think that was the problem?

A. No, I don't.

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

A. In one project, yes.

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

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

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

A. Yes, I did.

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

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

Q. What is the other alternative method of funding a construction code office?
A. They're dedicated by rider.

Q. Have you spoken with other code officials to determine or learn whether they have any staffing problems such as you've just mentioned?
A. I think there's staffing problems throughout the State.

Q. Is the by-rider funding the most common or the least common method?
A. I would think it's the least common used.

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

Q. How much additional work did your office have to do as a result of the various deficiencies that were found at this one project alone?
A. Could you explain your question?

Q. How much additional work did your people have to do because of the problems that were found at Four Seasons at Wall? In other words, did you have to do additional inspections, did they have to get out there a lot more?
A. Absolutely.
Q. Can you give us any idea of what the burden was to reinspect and to deal with the remedial work?

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

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

A. No, we did not.

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

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

Q. And why did you do that?

A. Honestly?

Q. Sure.

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

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

A. Yes, we did.

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

A. No. Some of the -- with the truss
situation, it depended on what the problem was with the truss. If the engineering firm came back and said it was a minor problem, we did not issue permits for that. If the engineering firm came back and said it was definitely a truss problem, permits were issued.

Q. Was the builder issued any notices of violations on the job?
A. Not that I'm aware of.
Q. Was the builder fined?
A. I don't believe so.
Q. Do you know if the builder filed any certifications that the homes were constructed to code after the remedial work was done?
A. Every house has a certificate request indicating that the home is constructed according to accepted standards.
Q. Did DCA cite the builder if you know?
A. I really don't know.
Q. How about anyone in your office, was anyone in your office ever cited by DCA for any of the problems?
A. I know the DCA did an investigation on the trusses after they were aware of the
problem. I'm not sure whether they wrote a letter of reprimands or not.

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

A. Not that I can remember.

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

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

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

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

MR. KIRK: Mr. Pierce had direct access to the complete construction drawings. Mr.
Pierce was correct when he said he had a problem with the truss drawings. We had a problem with the truss drawings. We gave Mr. Pierce the one set of truss drawings that we thought were to complete the project. K. Hovnanian had switched truss designers or contractors in the middle so there was another book out there and finally we had found the book. We gave it to Mr. Pierce.

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

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

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

MR. KIRK: Probably around 1996, '95.

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

MR. KIRK: Yes, I have.

COMMISSIONER MARINELLO: So it's
safe to say that it's possible that other homes
from 1996 until now had the same truss problem
inspections with the same inspector?

MR. KIRK: I can only hope not.

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

MR. KIRK: No, he didn't.

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

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

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

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

COMMISSIONER MARINELLO: And what
follow-up was done by your office to determine
whether or not the outside engineering firm was
MR. KIRK: We had constant communication with the engineering firm. I believe it was Dixon Engineering. They performed the inspections, they gave us drawings and letters as to how the repairs would be taken care of and they've also submitted certification that the trusses were correct.

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

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

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

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

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

MR. KIRK: Yes.

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

MR. KIRK: Yes.

COMMISSIONER MARINELLO: That's it.

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

MR. KIRK: For the construction of a house?

COMMISSIONER FLICKER: Yes.

MR. KIRK: Yes, it would be.

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

MR. KIRK: Yes.

COMMISSIONER FLICKER: After what you saw this morning and the details of the pictures we saw, the video we saw, the descriptions we heard, can you explain to us why
there were no violations and no fines issued to K.

Hovnanian?

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

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

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

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

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

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

MR. KIRK: For the construction of the home.

COMMISSIONER FLICKER: And none of the municipal inspectors have the responsibility
of inspecting the sewer lines, the electrical, the
underlying electrical lines, things like that?

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

COMMISSIONER FLICKER: Thank you.

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

MR. KIRK: Oh, yes.

CHAIRMAN SCHILLER: And what was the
result of that?

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

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

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

CHAIRMAN SCHILLER: They were not
there in response to any citizen complaints?
MR. KIRK: No.

CHAIRMAN SCHILLER: This was just a routine matter?

MR. KIRK: Yes.

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

MR. KIRK: No, it was not.

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

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

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

MR. KIRK: Yes, it is.

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

MR. KIRK: Yes.
CHAIRMAN SCHILLER: And is Wall
Township considered your full-time job?

MR. KIRK: Yes, it is.

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

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

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

MR. KIRK: One hour a day is fine.

I do Belmar and Spring Lake on Monday, Wednesday
and Friday and I do Manasquan on Tuesday and
Thursday.

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

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

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

MR. KIRK: Yes.

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

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

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

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

COMMISSIONER EDWARDS: Not involving you. You work as an agent with the Land Use Department then on the individual homes and COs for each individual home?
MR. KIRK: Yes.

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

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

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

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

COMMISSIONER EDWARDS: Without being sarcastic, and I shouldn't be because it's a very serious issue, we're looking for answers as to how we can do this better. You have -- I read your background. You have over 25, 30 years experience in the construction inspection business going all the way back to DCA and as a result of that, you've seen the good, the bad and the ugly and you've seen the system get better over the years, you've seen improvements being made to the inspection system. We obviously have a problem that exists with reference to the coordination of an inspection department that has responsibilities for this particular project. We are trying to come up with some recommendations on how to make it better and with your level of experience and the problems that have developed on this
particular project, is there a way that you might recommend that the system might work better, the entire system might work better, particularly with your background and experience? I'm asking a question that you haven't thought about perhaps or maybe you have and I'd like to get whatever answer you have now and I'd also like to get your opinion for later, after you've thought about it for a little while.

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

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

MR. KIRK: Yes, sir.

COMMISSIONER EDWARDS: Okay. Thank you.

COMMISSIONER FLICKER: Mr. Kirk, would it be your department that would check garages?
-PUBLIC HEARING-

MR. KIRK: Yes, it would.

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

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

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

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

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

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

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

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

COMMISSIONER FLICKER: Thank you.

CHAIRMAN SCHILLER: Thank you very much, Mr. Kirk.
PUBLIC HEARING

MS. GAAL: Glenn Gerken.

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

MR. PLAZA: Yes. Good afternoon.

My name is Ed Plaza and I appear on behalf of Glenn Gerken.

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

GLENN GERKEN, sworn.

BY MS. GAAL:

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

A. Glenn Gerken.

Q. And by whom are you employed?

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

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

A. Yes, I did.

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

A. Yes, I was a principal with Bay Point Engineering.
Q. And did you, in your capacity as a Wall Township Engineer, approve payments to Bay Point Engineering in connection with the Four Seasons at Wall development?
A. Absolutely not. I never approved, never recommended any payments at all to Bay Point Engineering.
Q. And who approved or recommended the payments?
A. The Township of Wall has a standard approval process and then ultimately they're put on a calendar and voted on by the Township Committee for payment.
Q. Did you personally have anything to do with the inspection at Four Seasons at Wall?
A. Yes.
Q. And what did you do?
A. We did site inspection in accordance with the Municipal Land Use Law. There are certain improvements listed to be bonded by the municipality. We inspect those bonded improvements. The easy way to distinguish it basically, we would inspect the infrastructure items up to the sidewalk area. We would not be inspecting any public utilities of gas, electric,
et cetera and then the house services and that would all be inspected through the Building Department. Basically, at the back of the sidewalk is where we would basically stop.

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

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

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

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

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

A. Yes.

Q. How would you explain those?

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

Q. However you want to.

A. Okay. With the Belgian block
curbing, there is a detail shown on the plan which
is a general detail. With it, one thing that
didn't get brought up by Mr. Pierce, there was
some changes made with that which are improvements
to the site. For example, the size of the Belgian
block specified on the plan was a four inch by
four inch block. The blocks which were installed
were four inch by seven and a half inches. And
why is that a benefit? It's because you almost
have 50 percent less joints involving the block.
You see more of the granite face of it and much better aesthetics and appearance with it.

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

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

A. There are some problems which we've identified and we've got them on a punch list of deficiencies to be corrected. They consist of at certain driveways there's some excess depression with it. They need to be removed and replaced. There is also some areas where the joints have popped out with it and need to be re-pointed up. But basically, from Mr. Pierce, he's going by the
width of the mortar. The mortar covers the joint and wraps around on part of the block.

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

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

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

A. Yes, there were some sink holes.

Q. What are they from?

A. The sink holes as you saw varied in size with it. Predominantly, ones that I was aware of, it might even have been the one where you saw Mr. Pierce with his foot sticking down in the hole, there was one where we inspected the line up to the clean out which is at the sidewalk. From that point on, the plumbing inspector picks up the inspection later on whenever that plumbing line is installed. There was one place where the joint pulled apart by a couple of inches, the soil washed down into the hole with it, then that had
to be excavated and repaired. There was another
one which I was aware of where telephone electric
conduit went across the streets. There was a
damaged conduit from that outside utility company
which again caused a sink hole. There were a few
damage to the pipe sections. I think Mr. Pierce
indicated when those were dug up, they were
repaired. I think that was some of the repair
work done to the damage to the pipe itself.

Q. During the installation?

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

Q. How about the storm drain system?

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

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

A. No. If we saw that during construction, we would have that removed. But let me understand or for your agency to -- we have -- well, let me back up. We have not finished
inspections on this project. There is still a substantial amount of work we're trying to get the developer to complete. We have punch lists which are lists of unacceptable, incomplete items which we are demanding that the developer complete. The Township is holding approximately five million dollars in cash and performance bond guarantees to assure this. The storm drain system, when initial questions were asked by the Homeowner's Association, we weren't even close to being finished with that and because, as I explained, the openness and the vulnerability of this system, that that is probably one of the last things we do before we make a final recommendation or release with it.

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

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

A. No, that's not correct. As I just said, we would have been -- when they are getting
close with everything else on that project to go off of their performance guarantees before they go on to their two year maintenance guarantee, we would have been going catch basin by catch basin doing a final inspection so that we could make sure all debris was out, all sediment was washed out of the system and any damage done was taken care of.

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

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

A. No, that is not a normal inspection, no. But in this particular case, since they would not release the information to us, from what they
did -- and nobody said they had to go do that but since they did and wouldn't release it, we demanded that the developer videotape it and there is a second videotape that's been done of the total system.

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

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

Q. Did you or your inspectors find any
of these problems during the construction?

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

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

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

   Q. I'm talking specifically, let's just stick with the storm drain system. We saw a small snippet today, but I looked at a lot of other video and there appears to me to be -- and I'm a
layperson -- significant problems in that system and my question to you is do you have any records of any inspections during the course of the construction where defects were found, yes or no?

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

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

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

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

A. Yes.

Q. How did he get down there?

A. Pardon?

Q. How did he get down there?

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

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

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

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

A. With regard to the drainage system myself?

Q. Yes.

A. No.

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

A. He was one of them.

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

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

Q. He indicated there was no problem
and it wasn't until Mr. Pierce went down that the first serious problem was noted. You are not aware of that?

A. I would have to check my notes again.

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

A. He was employed by Bay Point.

Q. As what?

A. As a subcontractor.

Q. What is his background, professional background?

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

Q. Is he a licensed engineer?

A. No, he’s not.

Q. And he was your representative on
site?

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

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

Can you see that, sir, the exhibit?

A. Yes.

Q. Can you tell us what it is?

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

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

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

Q. Is this an example of one of those inspection reports?
A. Yes, it would be.

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

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

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

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

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

A. Probably Ray Gordon.

Q. Who is he?

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

Q. And the last sentence on the page, would you read that to me?
A. I have reviewed this report and believe that it accurately describes the conditions found on the subject property on the date indicated.

Q. And it's signed by whom?
A. That's signed by Thomas Boyan.
Q. And it's written in for you, is that right?
A. Correct.
Q. The vast majority of the inspection reports we looked at were signed this way. Is that the way you handled this project?
A. Yes. Some of them I did sign but the vast majority were signed by him.
Q. Even though he is not a licensed engineer?
A. This does not require a licensed engineer to do this inspection whatsoever.
Q. Did it cause you any concern given the size of the project, the speed and the rapidity with which it was being built that there wasn't a licensed engineer out there doing these inspections?
A. No. For these inspections, they are a general health and safety issue. These are not
a quantitative, qualitative inspection of these items listed on here. They're just do they exist? Yes, they exist. Do they appear acceptable? Yes, they appear acceptable. For the Building Department to not issue a certificate of occupancy, there would have to be some health and safety issues and that's basically what we were looking at.

Q. You've seen the video that was done by the -- that the homeowners had done of the storm drain system?

A. I saw a cut and paste that they showed us for like 15 minutes and we've been asking if we could get it since then. Since they didn't, we demanded that the developer do a complete video which has been done and we have reviewed those.

Q. And based on what you've seen, do you have any concerns?

A. Oh, yes. We've got problems there.

Q. What kind of problems?

A. Well, we got problems where there's cracked pipe, there's ruptured joints, there's protrusions. With it, there's some -- a few separated joints. We've identified those. We've
got a listing of those and there are several
hundred feet of pipe that will have to be replaced
and there is also numerous areas where there will
have to be repair work done to the chips or
joints, et cetera.

Q. Earlier today you may have heard Mr. Kirk from the Construction Department indicating
that this job was -- and these are my words -- rushed, so to speak, that there was a lot of
construction going on, it was going on rapidly,
there was a lot of inspections being done and they
had difficulty, it seems, to keep up with it.

Did you experience the same thing on
the engineering side?

A. Yes. There was an awful lot of
construction going on, a lot of unannounced
construction which would go on and we'd have to
catch up with it and it was a very rapid built
project.

Q. Given whatever you've seen in those
videos or whatever that's been presented to you
concerning that storm and waste water drainage
system, if you had known then what you know now
about it, would you have approved it before people
moved in?
A. It has not been approved as of today even as we speak.

Q. Is there any requirement that it be approved before any homeowners move in?
A. No.

Q. Is there any requirement that it be approved before a Homeowner's Association take responsibility for it?
A. What there is we have the Municipal Land Use Law which governs the bonding of certain improvements. What that requires is that when the developer sends in a request for this -- the system the way it works is bonding is done, then there's requests for reductions in the bonds. There are statutory times when myself and the town must act on those based on the current state of conditions on that date. We have not released -- we're down to 30 percent which statutorily is the maximum we can hold on to at this stage.

Q. And are you holding on to it to a large degree based upon what the homeowners have presented to you?
A. No. Let me tell you one thing, too. We've almost begged for any information that they would come up with to share with us so we could
address any of their concerns for the homeowners.
You know, we're concerned that when the homeowners
move in that all the improvements are complete and
acceptable so that there's no extra burden put on
them. They have not shared one thing with us.
Even any of this testing, they don't even tell us
what they're doing with items with it and we'd be
very happy if they could share it with us.
Q. Do you know anything about those
oily slicks that we heard about today?
A. This is the first I've heard about
it right here.
Q. Doesn't cause you any concern?
A. It causes me concern. I'd like to
know what it is with it and something where I
would talk with the Township and see if they want
to have any type of investigative work done on it.
Q. Were you aware of any environmental
issues on that site and whether there was site
remediation done before that construction took
place? Were you aware of that at that time?
A. I believe there was through DEP,
there was a -- the site was an old sand and gravel
mining site. I believe that there was a certain
area on site where certain debris had been buried
with it and DEP had mandated certain clean up.
The developer had a separate geotechnical soils
engineer handle the engineering work for them on
that.

Q. Did you have any involvement at all
on behalf of the municipality overseeing that at
all?
A. No, not at all.

Q. Did Bay Point Engineering receive
over $579,000 in inspection fees connected to this
project?
A. I believe that would be the proper
amount over the life-span of the project which is
probably seven years or more as of this time.

Q. Is 222 still up? Just one last
question that I forgot to ask you. When you look
down about an inch and a half from the bottom of
the page, it's recommended that a CO be issued and
that it be and permanent is circled, is that
right?
A. That's what's circled, correct.

Q. And is that -- so, in essence, a
recommendation was made for a permanent CO to be
issued?
A. From the site health and safety
aspects as represented on this.

Q. Do you have any idea what it will cost to remediate just that storm drain system?

A. Not exactly, but let me clarify. The original system, entire system was probably about 1.4 million dollars which included a litany of items, all of which are not under question with it. There was over 26,000 feet of pipe and there are several hundred feet of pipe to be replaced. There are numerous places to be repaired. It nowhere comes close to replacement of the entire system but is a very small percentage of that. We would -- well, one, as we speak, lists have been given to the developer for corrective work. They are getting prices right now to have that work completed and I would probably imagine that within about a month, cleaning and flushing repair work will have been started out there. But we're probably looking in the magnitude of maybe half a million dollars.

Q. Do you know if the roadways at Four Seasons at Wall meet DOT standards?

A. As far as I know, they do.

Q. And on what, if anything, do you base that opinion?
A. Well, one, the two layers of asphalt came from certain plants which were a certain gradation mix, an I-5 and I-2 which was the required standard. On the -- that's graded aggregate. We do not do any laboratory analysis at the time of construction. In fact, it was probably two years after the surface course was down that you call it eruptions, I call it more blistering appeared because they're predominantly maybe about two inches in size, it raised up about a half inch in the surface and then after time settled back down. So except for the circles that they painted around, you probably wouldn't notice that.

Q. Have you ever seen anything like that before?

A. In my -- not exactly like that, no, no.

Q. It seems unusual, doesn't it?

A. Yes, it does.

Q. Do you have an opinion as to what's causing it?

A. No. It would be only speculation, you know, at this point.

Q. So am I to understand that you did
not know what the sub-base was?

A. When it going down, the State encourages, you know, recycling and also for dense graded aggregate the use of DGA which contains a certain amount of wood, certain amount of brick, cement and when it was going down, it looked good. We did proof tests on it with basically compaction tests. It compacted up extremely well and, in fact, the roadway surface is in extremely good condition out there from a rideability and construction standpoint. Even with these blisterings that has occurred, perhaps not that any dislodgement of any of the asphalt, there has not been any potholes, no breaking up of it, it's -- you know, it's slight eruption and then it has settled back down. But, yes, there is a problem with that and we put the developer on notice -- well, let me go back.

We did, while Mr. Pierce was doing some excavation there, extract three samples of the DGA with it and we had that sent to Craig Testing Laboratories with it and they sent back that it did meet the gradation requirement. We have put demand on the developer to have certified labs come out to take samples at these particular...
failure points with it and we're going to be
demanding that it get repaired. If they don't
respond, which we're having problems getting the
developer to respond to this work, I'm going to
make recommendation to the Township that the
Township hire a certified testing lab so we can
address what the problem is with it and be
finished. We want to get the project finished so
the homeowners aren't burdened with having these
imperfections in their development.

Q. We've also heard that driveways had
to be replaced in the development, some of them
two or three times. Why is that?

A. I really don't know because we don't
do a detailed inspection of the driveway. That's
not one of the items that we inspect.

Q. Does anyone to your knowledge?

A. I don't know. I know we do not
inspect it.

Q. You just said a moment ago you
wanted things corrected so the homeowners aren't
burdened. Don't you think this has been an
incredible burden for these homeowners?

A. For the homeowners that are living
in the development, a lot of these items are not a
burden to them from certain standpoints with it, but, yes, I do agree with it, that it is a burden on them, it should get done and we want the developer to finish up the landscaping, finish up these items and be done with it so they can have it done properly so then they can move out.

Q. What about the financial burden? I think we heard earlier they spent over a hundred thousand dollars in expert fees to get these various issues analyzed. Is that what one would expect a homeowner to have to do when they move into a new home in a 55 and over community?

A. Absolutely not, but I think had there been more cooperation between the Township and the Homeowner's Association, I believe the Township would have done a great majority of that work other than what they've gone off on their own to do.

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

COMMISSIONER EDWARDS: Mr. Gerken, prior to this, I asked the building inspector if he has any suggestions about how we might be able to avoid the circumstances that have led us to two and a half, three years of acrimony between a
large group of homeowners in the community and the
community itself with reference to the inspections
and deficiency in the builder's construction of
their project.

Do you have any suggestions about
how, either now or later -- this is the first time
we've really heard from you about some of these
issues and either now or later you could let us
know how you feel about what might be done to
avoid these kinds of problems in the future. I
heard you say to some extent you're not getting
enough data from the homeowners and cooperation
from the homeowners. They claim they're not
getting enough data from you and from the town
with reference to this system. That is not a good
relationship to start with. So do you have any
suggestions for us that we may be able to grasp
hold of or take from this?

MR. GERKEN: I would be happy to
think about that and present you with some stuff.
As Ms. Gaal asked one question, I think there are
some holes out there where a homeowner might think
a certain inspection is being done and it might
not be, like if the homeowner with their
driveways, for instance, if they thought that
somebody was protecting them by a quality
assurance inspection of the driveway, I don't
believe that's being done. But there is this area
where the building inspector and his people more
concentrate in the building issue itself. Our
office as the Municipal Engineer concentrate on
what's the bonded items set up by the Municipal
Land Use Law. I think there are some gaps in
between those that could be somehow tightened up.

COMMISSIONER EDWARDS: Gaps like Mr. Kirk said he covered six feet away from the
building property; you claim you're inside the
curb. There is a big difference. There is a no
man's land in there that people are not accepting
responsibility for. I'm not as interested in that
part. Somebody used the driveway as an example.
Nobody is inspecting the driveway. No one
inspects the garage. We just learned that the
inspections don't cover the garage. I can build a
garage that's eight foot long, you can't fit a car
in, maybe not even a motorcycle, nobody is
inspecting that. There is a compartmentalization
here that I take care of this and he's taking care
of that; unless you fit into my cubbyhole, I don't
want to hear from you kind of mentality that

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exists and response for sure that exists. That
was your response; that was Mr. Kirk's response
and I just for one think that's a deplorable
circumstance for a government that is being relied
upon to provide quality construction in homes, to
provide assurances to homeowners, that's what the
Uniform Construction Code was written for, that's
what the Municipal Land Use Law was written for --
I was there when both were written and passed as
legislation. That was not the intent of them.
The intent was to assist and protect homeowners in
the community and sometimes I think we forget that
in our compartmentalization of what we do and
maybe there's some ways as a professional who
works in that compartmentalized world, you, Mr.
Kirk who was here before might get back to us with
some ways to stop compartmentalization and start
working for our objectives of what the statutes
asked for.

MR. GERKEN: And also, I think
another area is basically if there could be
somehow control onto the speed of developments and
the rampant construction crews working, if we
could somehow -- but I will put together some
comments and will submit it to the Commission.
COMMISSIONER EDWARDS: I'm not unmindful of the cost involved, the cost to the developers who pass it on to the homeowners and drive up the cost of real estate. And time is important. Speed of inspections is important on both sides. People want to move into the houses and developers want to get their houses complete. And we are kind of the people in the middle, the government, who have the responsibility to make sure that's done properly and with speed. So keep an eye on both of those. I don't want to be unmindful of either side of that.

COMMISSIONER FLICKER: Mr. Gerken, just so I'm clear, it was your responsibility or came under your jurisdiction to inspect the storm sewers in this development?

MR. GERKEN: Yes. We inspected the sanitary sewer, water main and storm sewer. All those pipes, in fact, there was over 86,000 feet of piping on the project with it, except for one minor sheer crack that Mr. Pierce mentioned with the sanitary sewer after all of our inspections were finished, I do not know of any other problems with any of those. The only ones that I know was with the storm drainage.
COMMISSIONER FLICKER: Now, with the storm drains, you made it sound like the problems we saw in the videotape are almost common, that they're one of the first items put in and given the other construction crews that are on site, one would almost anticipate that the storm drains would have this kind of damage?

MR. GERKEN: It is the thing that has the most vulnerability, yes, it is.

COMMISSIONER FLICKER: Then tell us did you do interim inspections?

MR. GERKEN: No, we did not on the entire system. We just did it if we saw areas where the soil was washing into the catch basin. Normally we would call Freehold Soil Conservation District, tell them help stop this erosion problem.

COMMISSIONER FLICKER: How often did you do that?

MR. GERKEN: That's done on a daily basis.

COMMISSIONER FLICKER: No. How often on this particular project did you call someone to say that you saw some problems?

MR. GERKEN: On the onset, I
personally called Freehold Soils and we had
several meetings with them right at the site.

COMMISSIONER FLICKER: So that
should be in your records that you're going to
turn over to Ms. Gaal?

MR. GERKEN: They have them already.

COMMISSIONER FLICKER: So that
should be documented?

MR. GERKEN: Yes. It was a meeting
between Brielle, Wall Township officials, Freehold
Soil Conservation District, ourselves.

COMMISSIONER FLICKER: If you know
that the storm sewers are this vulnerable and
these problems occur, why didn't you do more
interim inspections to ensure that this type of
damage wouldn't get worse?

MR. GERKEN: The problem is there is
numerous bulldozers, backhoes, heavy earth-movers
on a daily basis moving across all these systems.
We could do an inspection one day and the next day
the damage could have occurred and we'd have to
constantly be doing these inspections. We wait
until we get to a certain stage in the development
and then we know it was good at the point it was
installed. Then we go ahead and do what we call

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like a final inspection of the system.

COMMISSIONER FLICKER: And that has now been years, 10 years?

MR. GERKEN: No, no, no.

COMMISSIONER FLICKER: You still haven't done a final inspection, correct?

MR. GERKEN: We have done a final inspection, have issued a memorandum to the Township and developer on the storm drain system.

COMMISSIONER FLICKER: And that final inspection, did it pass?

MR. GERKEN: Absolutely not. It's like a 40 page document identifying all sorts of cracks, ruptures and that to be repaired and demand has been made on the developer to have it repaired.

COMMISSIONER FLICKER: But let me make sure I understand this. You do a preliminary inspection and between the preliminary and your final inspection, which in some instances can be years later, correct --

MR. GERKEN: Correct.

COMMISSIONER FLICKER: Between the preliminary and the final, you almost anticipate that there will be damage to this piping and
perhaps to others, correct?

MR. GERKEN: It can happen, yes.

COMMISSIONER FLICKER: And you still
go ahead and you issue certificates of occupancy
to homeowners to move in, is that correct?

MR. GERKEN: I do not issue any
certificate of occupancy.

COMMISSIONER FLICKER: You pass
whatever you have to pass which then allows a
certificate of occupancy to be issued?

MR. GERKEN: I turn in a document to
the Land Use office who then I guess, in turn,
does some paperwork with the Building Department
for issuance of the certificate of occupancy.

COMMISSIONER FLICKER: If you fail
or reject things based upon your inspection, they
have to be corrected in some instances before COs
can even be considered, correct?

MR. GERKEN: Certain items
pertaining to the lot itself. The improvements
are all covered by performance guarantees.

COMMISSIONER FLICKER: I'm not
talking about that. I'm just getting to the
basics that certificates of occupancy were all
issued in this community and now the homeowners
are still dealing with some conditions that may be life-threatening. I mean would you agree that the gas line going through the storm drain could have been catastrophic if that hadn't been picked up?

MR. GERKEN: Oh, absolutely.

COMMISSIONER FLICKER: Was that picked up by you and your inspectors?

MR. GERKEN: No. We weren't even present -- we don't inspect any of the gas main installations or the service into the house or to the gas main coming into the house at all. We don't do any of those inspections.

COMMISSIONER FLICKER: So if the homeowners had not hired their own inspector, this would not have been discovered, is that correct?

MR. GERKEN: At that time, it would not have been picked up. Hopefully, we would have picked it up at the time of our final inspection.

COMMISSIONER FLICKER: The sink holes, would that have been something that you would have been responsible for inspecting?

MR. GERKEN: Some of it was caused by items we inspected and some was not caused by items we inspected.

COMMISSIONER FLICKER: Some that
were caused by items you inspected, that wouldall within your area of responsibility?

MR. GERKEN: Correct.

COMMISSIONER FLICKER: How many sink
holes did you uncover?

MR. GERKEN: When the sink holes
appeared at the site and we responded to get them
corrected.

COMMISSIONER FLICKER: How many were
there?

MR. GERKEN: I'm aware of about a
half a dozen.

COMMISSIONER FLICKER: Do you
perform interim inspections on any of these pipes
and lines after your preliminary inspection is
done?

MR. GERKEN: Storm drainage or the
other pipes, too?

COMMISSIONER FLICKER: I'd say all
of them.

MR. GERKEN: On the sanitary sewer
lines, once they're installed and the contractor
feels that they are complete, we do a pressure
test on the sewer lines which is an air test which
many of those failed at a certain time, many
didn't. We also do a mandril test which is pulling an object through the pipe.

For the water main system, we do a pressure test and then there is a bacterial test done. Once the water main system is complete and is operational, we do not do any more testing on it. Same thing with the sanitary sewer lines.

COMMISSIONER FLICKER: How long were you the municipal inspector for the Township of Wall?

MR. GERKEN: I'm the Municipal Engineer and I've been since 1988.

COMMISSIONER FLICKER: To today?

MR. GERKEN: Correct.

COMMISSIONER FLICKER: You are the municipal inspector -- I'm sorry, engineer, for the Township of Wall as of today?

MR. GERKEN: Yes, I am.

COMMISSIONER FLICKER: So you spanned the entire project?

MR. GERKEN: Yes.

COMMISSIONER FLICKER: Are you a Municipal Engineer for any other townships?

MR. GERKEN: Yes, I am.

COMMISSIONER FLICKER: What other
MR. GERKEN: The Township of Colts Neck and the Township of Upper Freehold.

COMMISSIONER FLICKER: And you are a direct employee of those townships? You're not a consultant?

MR. GERKEN: No, no. I thought I cleared that up in the beginning. I am a consultant. I am not on a direct salary or paid a retainage, any fee. I am hired by, back at this point, Bay Point Engineering and I draw a salary from that company.

COMMISSIONER FLICKER: Were you ever the direct employee of any of those townships?

MR. GERKEN: Never have been in my life.

COMMISSIONER FLICKER: I have nothing else.

COMMISSIONER MARINELLO: What part of the on site inspection process that Bay Point was involved in at this project is an engineer required to review? In other words, we already spoke about Mr. Boyan's involvement and he's not a licensed engineer. Is there any other part of this process, be it the storm drains, the streets,
the sidewalks, what part of it do you feel an actual licensed engineer is necessary to be inspecting?

MR. GERKEN: I don't feel a licensed engineer has to inspect any of those items, but he must have qualified personnel in the field with it and have knowledge and review the work that's being done because ultimately I have to sign off with the municipality that it's acceptable for them to, in the end, to release these performance guarantees.

COMMISSIONER MARINELLO: So at the time that the final inspection is to be done on this location, would it be safe to say that your company would send out people who are not licensed engineers to do the type of work that would be necessary at that time?

MR. GERKEN: Underneath my direction, correct.

COMMISSIONER MARINELLO: Okay.

MR. GERKEN: Of course, one of them could be licensed, but there's no requirement that they would have to be.

COMMISSIONER MARINELLO: Well, when you say there's no requirement, who would set the
requirement? I mean you say there's no
requirement. You're choosing to send who you send
as any business would choose to do. There's no --
what you're saying is there is no statutory
requirement or code requirement that a licensed
engineer do this work?

MR. GERKEN: Correct.

COMMISSIONER MARINELLO: Is it your
understanding that the people who employ Bay Point
and now Shore DePalma, in other words, the
municipalities themselves, understand the people
that you send out to do these inspections are not
licensed engineers?

MR. GERKEN: I'm quite certain they
understand that.

COMMISSIONER MARINELLO: How would
they know that?

MR. GERKEN: Because the people do
not represent themselves to be licensed engineers.
They never sign off on it. I advise them that
they're not.

COMMISSIONER MARINELLO: You advise
them that they're not?

MR. GERKEN: Yes.

COMMISSIONER MARINELLO: How does
that take place?

MR. GERKEN: For example, in a certain town, we try to have a certain inspector handle work there for familiarity with the projects going on. I introduce them to like the business administrator and then advise that, you know, they are my inspector out in the field and they're not licensed personnel.

COMMISSIONER MARINELLO: There's --

MR. GERKEN: In fact, even on our billing classifications, we have classifications for inspectors and various categories. One of them is like a principal engineer, so forth, so they do not even have titles that would relate to an engineer.

COMMISSIONER MARINELLO: I think my concern is maybe more of a comment than a question. I think people in Wall Township and I think other municipalities where this goes on and even probably the council people and trustees who vote on your bills assume when they get a bill from Bay Point Engineering for a review of the work that's been done at these locations that a licensed engineer has done that work. I'm not saying that there is a requirement of that, but I
think the assumption is that someone with the proper licenses has done this work. Do you agree with me?

MR. GERKEN: I don't really think so. I think they know it's been done under the supervision and direction of a licensed engineer, but not necessarily done by a licensed engineer.

COMMISSIONER MARINELLO: I can't get away from the fact that it troubles me to think that this work is being done, there's no engineer on site, the bills are being submitted by an engineering firm and I'm going to buy a home based on the fact that I know that a Municipal Engineer has reviewed it and okayed it, but, in fact -- now, it may be that you found a very qualified person to do this work and that person went out and did this work, but I am relying on the engineer to do it as the home buyer or the citizen of the town. I'm not relying on somebody the engineer used discretion upon who he hired. Do you see the distinction?

MR. GERKEN: Yes.

COMMISSIONER MARINELLO: You don't think the average person who bought in this development or any development, for that matter,
assumes that a licensed engineer reviewed this work and said it was okay?

       MR. GERKEN: Reviewed it or inspected it?

COMMISSIONER MARINELLO: Inspected it. You reviewed -- what you're telling me is you review the inspections?

       MR. GERKEN: Correct.

COMMISSIONER MARINELLO: Which is a piece of paper --

       MR. GERKEN: And speak with that person on any questions that might arise.

COMMISSIONER MARINELLO: But if you got a report back from the person who did the inspection and said everything was okay, under normal circumstances you wouldn't have anything to discuss with that individual?

       MR. GERKEN: No. I would check with them that -- I would normally have a conversation with them and say yes, you were at that lot, everything is okay like you put on your sheet of paper and then I would sign off on it.

COMMISSIONER MARINELLO: I don't have anything further.

CHAIRMAN SCHILLER: Mr. Gerken, you
fill the role of Township Engineer at Wall Township, correct?

MR. GERKEN: Correct.

CHAIRMAN SCHILLER: And how does Bay Point get selected or who decided Bay Point should be selected to do the inspections for the infrastructure?

MR. GERKEN: I have an annual contract with Wall Township of which myself and the personnel of Bay Point Engineering are covered in that contract.

CHAIRMAN SCHILLER: I understand that, but this is work over and above your standard Township engineering, is that correct?

MR. GERKEN: No, it's not. This is all part of --

CHAIRMAN SCHILLER: It's part of your contract?

MR. GERKEN: Yes.

CHAIRMAN SCHILLER: But isn't there a statutory role that the Township Engineer plays over and above and separate and apart from these inspections? You could hire another firm, for instance?

MR. GERKEN: They could hire another
firm.

CHAIRMAN SCHILLER: And for the outside work, you got a percentage of the performance bonds?

MR. GERKEN: Our company bills on an hourly basis based on the actual hours utilized on the project.

CHAIRMAN SCHILLER: Is that what happened here at this project?

MR. GERKEN: Yes. There is an escrow account set up based on the Municipal Land Use Law with the Township. We bill and they pay out of that escrow account.

CHAIRMAN SCHILLER: And that escrow account is calculated upon a performance bond or percentage of it?

MR. GERKEN: Yes. I believe it's five percent of the estimated cost of construction.

CHAIRMAN SCHILLER: And you said you so far have released certain amounts of the performance bond or certain things that were covered under the performance bonds?

MR. GERKEN: None of the bonds have been released. They've been reduced.
CHAIRMAN SCHILLER: What are they at now?

MR. GERKEN: They're at 30 percent of what the original bond was.

CHAIRMAN SCHILLER: What is that amount?

MR. GERKEN: The last one I saw was approximately five million dollars, slightly less.

CHAIRMAN SCHILLER: So that would be sufficient enough to cover the work that needs to be done on the infrastructure?

MR. GERKEN: Yes, in my opinion.

CHAIRMAN SCHILLER: And it would be your role to release that at an appropriate time or accept the work that's being done?

MR. GERKEN: It would be my role to accept it and make a recommendation to the governing body which they, by resolution, would have to release it. At that point in time, though, there would be a two year maintenance guarantee which would be employed which would be roughly a two million dollar separate bond which would go on for another two years after the performance guarantee is released.

CHAIRMAN SCHILLER: So your firm
MR. GERKEN: Myself as the Township Engineer will be making a recommendation to the Township at a certain point in time.

CHAIRMAN SCHILLER: And you're relying on what your firm is recommending to you?

MR. GERKEN: No. The people who work directly under my responsible charge report to me and my going over all of the items remaining to be completed.

CHAIRMAN SCHILLER: When you asked the developer to do the robot videos of the storm sewer, when was that?

MR. GERKEN: Probably a year ago.

CHAIRMAN SCHILLER: And I believe that the homeowners said that they had done the original one in the beginning of 2000 so we're in 2003 now. So that would have been about a year and a half after they commenced their investigation?

MR. GERKEN: Probably about a year after. I think it was roughly about a year, when we finally came to the realization that they
weren't going to release anything to us.

CHAIRMAN SCHILLER: They didn't have any obligation to do that.

MR. GERKEN: I know.

CHAIRMAN SCHILLER: Isn't it your job to do exactly what they're asking, to go do the inspections?

MR. GERKEN: It's my job to do the inspections.

CHAIRMAN SCHILLER: And make sure they are done correctly?

MR. GERKEN: Correct.

CHAIRMAN SCHILLER: And this is not an uncommon thing to do to ask a developer to put a robot down there, is it?

MR. GERKEN: Normally in a storm drain system it's not done often.

CHAIRMAN SCHILLER: Even on large systems it's not done that often?

MR. GERKEN: On storm drains? No.

CHAIRMAN SCHILLER: In Jersey City we do them all the time before we allow anything to be turned over. It would be just common sense to do that. You don't have to pay for it, do you? The developer pays for it, doesn't it?
MR. GERKEN: He would.

CHAIRMAN SCHILLER: So it's nothing for you to demand for the protection of the homeowners and for this particular Homeowner's Association to demand that that be done; in fact, you could do that routinely, couldn't you?

MR. GERKEN: I guess I could.

CHAIRMAN SCHILLER: And isn't that really what your role is to protect the Township and the homeowners, the residents of that town, not to worry about the developer?

MR. GERKEN: Oh, no. Absolutely it's not to worry about the developer. It's to protect the homeowner and the Township, absolutely. And that's what we do.

CHAIRMAN SCHILLER: So, therefore, you should be really their ally and that's what I think we're basically coming to is that the Township and the city people have to be the allies of the homeowners to protect the people who can't protect themselves and don't have a vehicle to do that and that's what these hearings are all about. In this instance, it seems to me it was a response, not an initiative on the part of the members of Wall Township as to protecting the
homeowners and that's what is really the crying
shame here, that it should have been initiated by
the government people, not by the homeowners to
protect their rights and that's what's concerning
us and that's what is concerning me in particular
because many of these things could have been done
all along and you as an engineer, as a supervising
engineer in a town knew that you could have
demanded that at any time and you didn't have to
rely on the information coming from the homeowners
and for you to categorize them as not sharing with
you is absolutely offensive to me.

(Applause.)

CHAIRMAN SCHILLER: I'm sorry but I
just feel that way and I have no further
questions.

COMMISSIONER FLICKER: Could we have
Exhibit 222 back on the screen. Is it on the
screen?

Mr. Gerken, three lines from the
bottom or four lines from the bottom, there is a
space there for unacceptable items covered by
bond.

MR. GERKEN: Yes.

COMMISSIONER FLICKER: That, of
course, would include anything found in the storm
drain?

MR. GERKEN: No, it would include
just the items shown on here, curbing or sidewalk
or aprons.

COMMISSIONER FLICKER: So that
wouldn't deal with the storm drain?

MR. GERKEN: No.

COMMISSIONER FLICKER: When the
storm drain -- I keep going back to the storm
drain because we saw that video and I know that
you told us that big pieces of earth-moving
equipment could crack it and there could be damage
to it while it was -- while other things were
being built. It's hard for me to believe, though,
that once that storm drain is in place someone
walked into the storm drain without the rungs on
the manhole covers being there and put a piece of
Styrofoam into a crack that was there.

Now, would that be an acceptable
condition for that storm drain, Styrofoam?

MR. GERKEN: No. In fact, it looked
to me like that was put from the outside, not the
inside of the pipe.

COMMISSIONER FLICKER: How about the
rungs on the manhole?  Shouldn't that have been
uncovered in an initial inspection?

MR. GERKEN: Yes. But with the
checks and balances that would have been picked
up, if it was missed on the initial one, when we
did our final inspection.

COMMISSIONER FLICKER: Well, you
keep talking about the final one. The initial
inspection had to be sometime before '97?

MR. GERKEN: No, that's not correct.
It probably was during '97, '98.

COMMISSIONER FLICKER: Well, we have
this document in front of us. 222 has a date of
10-23-97. That would have been before the storm
drain?

MR. GERKEN: The storm drain would
have been done for this particular section. There
was five sections in the development with it and
they were constructed section by section.

COMMISSIONER FLICKER: Did you as
the Township Engineer get individual complaints
given to you by homeowners during the six years
between 1997 and today?

MR. GERKEN: There were several
complaints of which we responded to, correct.
COMMISSIONER FLICKER: Did you note those? Are they in your file?

MR. GERKEN: Most of the complaints would have went to Thomas Boyan who would have responded to them at that time.

COMMISSIONER FLICKER: Did you put them in your file? Were they documented?

MR. GERKEN: I would have to take a look. I hope so.

COMMISSIONER FLICKER: And as the Chair pointed out, the homeowners have no obligation to provide you with copies of the work product that they had put together but I want to know did you go to the Homeowner's Association and say I want to know what you've done because we want to work together?

MR. GERKEN: The Township --

COMMISSIONER FLICKER: No, not the Township.

MR. GERKEN: -- and myself have made requests to get information from them which they did not. It became an obvious point where they were not going to -- there was not going to be any cooperation between them and us.

COMMISSIONER FLICKER: One has to
presume that the residents of this particular
community felt that you had become less than
cooporative with them, correct?

MR. GERKEN: Yes.

COMMISSIONER FLICKER: Do you think
it might be that they felt that the inspections
done by you and the people working for you were
less than satisfactory?

MR. GERKEN: I don't know.

COMMISSIONER FLICKER: Do you think
it's obvious that they felt that even if they
brought their complaints to you, you wouldn't have
done anything about it?

MR. GERKEN: I don't think so

because any complaints that did come directly to
us, we did look into it.

COMMISSIONER FLICKER: You said the
storm drain was done section by section?

MR. GERKEN: Yes. There was five
sections on the project.

COMMISSIONER FLICKER: Could there
have been any repairs done section by section?

MR. GERKEN: Could be.

COMMISSIONER FLICKER: Have there
been any repairs done?
MR. GERKEN: We've been trying to get the developer to the site to do the repair work for several years now and they have not responded.

COMMISSIONER FLICKER: So that the developer has not responded to your requests, is that what you're saying?

MR. GERKEN: And to the Township's requests.

COMMISSIONER FLICKER: And what actions have you taken because of that?

MR. GERKEN: I've had meetings with the administrator and the attorney for the Township explaining to them the work and the lack of progress and there are ongoing meetings now involving that as well.

COMMISSIONER FLICKER: And at what point do you act on the bond?

MR. GERKEN: A bond action does not take place unless there is a request by the developer to have a reduction or release of that performance.

COMMISSIONER FLICKER: Haven't there been releases all along?

MR. GERKEN: No, there's not been
releases at all. There's been reductions.

Everything is still covered by that five million dollars. It's not one specific item specifically is covered and another is not.

CHAIRMAN SCHILLER: I believe what the Commissioner is asking you is why can't you act on the bond yourself to call the bond and pay for the work to be done and at what point do you do that?

MR. GERKEN: I have to talk with the Township Administrator and attorney. It's up to them to --

CHAIRMAN SCHILLER: Would you do that and let's see if we can get some action on that? Why can't you call the bond in and see about getting some work done?

MR. GERKEN: As of the last meeting we had with the Township a month ago, the developer was told by the Township that they were going to be given a final list. If they didn't have a schedule or response to get it done, they were going to do exactly that.

CHAIRMAN SCHILLER: Thank you very much, Mr. Gerken.

We're going to take a break and
we'll resume with Mr. Wadja if we could in 45 minutes, so we'll be back here at quarter after 2:00.

(Luncheon recess taken at 1:25 p.m.)

(Resumed at 2:17 p.m.)

CHAIRMAN SCHILLER: Good afternoon, ladies and gentlemen. Please be seated.

COMMISSIONER EDWARDS: Good afternoon. Thank you for your patience as we try to fit in a very crowded agenda today. We all appreciate your patience in doing that.

One of the most troubling themes to emerge in the investigation is the inability or unwillingness of appropriate agencies of government to respond to the needs of citizens in a timely, productive fashion. Where do you go if a builder or inspector leaves you holding the bag in your own home, no less, for repeated code violations or problems? What recourse do you have if your new house is falling apart or the contractor assigned to do the remedial work is the same one that caused the problem in the first place? How much do people have to put up with before they get some satisfaction and how long should that take?
This afternoon we'll hear from a range of witnesses who will describe some more of the bureaucratic problems awaiting those who try to get answers to questions like these.

In some instances the wronged homeowner himself, at his own expense, had to show the code violations or problems existed before the appropriate agency would intervene and take some action.

In others, the failure of the municipal inspectors to detect code violations during the construction process were treated instead like failures by the homeowner, not by the local government.

The testimony to be presented here this afternoon is an important extension of what we've already heard earlier and is designed to reinforce the need for fundamental change and, Mr. Chairman, I would ask you to call the first witness.

MS. GAAL: John Wadja.

JOHN WADJA, sworn.

BY MS. GAAL:

Q. Would you please state your name and address, please, for the record?
A. John Wadja, 309 North Garden Boulevard, Edgewater Park, New Jersey.

Q. Thank you. And what is your present occupation?
   A. I'm a construction superintendent for a developer.
   Q. In the past, did you work for a large builder?
      A. Yes, I have.
      Q. And who was that?
      A. HovSons.
      Q. Do you remember when it was that you worked there?
      Q. And what position did you hold at HovSons?
      A. Construction superintendent.
      Q. As a construction superintendent, what were your duties?
      A. I was responsible for building the houses, dealing with building inspectors, dealing with homeowners, all those issues.
      Q. Was it sort of a nuts to bolts sort of thing?
      A. Yes.
Q. Now, did you work as the construction superintendent at a development known as Holiday City at Monroe?
A. Yes, I did.
Q. And in what county is that?
A. Gloucester County.
Q. When you started to work at that project, was it already under construction?
A. Yes, it was.
Q. Can you give us generally an idea of how much of it had been constructed when you came on board?
A. I would say a third.
Q. And were you given any instructions from your employer as to what you were to get done there?
A. No. He basically threw me in there and said build the houses.
Q. Had you ever done that before?
A. I was the construction superintendent for another company, yes.
Q. In general, how long does it typically take to build a house like those that were being constructed at Holiday City in Monroe in your position?
Q. Now, did HovSons utilize its own employees to build those houses or did it use subcontractors?

A. All subcontractors.

Q. All subcontractors?

A. Yes.

Q. None of them were their own employees?

A. No.

Q. Did you encounter any particular problem or problems during the construction of that project, any particular thing that stands out in your mind as caused some concerns?

A. Just lack of help with the contractors.

Q. And what do you mean by lack of help?

A. They wouldn't -- they weren't helpful to me at all. They just didn't produce.

Q. Can you give us in your opinion why didn't they produce?

A. Lack of pay.

Q. Lack of pay? Did they complain to you about that?
A. Yes, daily.

Q. The workers did?

A. Yes.

Q. How would you characterize their skill level?

A. They were skilled.

Q. Now, was there any problem on that site with water, ground water?

A. Yes.

Q. What was the problem?

A. There was standing water on the site. Homeowner's basements or crawl spaces had standing water all the time.

Q. Was that an issue that impacted the construction?

A. Standing water in crawl spaces?

Yes, it did.

Q. Had you ever encountered anything like that before?

A. No, I hadn't.

Q. Did you have a plan or did anyone give you a plan as to how you were supposed to deal with all that ground water?

A. No one gave me any plans at all.

Q. Just keep building the houses?
A. Yes.

Q. Did you have to do any extra work to facilitate the run-off or to try to deal with that water?

A. Everything was built per plan. I don't know if the plans were right, but everything was built per plan and we didn't do anything to change the plan.

Q. I need to ask you a couple questions then. What you are saying then, the plan didn't deal with the water or the plan did deal with the water?

A. The plan dealt with the water. There were different elevations on the plan that the water was supposed to go this way and that way and the drawings were bad.

Q. Was there any flexibility in things once you saw that the water didn't go the way you expected it to go?

A. There wasn't much flexibility because the houses were so close together and the water table was so high there that the water didn't have a chance to run anywhere.

Q. Now, as part of your job did you arrange for inspections from the local code...
office?

Q. And how would you go about doing that?

A. I would make a phone call and say we were ready for a framing inspection or a plumbing inspection, electrical, whatever needed to be done.

Q. And did they come out and do it?

A. Yes.

Q. Did they do their inspections on a timely basis?

A. Yes.

Q. Did you ever have anybody ask you what inspections you were going to do that week and basically hand you the tickets or the stickers?

A. I had that happen, yes.

Q. Tell us about that. What happened?

A. I would be on the site and the building inspector would say to me how many foundation inspections are you going to have today? And I would say, you know, how many we needed for that week and he would say okay, don't put the sticker on until the foundation is done.
Q. And did he do the inspections to your knowledge?
A. I don't know.
Q. Did you put the stickers on when the foundation was done?
A. Yes, I did.
Q. So he would give you their own stickers and you would affix them to the building?
A. That's correct.
Q. How many times did something like that happen?
A. It happened on a daily basis.
Q. On a daily basis?
A. Yes.
Q. What particular inspections were covered that way? Was it all of them or just --
A. The building inspector did that quite a bit. He was pretty much the only inspector who did that.
Q. Now, what was his name?
A. The building inspector was Lou --
Q. DeSalvatore?
A. Yes, Lou DeSalvatore, that's correct.
Q. How about in the electrical area?
Did anything like that occur in connection with the electrical panels?

A. Not to my knowledge.

Q. Did you ever have occasion where you needed to get a CO, you knew there was a closing scheduled and you had to call the local office for a rush inspection or a rush CO?

A. Every one.

Q. Every one? And how was that handled?

A. I would call them and say I need you to do an inspection and the building inspector would say all the inspections aren't complete. So the people would just move in without inspections.

Q. People moved in without inspections?

A. Yes.

Q. Now, were you rushed from your employer's end?

A. Yes.

Q. Describe that for us.

A. The end of the year -- the year's end was in January and one particular case I can remember trying to close 50 homes, up to 50 homes in the month of January and that's unheard of.

Q. You were supposed to close 50 homes
in January?

A. Around about that number, yes.

Q. Was January 31st the end of their fiscal year?

A. Yes.

Q. And at what stage were those homes when you were told you have to get 50 done that month?

A. Some of them were foundation only.

Q. Were you under regular pressure in this area from your employer, daily pressure?

A. Daily.

Q. Did you have disagreements about it, arguments about it?

A. No. I wasn't the argumentative type. I was a young guy, I had a job and I was trying to get it done.

Q. How old were you then?

A. Thirty -- 29, 30.

Q. Did you feel that your job was on the line if you didn't get it done?

A. Yes.

Q. Were you told the closing dates in advance?

A. Yes.
PUBLIC HEARING

Q. How early in the completion of a home did you know when the closing date was?
A. I would receive a package from the sales department and in that package there would be a date. Usually 60 days.

Q. Sixty days before --
A. They were supposed to close.
Q. You knew the date?
A. Yes.
Q. Did you get flexibility in making that date?
A. No.
Q. You had to make that closing date?
A. Yes.
Q. Did anyone explain to you why they needed all these closings in the month of January?
A. Just that they needed to make their numbers for the fiscal year.
Q. For the fiscal year?
A. Yes.
Q. What did you do to achieve some of those deadlines?
A. I did whatever I had to do. I mean I did whatever I could. At some point people needed to move in. I forged COs so people could
move in.

Q. And why did you do it? Can you give us a little more information?

A. I did it because I was in fear of my job, losing my job.

Q. And did anybody at your employer direct you to do that?

A. No.

Q. Did you think they knew what you were doing?

A. I believe so.

Q. And why do you say that?

A. Because it was never -- no one ever questioned me about it.

Q. Do you remember how many COs you forged?

A. I don't remember how many.

Q. Did you try to get inspections of those homes before you forged the COs?

A. In some cases, yes.

Q. And what happened?

A. They just weren't ready. The inspector would come out and the electrical wasn't ready, but I always called them in.

Q. You called them in?
A. Yes.

Q. You tried?
A. Yes.

Q. And did you tell anyone at your employer that this house isn't ready yet?
A. Yes.

Q. And what were they saying?
A. Do whatever you have to do to get them in.

Q. Did the mortgage companies that were involved require the original COs?
A. The majority of them -- homeowners didn't have mortgages from what I remember. They would go to the sales department and do their closing right at our sales office. I'd say probably 10 percent had mortgages.

Q. The majority of the homeowners you say did not have mortgages. Do you recall the type of homeowners that were moving into that development?
A. They were retirement families.

Q. Were they often people that maybe had sold another home?
A. Yes.

Q. So they had cash?
A. I don't know what they had. I mean -- maybe.

Q. But there were no mortgage companies involved?

A. No.

Q. At some point it was discovered that you had forged the COs, is that right?

A. That's correct.

Q. Were you still working for HovSons at the time?

A. No, I wasn't.

Q. Why did you leave?

A. Someone had offered me another position at another company.

Q. Was there any issue with respect to the stress or your family or anything?

A. No, not at that time.

MS. GAAL: That's all I have.

COMMISSIONER MARINELLO: Did the Township, did anyone in the code office, the construction code office have any idea that you were forging these COs?

MR. WADJA: I don't believe so.

COMMISSIONER MARINELLO: And what makes you think if there is anything specific that
your supervisor knew that you were forging the
COs? Is it just a practical issue that no one
could complete that many homes in that little
time?

MR. WADJA: That's correct.

COMMISSIONER MARINELLO: When he
said or someone said to you do whatever you have
to do to get it done, did you take that impliedly
to mean if you have to forge the COs, forge them?

MR. WADJA: I did because I was
under pressure to get the houses done, so I did
whatever I had to do.

COMMISSIONER MARINELLO: How did you
actually forge the COs?

MR. WADJA: I would just make a
mimeograph copy of a previous one and sign the
name of the building sub-code official on the
bottom of it.

COMMISSIONER FLICKER: What were the
condition of the houses that you gave COs to?

MR. WADJA: They were move in
condition, but I wouldn't have moved into them.

COMMISSIONER FLICKER: What were
some of the problems in some of those houses?

MR. WADJA: Some of them -- like the
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finals -- plumbing finals weren't done. Some of them were missing toilets. The floors weren't put in, painting wasn't complete.

COMMISSIONER FLICKER: What was the reaction of some of the homeowners after they did move in, what action did they take?

MR. WADJA: They were at my construction trailer daily and I could only do what I could do. I mean I was one person. I had a helper there sometimes, but he couldn't do what was required.

COMMISSIONER FLICKER: Did homeowners take to putting signs on their own lawns?

MR. WADJA: Yes.

COMMISSIONER FLICKER: Would you explain that?

MR. WADJA: Giant lemons were attached to their houses or on their front yards.

COMMISSIONER FLICKER: Did the developer, the head of the company for whom you worked, ever come to the site?

MR. WADJA: He was responsible -- he was supposed to come on Thursdays. He would come one Thursday a month, if, in fact, he even came.
one Thursday a month.

COMMISSIONER FLICKER: How long in total did you work for this company?

MR. WADJA: Over two years.

COMMISSIONER FLICKER: Did you ever talk to the head of the company about the forged COs?

MR. WADJA: No, I didn't.

COMMISSIONER FLICKER: Thank you.

COMMISSIONER EDWARDS: Real quickly, we have a group of homes that were built that were poorly designed, poorly constructed, not inspected and no formal COs were granted. And the building inspector got his salary, the builder who sold them all, he got his money, you got paid your salary or all your workers got paid and the only people who wound up with the short end of the stick are the people with the lemons that were sitting on their lawns and their only recourse at that point was to put signs up and they wound up with literally houses that were lemons.

Is that the sum total of this? I mean the whole system failed them? Nothing in this system was there to protect them and they were the only people who wound up getting the
short end of the stick in the final analysis? Is that accurate?

           MR. WADJA: I agree, yes.

           CHAIRMAN SCHILLER: I just wanted to thank you for your candidness here and just so that we understand that you admitted to doing the forged certificates of occupancy, didn't you, sir?

           MR. WADJA: That's correct.

           CHAIRMAN SCHILLER: And you paid for that in terms of a punishment from the criminal justice system?

           MR. WADJA: That's correct.

           CHAIRMAN SCHILLER: So we appreciate your coming in and being so candid with us now and I think Mr. Edwards put it very well, it was just a total breakdown of the system which is very apparent here and your indication on that is going to be a big help in helping to resolve the bigger problems.

           MR. WADJA: Whatever it takes.

           COMMISSIONER MARINELLO: I just have one follow up on that particular point.

           You said that you're currently working as a construction supervisor for another company?
MR. WADJA: That's correct.

COMMISSIONER MARINELLO: What was the result of the proceedings -- were you put on probation?

MR. WADJA: Yes.

COMMISSIONER MARINELLO: Was that like a PTI probation?

MR. WADJA: Yes.

COMMISSIONER MARINELLO: So as you sit here today, the probationary period is over and you don't have any criminal record to speak of because it was -- it came under PTI?

MR. WADJA: That's correct.

COMMISSIONER MARINELLO: Did your current employer ask you when you applied for this job or any other employer when you applied for any other job whether you had a criminal record?

MR. WADJA: Yes, they did.

COMMISSIONER MARINELLO: And you were able to answer that question?

MR. WADJA: That's correct.

COMMISSIONER MARINELLO: That you didn't have a criminal record?

MR. WADJA: I did answer it that I have a criminal record in the past.
COMMISSIONER MARINELLO: Oh, you did?
MR. WADJA: Yes, I did.
COMMISSIONER MARINELLO: I have nothing further.
CHAIRMAN SCHILLER: Thank you very much. We appreciate you coming in.
(Applause.)
MS. GAAL: Next is a panel comprised of Gary Baldino, Michael DePalma and Edward O'Neill.
Gary Baldino, Michael De Palma and Edward O'Neill, sworn.
MS. GAAL: You may be seated.
We'll start with Mr. Baldino. May we have your name, please, and your address?
MR. BALDINO: My name is Gary Anthony Baldino. 523 St. Martin Court, Williamstown, New Jersey, 08094.
MS. GAAL: What is the name of the development in which you reside?
MR. BALDINO: Holiday City at Monroe.
MS. GAAL: Are there age restrictions in that?
MR. BALDINO: Yes, it's 55. It's an adult community, 55 and over.

MS. GAAL: When did you purchase your home?

MR. BALDINO: I purchased my home on February 27th, 1998.

MS. GAAL: And who was your builder?

MR. BALDINO: HovSons, Hovnanian Corporation.

MS. GAAL: What did you pay for it?

MR. BALDINO: I paid $125,000 for my home.

MS. GAAL: Mr. DePalma, may we have your name?

MR. DE PALMA: Michael DePalma. Do you want my address?

MS. GAAL: Go ahead.

MR. DE PALMA: 135 Center Street, Blackwood, New Jersey, 08037.

MS. GAAL: By whom are you employed?

MR. DE PALMA: Monroe Township.

MS. GAAL: What is your position there?

MR. DE PALMA: Construction Official.
MS. GAAL: How long have you worked for Monroe Township as the Construction Official?

MR. DE PALMA: Two years and four months.

MS. GAAL: What licenses do you hold?


MS. GAAL: Prior to working in Monroe, where did you work?

MR. DE PALMA: Ocean City.

MS. GAAL: Same --

MR. DE PALMA: Construction Official.

MS. GAAL: And Mr. O'Neill, may we have your name?

MR. O'NEILL: Edward O'Neill, 2135 Tremont Avenue, Atco, New Jersey.

MS. GAAL: And by whom are you employed?

MR. O'NEILL: Monroe Township as the Building Sub-Code Official and the licenses I have are Building HVAC Inspector, Construction Code Official, Sub-Code Official and Electrical
Inspector.

MS. GAAL: How long have you worked for Monroe?

MR. O'NEILL: It will be three years in April.

MS. GAAL: And prior to that, where did you work?

MR. O'NEILL: Full time for -- I didn't work full time for anyone as an inspector.

MS. GAAL: Mr. Baldino, do you have some problems with your home?

MR. BALDINO: Many.

MS. GAAL: When did you first discover that you had problems?

MR. BALDINO: Well, on the walk-through when we first bought the home.

MS. GAAL: So the walk-through at closing time?

MR. BALDINO: Yes, closing time.

MS. GAAL: And if you could, and I know you want to tell us a lot, but I'm going to ask you to summarize the problems, just give us a summary of the problems you saw at your home.

MR. BALDINO: First of all, I had problems ranging from broken glass, I had problems

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with the trusses, with doors not closing properly, paint not being painted properly, areas of that nature, of course, nail pops, cracks, floors that squeaked. These are the minor things.

MS. GAAL: How about some of the major ones?

MR. BALDINO: The major ones right now that we know are trusses that were out of Uniform Construction Code. The trusses that were supposed to be put in there and supposed to be inspected were out of code. Plus, the water situation is devastating in that community as already noted and, of course, other problems envisioned concerning the actual landscape, the actual drainage and numerous other problems.

MS. GAAL: Have you had such things as loose shingles, loose siding?

MR. BALDINO: I had that problem, too. I had shingles on the roof, siding. Also, we notated the straps in the crawl space were not sufficient. There was anchor straps plus shims. When they shimmed my home up, after they did and when they corrected it, they actually cracked my walls inside my house when they jacked my house up to correct the shim problem. That's when it goes
in between the actual, I guess, construction, the
baluster and the board and they have -- they
weren't in there. So basically, when they did
come in and they did the job, they actually
cracked my walls. That's still there. The
cracked walls still have not been repaired.

So these are only a few things but,
as I said, I just want to notate something here.
I'm only speaking for myself and I know that
there's other individuals in my group. In fact,
could I just have them raise their hands?

MS. GAAL: Not at this point.

MR. BALDINO: I just want to make
sure that you know that other people should be
here speaking on my -- I'm not the only one
because you're only going to get my point of view,
but you should get the point of view of all the
residents.

MS. GAAL: At this point we're going
to question you and expect that you are here as
the representative of the others, also.

Did you bring the problems that you
found to your builder when you first found them?

MR. BALDINO: Yes, we did.

MS. GAAL: Was that around closing
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time?

MR. BALDINO: Yes.

MS. GAAL: Did you develop some sort of a punch list?

MR. BALDINO: Yes, we did.

MS. GAAL: And what was the builder's response to you as a homeowner when you brought those things to his or her attention?

MR. BALDINO: Well, when I first saw him, he said we are going to get to those problems as soon as we can. Now, it's five years later and I still have them, so you could deduce right there what the story is.

MS. GAAL: But in the beginning, they said we're going to take care of your problems and -- you have to answer. You nodded. You have to say yes.

MR. BALDINO: Yes.

MS. GAAL: And as a result of those assurances, did you proceed to closing?

MR. BALDINO: Yes, I did.

MS. GAAL: Because you thought they would take care of them?

MR. BALDINO: I thought they were a reputable builder. I though he was a quality
builder. It's been stated recently in the papers, as of Saturday and Sunday's Inquirer. He's the largest builder in the State of New Jersey.

MS. GAAL: Were there occasions or attempts made by the builder to rectify the problems in your home? Did they come in and make some attempt to rectify some of the problems?

MR. BALDINO: They attempted to rectify some of the problems, but most of the problems were more like a lackadaisical effort, more administrative procedures. They also, as far as I'm concerned, they didn't really take an interest to them at all. In other words, we're just another person, another $120,000. In other words, I think it's a bait and switch. In other words, we paid good money for our homes. We were given counterfeit homes. We paid United States dollars, but what they gave us was counterfeit.

MS. GAAL: Did there come a point in time when you realized that you were not alone, that some of your neighbors also had problems?

MR. BALDINO: Oh, this was a -- this is one of the highlights of what we're trying to get across. We as residents took it upon ourselves to find out what the problem was in
Holiday City, so I contacted other residents and we discussed the areas of the problems among us all and they were kind of close to what I had, the same problems. Therefore, we said we must go see the Township and initiate some action because obviously, we weren't getting any from the builder. I think that was null and void there. So we attempted to see the Township and that's what we did. And that's how we got to the meeting at Monroe Township.

MS. GAAL: Okay. Take a break.

Now, here's your chance to give me an idea of what your neighbors' problems are. What are the problems that some of the other people have? Particularly, I'd like to hear about that water problem.

MR. BALDINO: Well, most of the -- the ones I know of in my section, the third phase basically was where the water is. There's numerous people with water in their basements. I mean right now there is an individual with water with about six inches in his basement. And nothing has been done. I mean it's just lying water. Therefore, it creates a health problem. You're talking about not only mold, you're talking...
about the West Nile Virus; you're talking about respiratory problems in senior citizens. These are senior citizens. These are not young people. So you've got to consider what we're doing here and what we're trying to convey to the Commission.

MS. GAAL: Now, did some people have situations where the cabinets in their homes aren't aligned properly?

MR. BALDINO: True.

MS. GAAL: How about floor problems?

MR. BALDINO: That's correct.

MS. GAAL: What kind of problems do they have with their floors?

MR. BALDINO: Some of the floors are sinking due to the fact that the actual foundations are sinking in the homes because of the water situation. Obviously, if you're sitting on top of water, I don't think you're going to have a foundation that will last too long. It's going to sink but you don't know how because we're not engineers. So how would you determine only by looking at it and feeling these problems and realizing there is a problem. So we're going to have to have somebody come in and look at the foundations.
MS. GAAL: So, along with that, do you have the kind of problems such as the doors don't fit properly?

MR. BALDINO: That's correct. Doors are out of alignment, don't close. There is a window problem, doesn't close properly. So I believe that the total structure of the home is involved in what we're trying to convey here. It's the total structure.

MS. GAAL: Mr. DePalma, did you have any involvement in inspecting the Holiday City development?

MR. DE PALMA: Prior to my employment in Monroe?

MS. GAAL: Once you got to Monroe, were you called upon to look at those homes?

MR. DE PALMA: Yes.

MS. GAAL: And --

MR. DE PALMA: Actually, I was the Construction Official and Ed, he was the inspector on site, but we went out together a lot on a lot of different issues. As Mr. Baldino indicated, there was a meeting held in Monroe Township but that was prior to me taking the job as Construction Official.
MS. GAAL: Right. When you saw problems during the construction, what did you do? Did you talk to anybody about that?

MR. DE PALMA: Yeah. We had the job site superintendent out there, just kept failing him. Eventually it got to where we had to stop the job.

MS. GAAL: Let's go back to during the construction phase, were you ever working there while those houses were being constructed?

MR. DE PALMA: Yes.

MS. GAAL: In what position?

MR. DE PALMA: Construction Official.

MS. GAAL: Did you see problems during the construction?

MR. DE PALMA: Yes.

MS. GAAL: Whose attention did you bring it to?

MR. DE PALMA: The construction -- I was the Construction Official. Maybe I'm off base here. Maybe I don't understand what you're asking me.

MS. GAAL: Weren't you a Sub-Code Official before you became the Construction
MR. DE PALMA: Yes.

MS. GAAL: Okay. Let's go back to that.

MR. DE PALMA: I'm sorry. Yes.

MS. GAAL: Relax. We're not giving you a hard time.

MR. DE PALMA: I didn't know what you were asking. Yes, I was the Plumbing Sub-Code Official from '96 to 2000.

MS. GAAL: All right. Now when you were out there as a Plumbing Sub-Code Official, did you see problems in the construction?

MR. DE PALMA: Yes, I did.

MS. GAAL: Did you bring those problems to the attention of anyone else working for the municipality?

MR. DE PALMA: I did. I brought it back to the Building Sub-Code Official and the Construction Official at the time.

MS. GAAL: And what problems stand out in your mind that you saw in the homes?

MR. DE PALMA: Two major problems that stand out most in my mind. One was truss bracing issues and the other was crawl spaces were
MS. GAAL: Truss bracing issues and the crawl spaces were wet?

MR. DE PALMA: Correct.

MS. GAAL: And you saw a lot of that?

MR. DE PALMA: Yes.

MS. GAAL: Did you think the truss bracing was not being put up properly?

MR. DE PALMA: It was not there at all in same cases and, most cases, it was not properly for sure.

MS. GAAL: So in most cases it wasn't proper and in some cases there wasn't anything?

MR. DE PALMA: That would be the gist, yes.

MS. GAAL: Did you know that it wasn't right when you saw it?

MR. DE PALMA: Yes.

MS. GAAL: And why is it that you knew it wasn't right?

MR. DE PALMA: Before coming to Monroe, I had moved to Florida for a while and I was Building Inspector in Florida and as part of...
our training in Florida, we had weekly courses on
truss bracing, wind and the effects of wind on a
house and we had intense training on truss bracing
and when I came back and started making the
plumbing inspections at Monroe, I'd point out to
the Building Sub-Code Official that some of that
bracing was missing and there wasn't bracing on
some of those trusses and he said, well, there
would be a red tag if it was required. I said no,
that's not so.

MS. GAAL: And there were no truss
designs or --

MR. DE PALMA: There were no truss
profiles on the job site.

MS. GAAL: So you would bring this
to their attention and basically what, you got
overruled?

MR. DE PALMA: Yes. We argued about
it a few times and I got overruled between the
Building Sub-Code and the Construction Official
and things proceeded.

MS. GAAL: And you weren't the
Construction Official at the time and you weren't
the Building Sub-Code Official? You were the
plumbing --
MR. DE PALMA: Right.

MS. GAAL: So it really wasn't your bailiwick, so to speak?

MR. DE PALMA: Exactly.

MS. GAAL: Did you feel that proper inspections were being conducted at that time?

MR. DE PALMA: Well, just the fact the truss bracing was missing and the crawl spaces were wet, no.

MS. GAAL: Now, when you say crawl spaces were wet, what do you mean?

MR. DE PALMA: We would go back even sometimes on a final and the crawl spaces would have water and try to make a final inspection.

There were other issues and I felt that there should be drains installed to relieve the water.

MS. GAAL: I can't hear you real well.

MR. DE PALMA: I felt there should be drains installed to get rid of the water and I was overruled on that, also.

MS. GAAL: I assume that crawl spaces should not be wet at the final inspection?

MR. DE PALMA: That is correct.

MS. GAAL: And when you say wet,
what kind of water were you seeing?

MR. DE PALMA: Well, they were just damp dirt to having a few inches of water in some of them and, of course, our Construction Official's answer was he gave me a pair of waders and yellow boots.

MS. GAAL: A pair of waders and yellow boots?

MR. DE PALMA: Yeah.

MS. GAAL: To go in there?

MR. DE PALMA: Yes.

MS. GAAL: Did you put them on?

MR. DE PALMA: Yes.

MS. GAAL: Did you get sick?

MR. DE PALMA: No, I didn't get sick.

MS. GAAL: Were those homes issued COs despite that water being in the crawl space and with those bracing situations as you saw?

MR. DE PALMA: To my knowledge.

MS. GAAL: Okay. Now, Mr. Baldino, getting back to you, during that time frame, did you bring your issues to the Construction Code Official?

MR. BALDINO: Yes, we did.
MS. GAAL: Okay. Did you bring your issues eventually to Mr. DePalma?

MR. BALDINO: Yes, we did.

MS. GAAL: By that point I guess he was the CO?

MR. BALDINO: Yes, he was.

MS. GAAL: And what did you learn when you went to him?

MR. BALDINO: He took it more seriously. In fact, he did a good job, very good job in correcting these problems. However, prior to that, the inspectors did not do their jobs. This is what we were concerned about. That's why we had the meeting at the Township. That's what brought on all these officials from the State to look into this problem. We had Mr. Geist there. We had Mr. Raoule there from the DCA. We had a Bob Smith there and this is what happened. After this, this is why we had to approach it this way because we felt there was no other way to go.

MS. GAAL: Did Mr. DePalma tell you that someone had forged your CO?

MR. BALDINO: Well, we knew that there was forged COs. I had one personally, that's why. When I went up to the office with Mr.
Polino who at the time was the Construction
Official, my CO wasn't up to date at all. Mine
was forged and they told me it's just one of those
things that happened and that's just one of those
bypass things. I said I doubt it because you
cannot occupy a home without a CO. It states in
there specifically.

MS. GAAL: So you're one of the
homeowners whose house had a forged certificate of
occupancy?

MR. BALDINO: Yes.

MS. GAAL: And did you subsequently
write a letter to the Department of Community
Affairs?

MR. BALDINO: Yes.

MS. GAAL: The Office of Regulatory
Affairs.

MR. BALDINO: I sure did, Mr. Grace.

MS. GAAL: Did you outline your
concerns to him?

MR. BALDINO: Yes, I did.

MS. GAAL: Did he give you a
response?

MR. BALDINO: Well, his response was
they don't have the manpower to look into my
problem. It wasn't a safety issue was the problem
so he figured that's not a concern of his
department. He said he didn't have enough
manpower, therefore -- that was it. That was the
answer I got. So therefore, from that that's why
we had the meeting because we got no response from
the initial -- the DCA response was null and void.
As far as I'm concerned, they didn't care about
the residents of this particular state and this is
why we're here.

MS. GAAL: Did the initial response
from DCA, you mentioned Mr. Grace, did it indicate
that your problems were cosmetic, probably
workmanship?

MR. BALDINO: He said they were
cosmetic in nature. Of course, how could he know
if he didn't inspect? He makes a statement and
just outright makes a statement that they are
cosmetic, but they were not as we know now.

MS. GAAL: Did he indicate that they
didn't have enough manpower?

MR. BALDINO: Exactly. It states in
the letter, lack of manpower.

MS. GAAL: Did you ultimately write
a letter to the Director of the Bureau?
MR. BALDINO: Yes, Mr. Connolly,
yes.

MS. GAAL: And what did you indicate
to Mr. Connolly?

MR. BALDINO: Well, the same
problems I indicated to Mr. Grace, that we're
going through this period where we have shoddy
workmanship, poor construction, poor inspection
and we wanted the State to handle it. We figured
the State is our last outlet. We went to the
Department of Consumer Affairs to see what they
would have to say. And they -- we had a meeting
in Trenton and --

MS. GAAL: We'll get to that
eventually. What did you get back from Mr.
Connolly? Did you get a letter?

MR. BALDINO: Mr. Connolly stated
they were going to look into the problem and at a
regular time we're going to have meetings and so
forth and so on. In other words, he recognized
the problem. We wouldn't let him go. Just like
Mr. Grace said, we had Mr. Connolly cornered. I
said either you're going to do something or we're
going to go higher.

MS. GAAL: Did he indicate that a
number of your problems were warranty problems?

MR. BALDINO: Excuse me?

MS. GAAL: Did he tell you in his letter that many of your problems were warranty problems?

MR. BALDINO: Yes, he said they were workmanship issues.

MS. GAAL: Did you ever attempt to make a claim under the warranty?

MR. BALDINO: Yes, we did. I filed a complaint and referenced my CO stating why I should be in a home that's out of code and the warranty comes back and said we have nothing to do with code issues. We're only concerned with the warranty issues in your home. I can't go into too much because I don't have the thing in front of me.

MS. GAAL: Okay. So you didn't get any satisfaction from --

MR. BALDINO: Not from the warranty company, no, we did not.

MS. GAAL: Now, you mentioned a meeting and I assume that meeting was a meeting with your Mayor?

MR. BALDINO: Yes.
MS. GAAL: Then Mayor Duffy?

MR. BALDINO: Yes, late Mayor Duffy, and I just want to say that late Mayor Duffy helped us quite a bit to stem the tide of this particular situation.

MS. GAAL: And according to my notes, in April of 2000, you organized a meeting between the residents, the builder, the local construction officials, elected officials and DCA, is that right?

MR. BALDINO: That's correct.

MS. GAAL: Did you have a large meeting?

MR. BALDINO: Yes, we did.

MS. GAAL: And as a result of the meeting, did someone ask the DCA to investigate the matter?

MR. BALDINO: Yes.

MS. GAAL: Who was that?

MR. BALDINO: That was Senator Geist at the time, George Geist.

MS. GAAL: Okay. And what was the outcome of that request? Did DCA come down and investigate?

MR. BALDINO: Yes, they actually
took command of the situation after that. Mr. Geist said you have the ball and you must take it to the homeowners and find out exactly what occurred here because we see a lot of complaints. We had over 250 people at that meeting. Our complaints were listed right here. In fact, the DCA has a list of all our complaints in their computers.

MS. GAAL: Now, did DCA do that investigation?

MR. BALDINO: Yes.

MS. GAAL: Can you describe for us or summarize for us any code violations that they found as far as you know?

MR. BALDINO: Well, first of all, when they made that inspection, they came down and wanted to -- I guess they wanted to alleviate some of the problems between the builder and the residents and, of course, the DCA. What they did is the builder, actually, after they initiated the problem, the builder got his own engineering company to come down and inspect the homes, French and Perillo is their name and they did the inspections of our homes. And after that they found problems with the code issues.
MS. GAAL: What kind of code issues?

MR. BALDINO: Well, the truss code issues, straps, water in the crawl space. We had -- of course, I had my shims, also. We have outside drainage. Those issues were brought up.

MS. GAAL: Now, were those problems problems in many of the homes?

MR. BALDINO: Most of the homes, yes. I would say -- well, let's put it this way. I know that our section had them. I don't know about the rest of them. Not all houses were inspected, by the way.

MS. GAAL: Okay. Mr. DePalma, when you took the job as the Construction Code Official, not the Sub-Code but the Code Official job, you knew there were problems in Holiday City, I take it?

MR. DE PALMA: Correct.

MS. GAAL: Okay. And was there, by that point, a formal agreement drafted between the DCA and the builder?

MR. DE PALMA: Yes, there was.

MS. GAAL: Okay. And as the Construction Official, did you have any responsibility to oversee remediation work at
Holiday City?

MR. DE PALMA: Yes. My department was instructed to make the inspections in accordance with the repairs.

MS. GAAL: Okay. And when the inspections -- strike that. When the remediation work was done, did the builder comply with the DCA directives at least in the beginning?

MR. DE PALMA: I think for the most part, yes.

MS. GAAL: Okay. Go ahead.

MR. DE PALMA: I would say, as Mr. Baldino indicated, they had an engineering firm of French and Perillo that inspected a few of the first homes. I think they inspected 40 homes, found code violations. In the agreement, they separated code violations from warranties and these code violations were to be corrected.

MS. GAAL: What about the warranty issues?

MR. DE PALMA: That was a different area, but they were supposed to -- I don't know what happened from them, but the agreement was they were going to treat all homes as if they were in the first year of occupancy and deal with any
problems they may have.

MS. GAAL: But --

MR. DE PALMA: I don't know that

that happened.

MS. GAAL: As far as warranty

issues, were they, in fact, out of time on

warranty? Was it too late?

MR. DE PALMA: Well, the warranty --

home warranty on the builder's responsibility

before they get into the HOW program which is the

10 year, the builder has a one year warranty on

the homes prior to that. They were going to treat

it as if they were new homeowners and the one year

warranty was still in effect. I don't know if

that happened or not.

MS. GAAL: The builder agreed to do

that as far as you know?

MR. DE PALMA: Correct.

MS. GAAL: Now, what kind of code

violations were found, do you remember?

MR. DE PALMA: Yes. We were dealing

with truss bracing in all houses, some type of

truss bracing, foundation anchorage which is

either strapping or bolts is what holds the wood

to the masonry foundation. Both of those were
 unacceptable by code and then, also, they made an
inspection of the homes, they gave people a 10-day
window or so to write a request for inspection of
the crawl space to see if they had water or not.

MS. GAAL: People had 10 days?

MR. DE PALMA: I believe it was only
10 days. Of course, other people may know better
than that. But that is in the agreement. And the
people that responded to that that did write --
and, of course, there were some that were away on
vacation and some that may spend winters in
Florida and not come back yet, but I believe there
were 60 some that they agreed to put drains in.
Now, there's 600-some houses in there.

MS. GAAL: Okay. Mr. O'Neill, as
the Building Inspector, did you have
responsibility in inspecting any of that
remediation work?

MR. O'NEILL: Yes, the majority of
it.

MS. GAAL: And when you inspected
it, do you inspect to code or do you inspect to
the architect and engineer's remediation plan?

MR. O'NEILL: No, now we're
inspecting according to the new engineer design.
MS. GAAL: Now, when you say now, what --

MR. O'NEILL: Well, when the agreement came into effect, they gave us new engineering for those homes, specific engineering for each model and those are the repairs made on that particular model. I inspect those repairs, that they are according to the engineered design for that model.

MS. GAAL: Let me make sure we all understand what the facts are. When you say they gave you engineering design, who is the they?

MR. O'NEILL: French and Perillo which is the engineering firm hired by HovSons, they gave new designs which were approved by DCA for each of the houses, prototype designs, so to speak, for the repair work on the truss bracing and the sill plate anchorage specifically.

MS. GAAL: So when you do your inspections on the remediation work, you inspect to the repair plan, not to the code?

MR. O'NEILL: That's correct.

MS. GAAL: Am I right?

MR. O'NEILL: That's correct.

MS. GAAL: Now, did you notice any
problems with the remediation work that was being done?

MR. O'NEILL: Well, initially, they couldn't get it correct. They couldn't do the repairs according to the engineering design.

MS. GAAL: Who is the they you're talking about?

MR. O'NEILL: At that particular time, it was John Tanuski who was a subcontractor who was hired by HovSons to do the repair work.

MS. GAAL: What do you mean he couldn't do it right?

MR. O'NEILL: Well, you have a picture in front of you basically and a design and there are specifics written on the picture, so many nails, certain types of nails, certain placement of nails or screws depending on the design work and the design has to be according to the picture and either it is or it isn't. It's cut and dry. So they couldn't get it according to the picture.

MS. GAAL: Was there anything about the picture that was difficult or impossible?

MR. O'NEILL: Not really, no.

MS. GAAL: Do you have an
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explanation or an opinion as to why they couldn't get it to the picture?

MR. O'NEILL: Not really, I can't give you an explanation why they couldn't get it. There were situations where there were some odd situations that weren't covered by a particular design and they would have to go back to French and Perillo to get additional design work done which took a long time for them to be able to get. They just couldn't get the updated engineering done in a timely manner either. So it was just -- the start-up process was very difficult.

MS. GAAL: How long is a long time?

What do you mean by that?

MR. O'NEILL: For them to get updated?

MS. GAAL: Yes.

MR. O'NEILL: In the beginning, it would take months.

MS. GAAL: So, in other words, you'd be working on a house, there would be a need for an updated design and months would go by before there was a new design on the house?

MR. O'NEILL: That's correct.

MS. GAAL: And the house would what,
MR. O'NEILL: They couldn't continue repairing that house or that particular model until they got the updated design.

MS. GAAL: And did you fail either the footing or foundation work?

MR. O'NEILL: All the time.

MS. GAAL: All the time?

MR. O'NEILL: Yes, in the beginning, yes.

MS. GAAL: Did you fail the repair work on the same house more than once?

MR. O'NEILL: Yes.

MS. GAAL: Can you give me an idea how many times you might have failed the repair work on some of those houses?

MR. O'NEILL: As many times as it wasn't right. Four, five sometimes.

MS. GAAL: And you would have to keep going back out?

MR. O'NEILL: Yes.

MS. GAAL: And give us an idea then overall how long the problems went on?

MR. O'NEILL: They're still going on.
MS. GAAL: And there were homeowners living in the homes, am I right?

MR. O'NEILL: All of these homes are homes that were started prior to Mr. DePalma and myself coming to work there. Any of the homes that were started when we got there that we fully inspected do not come under this agreement because they were inspected properly, they were done properly and they don't have the problems. Any of the prior homes have existing problems and come under the new designs and have to be repaired accordingly.

MS. GAAL: Do you know about how many homes are included?

MR. O'NEILL: Probably between 500 and 550.

MS. GAAL: Now, you mentioned trusses, the anchors. Is there any remediation work with respect to all that water we've heard about?

MR. O'NEILL: No, I brought that up. There was a meeting in Monroe Township with the official, Mr. Geist, Mr. Smith, Rob Andrews had people there, Mr. Connolly was there, and Edele Hovnanian was there, some of the homeowners and I
brought that specific question up because it
wasn't addressed at that time and I said that it
was mentioned that there was a water problem and
they said they were going to put an ad in the
paper and they could contact within 10 days to
have the crawl spaces checked to see if they did
have a water problem and I said, number one, most
of these people are old, they don't go into the
crawl space.

Number two, we are in the middle of
a five year drought so the water is very low and
some of these people are snow birds. They're not
even around and at that time, Mr. Connolly said we
would address that as it came up, but I don't know
if anything else has occurred beyond that.

MS. GAAL: Are you aware of anything
having come up to address that?

MR. O'NEILL: No, not really, no.

Part of that agreement was that the engineer,
French and Perillo, would make inspections of
these homes or the engineer's designated
representative. Now, the problem that I feel is a
problem is that the designated representative
happened to be the employee or subcontractor of
the builder who's making these investigations of
the home and making the determination and I felt
that was a conflict of interest.

  MS. GAAL: So, in other words, so
we're clear, the agreement says the engineer or
his representative will do it but, in reality,
it's an employee of the builder?

  MR. O'NEILL: That's correct.

MS. GAAL: And so it's not the
engineer, in fact?

  MR. O'NEILL: Not the engineer, no.

  MS. GAAL: Is it, by any chance,
anyone who's doing the repair work?

  MR. O'NEILL: Yes, exactly.

  MS. GAAL: So the employee who is
doing the repair work is also the person doing the
inspections to see if the repair work complies
with the remediation plan?

  MR. O'NEILL: No. They're doing --
they're looking to see what needs to be done as
the representative of the engineer. Now, if there
are additional things such as missing piers, no
shims, incorrect shims, because directly addressed
in the agreement was basically sill plate
anchorage and truss bracing. The other things
that were existing problems were to be looked at
on a case-by-case basis, so to speak, and by reaching Hovnanian's agent's representative and that ends up being the employee of the builder.

MS. GAAL: Okay. Have you seen any of this addressed on a case-by-case basis?

MR. O'NEILL: Initially I would bring it up when I go down to inspect a sill plate and there were some things that had to be done and it waffles back and forth insofar as what I should be looking at, what I shouldn't be looking at. At periods I'm too picky.

MS. GAAL: Who says you're too picky?

MR. O'NEILL: Well, DCA.

MS. GAAL: DCA says you're too picky?

MR. O'NEILL: Yes.

MS. GAAL: Did they ask you to back off?

MR. O'NEILL: Periodically, yes.

MS. GAAL: And the sub or the individual who's doing the work, that contractor you mentioned, did he also work on the job initially?

MR. O'NEILL: Well, no, he was not
part of the building process, no.

MS. GAAL: Now, the DCA sent inspectors down, by the way?

MR. O'NEILL: Yes.

MS. GAAL: And did they inspect your inspections? What did they do?

MR. O'NEILL: Yes, they're coming down and they're inspecting periodically with me or behind me depending on the case. A lot of times we now go in together and they'll take half of it and I will take half of it. They'll actually take the inspection because they've inspected behind me so many times that they don't expect to see anything that I don't see.

MS. GAAL: It sounds to me a moment ago like the DCA was indicating you were a little too picky?

MR. O'NEILL: Well, it depends on when you asked what.

MS. GAAL: What do you mean by that?

MR. O'NEILL: Well, it's changed back and forth so many times. I think in deference to the DCA, they made an agreement with the builder, they want to try to get certain repairs done. Any builder has a corporation in a
particular building community. It's a separate corporation. Any builder can bankrupt that corporation and walk away and do nothing. So DCA did get an agreement and did get a certain amount of work to be done by the builder to correct problems that were there rather than having the builder just walk away and having no corrections done. But in contrast to that, there were other things that could be done.

MS. GAAL: Now, when you found those other problems that you mentioned earlier, did the builder correct those when you would point them out?

MR. O'NEILL: Sometimes they did and then sometimes they would call their home office and the home office would call DCA and DCA would either say we'll have to look into it or right now we're not addressing that or depending on the situation or the timing. We also asked for periodic meetings with the builder which I think we had one or two.

MS. GAAL: And over what period of time?

MR. O'NEILL: We had two meetings in a period of a month, I think it was, and that was
the end of that.

MS. GAAL: And when was that

approximately, when did this start?

MR. O'NEILL: A year and a half ago.

MS. GAAL: Mr. DePalma?

MR. DE PALMA: Yes. When the issues

started -- when the repairs started and Ed was

picking up these problems and we were failing the

problems over and over again, I said we have to

get a meeting so that we can convey it to this

guy, that Mr. John Tanuski that he's making these

repairs that he has unskilled people out there.

That's why it was failing over and over again and

they just couldn't understand these truss

profiles. I said he's got to go up there and look

at this work before he calls in to us. This is

additional inspections which our town which is a

busy town and we want to do these inspections, but

these are additional inspections. We don't want

to have to do it five or six times.

So we did manage to get that meeting

together and after two meetings, I lost my cool at

one meeting and I hollered at Mr. Tanuski and

after that, Chris Aikens who was one of their area

superintendents for Hovnanian. After, we were
left out of the meetings and then the meetings just stopped.

MS. GAAL: So they started leaving you out of the meetings?

MR. DE PALMA: Yes, Ed and I were left out and then the meetings stopped. We just had another meeting because things weren't going -- I had a problem with the fact, and so does Ed, with the fact that we have an employee of Hovsons who is a representative of the engineering company and one of the issues in these houses is they have some missed piers, as Mr. Baldino indicated, or some shimming problems and they're supposed to go down there and measure the piers to make sure the span is set at the place it's supposed to be, the piers are set at the right spacing. That's part of what the engineer's representative is supposed to be doing.

So DCA came in and found that they weren't doing that. Ed had mentioned to them that they weren't doing that because he had picked up some over-spanning. So the DCA looks at it and says well, have Ed measure each one of these spans. Well, there's a considerable amount of piers in some of these houses and some of the
models have a lot of piers which allows them to use small --

MS. GAAL: Let me just get this right. The DCA told you to have Ed go out and measure the piers in maybe 500 homes or a number of homes?

MR. DE PALMA: Exactly. While he was down in the crawl space making his inspections as far as the foundation anchors went, as far as the shims went, have Ed make these inspections in the piers. This is just --

MS. GAAL: Is he in the water while he's doing the inspections?

MR. DE PALMA: No. Most of them are dry. If we find water now, we won't go in them.

MS. GAAL: You refuse to go in?

MR. DE PALMA: Yes. Because I want the water situation corrected. That is another issue. That's in the Court of Appeals' hands. That's another issue. If you want me to go back to it, I will.

MS. GAAL: Well, I think it's an issue. The water is still there?

MR. DE PALMA: It's definitely an issue. When Ed picked up the first couple, I went
out and did look at a few of them. There's
definitely drainage -- crawl space drainage
systems that were put in improperly and they were
installed without permits. It was done after the
house was completed. But the fact remains that
you can't do work in the State of New Jersey, work
that requires a permit you can't do without a
permit, so I issued violations to Hovnanian and I
also stated in the violations that if, indeed, we
find more of these homes that are wet and have
these improper drainage systems in them, these
also have to be addressed.

So the proper channel, according to
the UCC, is either to fix the water or they take
it to the appeal board and that's where we are at
now. They've postponed it and postponed it and
now that appeal is coming up finally the 2nd of
December.

MS. GAAL: And you mentioned you had
a meeting recently? I think you said that. When
was that recent meeting?

MR. DE PALMA: We had a meeting just
before I left on vacation, probably three weeks
ago, and Mrs. Adele Hovnanian was there herself, a
representative from DCA, Tom Locca, who is the man
who was doing the repairs with a crew and he's also French and Perillo's representative. So we had this meeting. And during that meeting Adele had discussed with me what do you think actually happened with this development? And I said I had indicated before, maybe not in this particular meeting, but these big builders, they're business people. They don't have a clue about building a house. They depend heavily on their superintendents out on the job sites. That's how things were allowed to happen that happened as Mr. Wadja testified to. The builder is just a businessman. He cares about are we making money or aren't we? If we aren't, what do we have to do to make money? That's where that major hassle comes up that John referred to. If a certain something is coming up, we want to know and they put the pressure on the superintendent.

So I told her, I said at this last meeting the problem is you lost control. You had bad supervision, you kept changing superintendents on the job site. They changed constantly. I said you had superintendents that didn't know what they were doing and the job was terribly run. Things were not done properly. Besides, the inspection
team that was in there did drop the ball and the
inspections didn't go properly and it just
became -- I agree with the residents of Holiday
City that they have basically an inferior product
and that's a result of what happened.

MS. GAAL: You said a few moments
ago and you mentioned a couple of times your
concern about the engineer's representative being
the person hired to do the work. Have you raised
that with anyone either from DCA or the builder or
anywhere, have you bought that up?

MR. DE PALMA: Well, we very seldom
talk to the builder and we've never talked -- I
shouldn't say never. That is a wrong statement.
We did talk to an engineer a few times. We
initiated the first meetings. I asked for an
engineer from French and Perillo to be present so
he could explain the truss bracing profiles to
John Tanuski who was doing repairs at that time.
I asked for John Tanuski to be present, John
Dotoli was present, Chris Aikens who was the area
supervisor was present.

MS. GAAL: Did you bring up this
issue?

MR. DE PALMA: Yes.
MS. GAAL: And what were you told?

MR. DE PALMA: Initially, when we brought up issues about the fact that I thought it was wrong, they said well, the representative could be whoever they select. I still think it's wrong, but that's what we have.

MS. GAAL: And why do you think it's wrong?

MR. DE PALMA: I think it's like the fox watching the chickens in a hen house. I mean you have the guy that's making the repairs looking to see what repairs have to be done and he's paid by Hovnanian. And this is something we didn't discuss, but most superintendents on the job site, the more money they save, the bigger the bonus and that wasn't discussed or asked but that's a fact.

MS. GAAL: So where are we at right now?

MR. DE PALMA: Where are we at right now?

MS. GAAL: Yes.

MR. DE PALMA: Right now, according to the agreement, they had to produce 22 CAs, repairs, a month.

MS. GAAL: What is that?
MR. DE PALMA: Certificate of approval. They had to do the work that was required in the crawl space, any repair work that was done in the attic, Ed has to make the inspections and then I would issue a CA.

MS. GAAL: And if they don't get 22 a month, what was to happen?

MR. DE PALMA: There was a penalty.

MS. GAAL: How are they doing? Did they make 22 a month?

MR. DE PALMA: They have just now caught up to that and they had some money reimbursed, but the penalty was -- it was a penalty that went into a bank account of Hovnanian's and once they reached that 22 a month or the average of 22 a month according to how many months had passed, they would get that money back.

MS. GAAL: So it wasn't a real penalty?

MR. DE PALMA: It was not a fine. It was just a penalty.

MS. GAAL: And it went into a Hovnanian account so now it's going back to Hovnanian, is that what you said?

MR. DE PALMA: Yes.
MS. GAAL: Were they behind on meeting that 22 homes a month?

MR. DE PALMA: They immediately fell behind.

MS. GAAL: They immediately fell behind?

MR. DE PALMA: Yes, and they made agreements because of the engineering wasn't right and this -- Mr. Chris Aikens was a tremendous help for the Hovnanian Corporation as far as dealing with DCA.

MS. GAAL: Who was he?

MR. DE PALMA: He was an area superintendent or -- he was above the superintendents.

MS. GAAL: Now, you --

MR. DE PALMA: I've got to say that was only for a limited time. That was only for about three or four months. How long was Chris Aikens there?

MR. O'NEILL: He stayed as a consultant for them.

MR. DE PALMA: I think he still was a consultant for them.

MS. GAAL: But he's no longer in the
same role?

MR. O'NEILL: Not as an employee.

MS. GAAL: With respect to the burden on your office, it sounded to me like from what you're saying that your particular office has had to do a lot of additional inspections and spent an awful lot of time on this project.

MR. DE PALMA: This is true.

MS. GAAL: Did you get any additional money by way of fines or penalties or anything from the builder to compensate you for the people you need to do this job?

MR. DE PALMA: That part of the power of the Construction Office was taken away. All we have to do is make the inspections. We did discuss the fact that if they did keep failing the inspections over and over, we'd give them a penalty because after the third inspection, they should get it correct and if we went back the fourth time and it still failed, there would be a fine. That's when I don't know if they fired or dismissed John Tanuski and Tom Locke started doing repairs.

MS. GAAL: What kind of burden has this been on your office?
MR. DE PALMA: Luckily, my office, because of the issues that had happened prior to, is staffed with enough people with building licenses to pick up the load. I have been through many crawl spaces and attics myself making inspections. We also -- all of the inspectors in there also possess a building inspection license.

MS. GAAL: Now, I want to just see if I understand on the water. That's just basically -- I don't want to say stagnant because it sounds like a pun, but the water issue is pending?

MR. DE PALMA: Yes.

MS. GAAL: You refuse to do inspections where there is water in the crawl space?

MR. DE PALMA: There was two of them out of the ones that I made and I refused to go down there because I don't want to get down there and crawl around in the water. Get rid of the water and call me back. I think the proper thing to do is put a drain in but I don't think Hovnanian wants to deal with that issue.

MS. GAAL: Mr. Baldino, I'd like you to take a look at Exhibit 48. Can you see it,
MR. BALDINO: I see it.

MS. GAAL: And what is it?

MR. BALDINO: That's water in the crawl space.

MS. GAAL: My notes indicate that that photograph is from August the 27th of this year. Is that right? Do you know if that is approximately the date?

MR. BALDINO: Yes, that's approximately.

MS. GAAL: And was it the home of someone named Al Nanni?

MR. BALDINO: Yes.

MS. GAAL: 575 Riviera Drive in Holiday City?

MR. BALDINO: Yes.

MS. GAAL: Did he or she give you that picture?

MR. BALDINO: Yes.

MS. GAAL: And they asked you to give it to us?

MR. BALDINO: Yes.

MS. GAAL: Have you ever seen this yourself?

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MR. BALDINO: Yes.

MS. GAAL: And is this a picture that accurately depicts what that crawl space looks like?

MR. BALDINO: Yes. In fact, today -- he called me yesterday. It's actually more. He just told me will you let them know I'm still having water.

MS. GAAL: He told you to tell us it's worse?

MR. BALDINO: That's right. He called me this morning and says I can't make it because I had a medical appointment and please be sure to tell the Commission that this is the situation we now face and to me that -- that to me represents not only the lackadaisical effort of the County but also municipalities and the DCA to come down and correct that problem right away because that problem is a health issue. That is a health issue looking you right in the face and no one, no one said we're going to correct that right away. What they're doing is what Mr. DePalma said, delays, constant delays. We can't have delays. We're older people. We may have respiratory problems. We don't know. Those
houses have to be inspected for mold, also. And
guess what? I called Mr. Santafante here. He is
the Director of Health and Senior Services and he
told me I'm sorry, there is no law in the State of
New Jersey that covers private houses. We will
cover public, but we won't cover the residents who
pay the taxes here. Could you believe that?
That's the statement I couldn't believe. He said
sorry. You'll have to get that attended to
through legislation and I mentioned these to him
many times, that we have a health issue here and I
tell you if it gets to be somebody gets sick, the
State of New Jersey is going to pay heavily.

MS. GAAL: You're saying there's
nothing to cover --

MR. BALDINO: No. According to his
office, there is, the Department of Health and
Senior Services. I called him directly. They
oversee, I guess, the health issues, the
environmental issues. Am I correct in assuming
that?

MS. GAAL: Yes. I'd like you to
take a look at number 50. Is that another
photograph that you gave us?

MR. BALDINO: Yes, it is.
MS. GAAL: And someone wrote on it builder's version of a French drain?

MR. BALDINO: I don't know. It looks like a patch of land.

MS. GAAL: Is this someone's crawl space?

MR. BALDINO: Yes, it is.

MS. GAAL: And you can see some of the black what might be mold along the wall?

MR. BALDINO: That's possible. I can't tell you unless they get somebody who is authorized to look into this if there is a mold. These questions, I can't answer. I'm just a layperson. But you can understand by what I'm trying to convey here, look at that. I mean what is it?

MS. GAAL: Do you know whose house this is?

MR. BALDINO: Yes, I do.

MS. GAAL: Do you want to tell us?

MR. BALDINO: Well, I can, but I mean does it have anything to do with anything?

MS. GAAL: No. It's okay.

MR. BALDINO: I mean it is. There's numerous houses like this. This is not the only
one.

MS. GAAL: Just so we're clear, running down the middle of that is what looks like a little tiny stream almost?

MR. BALDINO: Exactly. That's what they look like exactly. That was supposed to be a French drain, by the way.

MS. GAAL: That is a French drain? MR. BALDINO: That's a French drain according to HovSons and Company and that kills me because the DCA said that looks pretty good, too. And where are they coming from? I don't understand. They're supposed to have the knowledge of the situation here and the knowledge of DCA's -- we don't trust any agency any more, not with this information we received from like Mr. Grace, Mr. Connolly. He says in one of his statements, he says a well-built house will never have a water problem. I mean take that now. Consider what I just said. First of all, the houses weren't well built to begin with and he is telling me that a well-built house will never have a water problem. What does that look like? What does this look like?

MS. GAAL: Okay. We hear you.
Mr. DePalma, do you know anything about HovSons donating an ambulance to Monroe Township in conjunction with the building of Holiday City?

MR. DE PALMA: No, I do not.

MS. GAAL: I think I've covered everything I wanted to cover.

COMMISSIONER FLICKER: Mr. Baldino, you went through some of this quickly so just help me. Am I correct in assuming you got no satisfaction whatsoever from DCA until some of the elected state officials got involved?

MR. BALDINO: Well, the point is, first of all, yes, that first letter we addressed to Mr. Grace, I mentioned before, as you can see, he didn't have the manpower. Therefore, we had to do something. We said if he's not going to help us, we have to look to other agencies that can help us. So we went to the Township and we decided to let the Mayor know we were dissatisfied because we pay a hell of a lot of taxes down here.

You don't get representation in this State. We have one of the highest taxes in the country and yet no representation from the officials, county, state or municipal.
COMMISSIONER FLICKER: Let me just slow you down a little.

MR. BALDINO: That's the truth.

COMMISSIONER FLICKER: I'm not disputing it. I'm just trying to get the chronology straight. So first you went to Mr. Grace from DCA?

MR. BALDINO: He's a part of DCA, I assume. Regulatory Affairs, I assume, his office? Have I got that right? Do you know?

MS. GAAL: That's correct.

COMMISSIONER FLICKER: And he said they didn't have enough manpower?

MR. BALDINO: That's what he said in his letter. I have the letter right here.

MS. GAAL: We believe you. And then you went back to your Mayor and she was very helpful?

MR. BALDINO: Well, only because we figured that through the Township we can get something started because we were residents of Monroe Township.

COMMISSIONER FLICKER: So you got something started and eventually you got a meeting you talked about with Assemblyman Geist?
MR. BALDINO: Yes.

COMMISSIONER FLICKER: And that resulted in an agreement between DCA and HovSons?

MR. BALDINO: Well, eventually down the line, that's what it came out to be, but prior to that, we went to Trenton and for that particular meeting with Mr. Connolly and I just want to say something here. I don't know whether this is true or not, but we attended that meeting as residents of Monroe Township, citizens of New Jersey.

When I stepped in that room with Mr. Connolly, Mr. Geist was there, Mr. Smith was there, Mr. Maul was there, Mr. Wolford was there, I suggested that we take minutes of this meeting just as you're taking minutes here. Mr. Connolly turns around and says no minutes. All the facts are known. How could you know all the facts? We didn't even start the meeting. He said there's no reason to have minutes because we know the situation. How could they know the situation when we just approached them?

So I just want to bring up to the Commission that I feel that was a violation of our rights, Democratic rights. We should have minutes.
at that meeting.

COMMISSIONER FLICKER: Mr. Baldino,

we're looking at problems with houses. We'll get
to your rights at another meeting. Let me ask Mr.
DePalma and Mr. O'Neill, you, in fact, indicated
that the agreement that DCA struck with HovSons
was essentially, from your perspective, you were
getting something which was better than nothing?
Is that accurate? I think Mr. O'Neill or --

MR. DE PALMA: You mean DCA's

agreement?

COMMISSIONER FLICKER: Yes. Well,

that you felt DCA was getting the builder to do
something to rectify some of the problems.

MR. O'NEILL: I said that and

that's -- I think that in looking at it from DCA's
point of view where the builder could have walked
away, just bankrupt that corporation because every
development is a separate corporation -- that is a
loophole, they can bankrupt it and walk away and
the homeowners would have gotten nothing. They
felt I think that they accomplished something by
getting certain repairs done.

Now, the underlying issue was the
water problem that's never really been addressed.
I mean they think they've addressed it by putting
the ad in the paper and giving 10 days for people
to look at it and having a representative of the
engineer go down and say yeah, you have a problem
or no, you don't, but I've been in hundreds and
hundreds of these houses and a lot of them have
water problems. Some of them never were addressed
at all. Some of them had a hole dug by hand and a
pump stuck in the hole and that's supposed to be a
drain without even electricity for the plug to
plug into. So I mean it's atrocious and it's just
a bad situation.

COMMISSIONER FLICKER: So the three
areas that I -- I mean life-threatening -- the
trusses, its anchorage, sill plate anchorage, that
was addressed by the agreement, the first two, the
trusses and the --

MR. O'NEILL: Yes.

COMMISSIONER FLICKER: The water was
not?

MR. O'NEILL: No, the water has
never been fully addressed.

COMMISSIONER FLICKER: And just one
other issue. The agreement called for 22 houses
per month to be rectified?
MR. BALDINO: That's correct.

COMMISSIONER FLICKER: Out of how many that have problems?

MR. O'NEILL: I guess close to 550.

COMMISSIONER FLICKER: And that was considered to be an adequate number?

MR. O'NEILL: We didn't have any part in the agreement.

COMMISSIONER FLICKER: Do you know if the bond for HovSons at Holiday City has been released by Monroe?

MR. O'NEILL: I don't have a clue.

MR. DE PALMA: That's an engineering issue. The bond is for the streets, the curbs, the sidewalks, the retention bonds, detention ponds, the buffers, whatever may be required as far as the drain review process went. We don't -- we've heard that it has. I can tell you that I've heard it has been released, but I don't know that for a fact.

COMMISSIONER FLICKER: Thank you very much, gentlemen. Thank you, Mr. Baldino.

COMMISSIONER MARINELLO: I'd just like to address a couple of questions to Mr. DePalma.
Mr. DePalma, this particular Township had the benefit of hiring someone who had appropriate training of trusses after your time in Florida. Are we doing enough to educate the inspectors out there in the area of truss bracing now in your opinion? And I particularly address that because it appears that even though you had the benefit of that training, the people who you worked for at the time weren't listening to it.

In other words, are we doing enough to educate the inspectors?

MR. DE PALMA: At the present time, the DCA has put -- we do continuous seminars as core continuous education units and new seminars have come in as far as truss bracing and things of that nature. In my opinion, no, I think that truss bracing issues should be a little more intense. I also have to say that once I started in Monroe, myself, Ed -- I asked Ed to set it up and he did set it up -- we went to Concord Truss, myself, Ed and Angelo Martini who is another Building Inspector, we went and toured the plant, learned truss profiles, learned the computer, we were shown how they figure out uplift trusses, the stress on trusses on the computers and got a
better understanding and that's one of the things we did. Since then, like I said, DCA has initiated new seminars that include truss bracing and those sets of issues. Personally, I think there should be more of it. That's my personal opinion.

COMMISSIONER MARINELLO: So even though now -- now, there's been some changes in the way trusses are manufactured, correct?

MR. DE PALMA: In the way they're manufactured?

COMMISSIONER MARINELLO: And how they're brought -- they are pre-fabricated?

MR. DE PALMA: Yes, they're -- all trusses are pre-manufactured and brought to the job site. As far as changes, I don't think there's been tremendous changes in the way they're manufactured. As far as the way the inspections are made to look for truss bracings and truss profiles on job sites in order to make sure that adequate truss bracing according to the manufacturer is installed on the site by the contractor, that has changed drastically.

COMMISSIONER MARINELLO: When you were the Plumbing Sub-Code, did you occasionally
fill in for the Building Sub-Code when he was away and out of town?

MR. DE PALMA: Yes, I did.

COMMISSIONER MARINELLO: And at the time that was during the construction of Holiday City, correct?

MR. DE PALMA: Correct.

COMMISSIONER MARINELLO: And were you called upon to review the framing and the trusses at that time when he was out of town?

MR. DE PALMA: I may have but -- I went out to make framing inspections which include truss bracing inspections, yes.

COMMISSIONER MARINELLO: And were those the times you would go back to the Construction Sub-Code Official and tell them about the problem and they would, in fact, overrule you?

MR. DE PALMA: Yes.

COMMISSIONER MARINELLO: Did he give you any reason why he overruled you on those issues?

MR. DE PALMA: No. If you know Louie DeSalvatore, he doesn't give reasons.
the Construction Code Official, they weren't one
and the same person, correct?

MR. DE PALMA: Correct.

COMMISSIONER MARINELLO: They're no
longer working for the Township of Monroe, is that
correct?

MR. DE PALMA: No. When -- in the
negotiations for me to go back to work for Monroe
Township, it was over a long period of time. It
took about four or five months and one of the
issues we discussed was Lou DeSalvatore was still
the Building Sub-Code Official at the time in the
town and I told the Business Administrator at the
time that I would not work with Lou DeSalvatore.

COMMISSIONER MARINELLO: Do you know
if either of these two gentlemen are currently
employed as Sub-Code or Code Officials in any
township in the State of New Jersey as we speak?

MR. DE PALMA: Yes, they are. Lou
DeSalvatore has what is called an on site agency.
He contracts inspections from towns and his agency
makes all the inspections in the towns. Some of
the towns he works in, I know he does Bordentown
and I know his agency also does Egg Harbor
Township. And Louis Pilloni works as the
Construction Official in Washington Township.

COMMISSIONER MARINELLO: That's all I have right now. Thank you.

COMMISSIONER EDWARDS: Mr. DePalma,
today, if this development were to be proposed and approved by a planning board and you had the responsibility to inspect it, would the same problems have happened?

MR. DE PALMA: You have to repeat that.

COMMISSIONER EDWARDS: Today, if Holiday City was a new approval and it was being constructed in Monroe Township and your department at its present structure had the responsibility to inspect it, would the outcome have been the same, similar, would there have been any problems with it?

MR. DE PALMA: As Ed indicated, the ones we inspected when we first came back, we had kind of changed things, they don't have to be reinspected. The truss bracing -- they were looked at by DCA, the truss bracing is adequate, the foundation is adequate, they're fine and they have drains.

COMMISSIONER EDWARDS: Part of the
problem as I understand it in this particular
development related to some engineering issues
that had to do with the drainage location
elevations -- I think that was testified to not by
you but by the Construction Official previously.
Have those problems been corrected?

MR. DE PALMA: The major problem as
was indicated by -- I don't know who said it --
one of the people who testified said -- I'm sure
Mr. Baldino said it -- it is in a high water table
area. The whole area was basically a swamp before
they started that development. Not the entire
development, but probably 75 percent of it. And
when it rains and the ground is saturated, the
water has nowhere to go.

COMMISSIONER EDWARDS: So there are
inherent engineering problems and approvals of
this development based on location that have
nothing to do with the building inspection
process, would I be accurate in saying that?

MR. DE PALMA: No. The only thing
that we could have done is what we did after we
started is to have them put drains in all the
homes. That's it.

COMMISSIONER EDWARDS: Mr. O'Neill,
Mr. DePalma and Mr. Baldino, I've asked this question to everyone who has come up before us. We're here to try to find remedies and solutions to problems like Holiday City and the one this morning and others, and we have 58 of them on our list spanning 11 counties -- 17 counties, excuse me, so I asked everyone.

Do you have any suggestions as to how we might make recommendations to change the system to help alleviate some of these problems and other problems that have to do with ultimately the homeowners and their receiving the product that they paid for in an approved fashion or in a fashion that is predetermined to be satisfactory to our health and safety codes in the State of New Jersey?

MR. DE PALMA: Yes, I do. The main ones that I feel should be addressed -- currently we have a builder's registration in the state and if you mail in for your builder's registration, anyone can be a registered builder within two weeks or maybe a month at most and you can have as many as you want in as many different names and as many different corporations as you want. I think you should have licenses. We only have two
licensed trades in the State and that's electrical
and plumbing. I feel that the builders should be
a licensed individual and also feel there should
be another license generated for the job site
superintendent. If something is wrong, something
could be done that you could use to apply pressure
to them. I also feel that limited inspections or
framing inspections for Building Sub-Codes should
be limited to approximately four a day so they're
not pressured to make more than that. Sometimes
the more hurried you try to go, the more you're
going to miss.

Also, we have -- it's been referred
to over and over again -- the UCC, the Uniform
Construction Code, and I believe it's Section 417
which addresses the money that flows into that
department should be used strictly to fund that
department. It's not the way it works today.
Today any monies that go in, they go into the
general budget and once under the general cap,
they can spend -- and a lot of times when you go
and ask for help and say I need another Building
Inspector, I need anything, you're told we don't
have the money, when you know the money is there.
You know it's coming through your office. I think
that it's written as a law the Uniform
Construction Code and that statement is in there
and that should be one of the things that should
be looked at and made possible. There will always
be extra monies that the Township can, I guess,
funnel into the general budget out of that anyway
and in my particular town there's extra monies
that come out which is not a bad thing. I think
that's a good thing.

COMMISSIONER EDWARDS: Do you think
that money should be dedicated to the operation of
your budget? It makes some sense. The concept
behind it -- I know the section of the code you're
talking about. The concept is a user fee. Well,
let's take it from the builder's perspective. If
I'm paying a fee and you're doing the inspection,
I should be paying enough of a fee to get the
inspection. I shouldn't be paying an extra amount
to subsidize a Township because that's a fee for
service as opposed to something that's bought.

Let me pose something on the other
side of that coin. Let's assume your county
doesn't have a lot of construction going on. You
still have a requirement to have a competent and
fully staffed inspection department which you may
not be generating enough fees to pay for that
because of the mere lack of building, but when you
do need one, you still need it done just as
accurately, just as competently and by people who
are paid an adequate salary for meeting and
assuming that responsibility.

So I'm going to assume you're saying
you should fund every Building Department and
every town level sufficient to making inspections
and if your fee system creates more dollars, it
should go to help increase those budgets for those
communities that have a higher level of activity
and inspection needs. Is that accurate?

MR. DE PALMA: That's more specific
than I was putting it. Basically, first of all,
smaller towns that may not have the amount of
construction to, as you say, support the
construction office, then you don't have the
requirement for the men to be there all day.
There are a few ways that that can be met.

Multiple licensed men, part time. Also, there is
no cap on the amount that the fee can be. And
also, then the third -- of course, the third one
you may not recall but it's there, you could have
an agency come in and do the inspections. You are
still required to have a Construction Official.

What I'm saying is the more busy towns need more
people and when the town gets busy, a town such as
Monroe which is really right now experiencing
large growth, you may need more people. That is
the first thing you hear from the town council is
they have a thousand reasons why they shouldn't
hire that person because they have places where
that money has to go and there are monies there
that are available to the department that should
be available to the department. What I'm saying
is the funds that go to the Construction
Department should be either budgeted by rider or
have some other way, maybe even a separate entity
although that's the extreme as far as I'm
concerned and those monies channeled strictly to
the construction project and if you need people,
you can hire them. And if it comes out you have a
large overflow and you realize because of monies,
then maybe you just lower your fees.

MR. O'NEILL: This was attempted 12
years ago and the Board of Municipalities --
League of Municipalities fought it and it died.

COMMISSIONER EDWARDS: I remember.

MR. O'NEILL: So budgeting by rider
would be extremely beneficial to the Construction
Departments so they could do it properly and have
the proper number of people to do the number of
inspections that are required.

Also, with the licensing for
builders, superintendents, home remodelers, there
should be requirements and there should be
penalty. If you do -- you have a driver's
license. That is a privilege, not a right. If
you do something wrong, they take away the
license; you can't drive. It is that simple. And
it should be the same thing when you're dealing
with people's homes. So many people get ripped
off. The New Jersey Remodelers Association has
been trying to get a license bill passed for
remodelers for four years and the Better Business
Bureau, the Consumer Affairs Bureau have all been
behind it, but somebody keeps blocking it. They
don't want it to happen because of control. Who
controls the operation? Somebody wants that power
and they block the operation because they're not
sure of being in charge and it's a shame because
people are still getting ripped off right now
while we're sitting here because there's no
legislation or licensing to protect the people and
it's just another portion of the building industry. So if these people are licensed, there are requirements for those licenses and there's penalties. If you do not comply with the rules of licensing, then you get penalized. It's -- that's the way you raise your children. You do something right, you get praise; you do something wrong, you have to pay the price for it. That's the way to teach people. So that's something also that should be taken care of.

COMMISSIONER EDWARDS: Before I ask Mr. Baldino, I was waiting for you to give the last piece on that, Mr. DePalma and Mr. O'Neill, the supervision of building departments and building inspectors. It's obvious to me that Monroe Township did not have the best Building Inspection Department structure and people, quality of people in place to do it and few people represent that kind of quality.

How can we better supervise or is there something we can do to avoid that?

MR. O'NEILL: Yes. DCA, along with their many responsibilities, I think they do inspections in numerous towns in the State. Possibly, instead of doing that, they could have
people go out just as they did to us, come behind
their inspectors and check to see what they're
missing. Now, everybody is human and you can miss
things and even though I'm pretty diligent, I'm
sure I miss things, too. But there's a certain
difference between missing some things and just
not seeing anything.

COMMISSIONER EDWARDS: Basically,
you are the supervisor right now in Monroe
township, is that accurate?

MR. O'NEILL: Well, I mean whether
I'm a supervisor or not, you're either that type
of person or not.

COMMISSIONER EDWARDS: Right now DCA
does not have that responsibility?

MR. O'NEILL: I'm sorry?

COMMISSIONER EDWARDS: DCA does not
have the responsibility to supervise or check?

MR. O'NEILL: They oversee us, yes,
that is their responsibility. But, once again, as
manpower dictates, they haven't had the
opportunity to go out to the different townships
throughout the State. There's 567 municipalities
in the State and they haven't had the opportunity
or the manpower to go out and spend the day
inspecting behind these building inspectors or
that building inspector or wherever to do that.
You were in school, we got tested. We do have
continuing education credits, but, still, it's
when you're out there, you're actually doing it,
you're on the job and somebody else is coming back
there that's highly trained and they say gee,
well, you missed this, you didn't see this, you
didn't see that and it still falls on the
individual because oh, I missed it and the next
time I missed it, too, but if you're diligent and
you want to do a good job -- I have people all the
time saying to me you're the building inspector,
you can do whatever you want. I tell them no,
you're not going to do what I think; you are going
to do what the Code calls for and if you think I'm
telling you something that is wrong, please tell
me because I'll go back and I'll look it up and if
I'm wrong, I'll tell you because I'm not only
telling you that wrong thing; I'm telling
everybody the same wrong thing and I don't want to
do that. So if I'm telling you something that is
wrong, please say something to me and I'll check
it out and that's the way it should be. We're out
there to protect the people and that's our job and
you either do it right or you do it wrong.

COMMISSIONER EDWARDS: Mr. Baldino?

MR. BALDINO: In the letter we just
were sent, I think the Commission must take this
as a serious issue only because I think there
should be a lemon law legislated for houses.
We've got it for cars, but we don't have it for
the individual's home. That's more important than
any place in the world. Of course, New Jersey
said your home is a castle, am I correct? That's
what it is. Therefore --

COMMISSIONER EDWARDS: I don't know
that New Jersey says that.

MR. BALDINO: Well, I picked up a
newspaper and it said your home is your castle.
So I would say that enforcement also by the
agencies -- municipal, local, state -- you have to
really look into that. They are really not doing
their job as far as I am concerned. They are not.
All they're doing is looking the other way trying
to find out ways and means to get around certain
issues and we see now that we have the facts
presented here, something has to be done. I don't
care what's got to be done, but we're, as
individuals of Holiday City, we feel that it's
your obligation as an individual entity of this
State to give us our apportioned rights as
citizens. I want you to look into that to make
sure this legislation gets to the proper people
and something is done because you're talking about
a person's home. You're talking about his home,
his life, his happiness. Don't forget. What does
the State flag say, prosperity, liberty -- you got
liberty but I don't know about prosperity on the
flag. But I'm just saying this is a very serious
issue; not only a health issue but as you can see
from the facts presented here today that some
action has to be taken right now. The residents,
right now they want action. They don't want talk.
They want to see something implemented which will
help us in the long run and future for future
buyers in this State, because if you know that
particular buyer's going to say, you know, that
sprawl problem now, maybe they don't have enough
inspectors because they're building, but you've
got to realize that when you do build, you have
the measures in place to protect the citizens of
the State. We pay the taxes, we demand excellence
in your field. So that's exactly what I think we
should get.
(Applause.)

COMMISSIONER EDWARDS: Thank you. I appreciate that very much and we don't have the power to enact those things, but we have the power to put a lot of pressure on. We're going to do that.

MR. BALDINO: Well, you could turn it over to another agency. That's what we want to see.

(Applause.)

CHAIRMAN SCHILLER: I am just going to have to ask Mr. O'Neill and Mr. DePalma, from the Community Affairs, the codes and standards, did you find them helpful or a hindrance or accessible in this particular situation?

MR. O'NEILL: Both, all three, whatever. Periodically, I mean, as I said in the beginning, in justice to them, I think they got what they felt they could get out of the builder to make repairs to a lot of houses that I think it's the first time something like that was done in New Jersey and I think they did what they thought they could to the benefit of the people.

Was it enough? No, I don't think so. Do I think they could have gotten more? I'm...
not really sure. I wouldn't put money on it. So I think they did the best that they felt they could do with the circumstances the way they were and they're limited also because of the way the laws are with bankruptcy, things of that nature, the builder didn't just walk away. So --

CHAIRMAN SCHILLER: Mr. DePalma?

MR. DE PALMA: As Ed indicated, it was both. One of the situations was when, I know Ed hit on it a little bit, when we first started doing the inspections, they first came and asked Ed to maybe back off a little bit, he was picking up things that weren't required or weren't necessary and then after a few weeks' time, they came back and said, you know, we went behind you and we found Ed missed this or Ed missed that and you want him to look or don't you want him to look, you know?

And the whole time my stand on it was you made the agreement with the Hovnanian Corporation that they were going to have an engineering firm go out and look at these 40 houses and then have a representative go out and look at the problems, the problems would be corrected and we would inspect the problems as
they were corrected. We weren't initially
supposed to go out there and look at the problems,
but that's what it turned into. So the
representative from the corporation basically
doesn't exist. Whoever was supposed to be out
there looking for problems doesn't exist. This
turned into a catch me if you can.

So initially, yes, they were very
helpful and in some circumstances, yes, they're
helpful even yesterday or the day before. There's
other times where I've said something and I can't
hold it. The water situation is one of them. I
want it addressed differently and they said well,
anybody that didn't -- anyone that did not send
notice that they wanted their crawl space
inspected, they lose and that was basically their
words and Mr. Nanni is one of the homes. That
picture that was up there is one of the homes that
has a violation and is going before the Board of
Appeals. I also have that picture on my desk. I
have asked some of the people to please attend
that meeting, so I just asked them that today.

CHAIRMAN SCHILLER: Mr. Baldino, I
know you have something to say.

MR. BALDINO: Well, as far as I'm
concerned, the DCA with the initial meeting we had with Mr. Connolly and I guess my residents will agree because most of the people here attended that meeting, again, I want to bring out that situation that no minutes were taken, this was a clandestine attitude I think was taken, but no sort of state of emergency, we're going to have a clandestine operation on home construction. And as far as the DCA's operation is concerned, Mr. Connolly told us that he'd be in close contact with us throughout this ordeal. We haven't heard from Mr. Connolly. We have to call Mr. Connolly. We don't even know where they're at half the time. Sometimes the inspector is with the inspector from the Township; sometimes he's not. But these points of trust is what I think you have to take into accountability.

We're -- there is a lack of trust here somewhere. The county officials and the State, they seem to bicker between one another. I think that's the wrong thing to do. Between the county, municipalities and the State, there's always a squabble going on and I don't think that benefits the residents of the State. You have to have good clear communication between all the
agencies to get the job done and we feel the DCA did not really feel resident friendly. They were more concerned about the builder than they are us and we are the ones paying the money and we're the ones paying the taxes. So I believe in the future I think you have to have a mandated situation where you can have these particular agencies fulfill their obligations and fulfill their duties to their top performance. I don't want anything like maybe, so, if. You've got to have regulations and got to also -- I just want to mention one point. These codes we have in the State of New Jersey, the building codes, they should be looked into and revised.

I just want to make a statement about Mr. DePalma. He's a very good speaker but there are certain issues I disagree with and some of the issues are the code issues of this State. They have to be looked into. They're going to have to be more friendly to the individual buyers of homes than they are to builders because we ran into a lot of problems here and you can see for yourself the amount of problems -- this is only the surface. We're only talking about the surface here. This is the surface. You have to really
look at the details of every home. So I feel that
the DCA yes, they came to assist us, but they're
like the calvary coming with one horse and one
soldier.

CHAIRMAN SCHILLER: I want to thank
you. I think, if nothing else, you certainly have
improved the inspection for Monroe Township and
have been a real asset to this committee and I	hank you very much for your contribution today.

We'll take a five minute break.

(Recess taken at 3:56 p.m.)

(Resumed at 4:05 p.m.)

CHAIRMAN SCHILLER: Ladies and
gentlemen, please take your seats.

MR. GLASSEN: The Commission calls

Antonio Acevedo.

ANTONIO ACEVEDO, sworn.

BY MR. GLASSEN:

Q. Could you state your name and
address for the record, please?

A. Antonio Acevedo, 18 Polly Pigeon

Drive, Manalapan, New Jersey.

Q. Mr. Acevedo, when did you purchase

your home?

A. In 1996.
Q. And when did you move in?
A. September of '96.
Q. And how much did you pay for your home at the time you purchased it?
A. Approximately $412,000.
Q. And what is the name of the development that you reside in?
A. Manalapan Chase.
Q. And who was the developer of Manalapan Chase?
A. Colton Homes as well as Syntex Homes.
Q. Was Colton purchased by Syntex?
A. From what I understand, yes.
Q. How many homes are there in the Manalapan Chase development?
A. I believe there are 52.
Q. At the time that you moved into your home, did you experience problems?
A. Yes, I did from the day I moved in.
Q. Can you describe those problems to the Commission, please?
A. Crooked walls, plumbing that didn't work, electricity that didn't function, gaps and holes in the woodwork and at first I thought they...
were all minor cosmetic issues but the closer we looked at them, I found out that 14 electrical outlets didn't work, so I started to look further.

Q. Mr. Acevedo, you were involved and concerned about the construction of your new home, is that correct?

A. Yes, I was.

Q. So you made periodic visits to the building?

A. As often as I could.

Q. Well, then, was it represented to you at the time of your closing that these problems that you had noticed would be dealt with after the closing?

A. Yes, it was, but at one point they asked me not to come back to the site.

Q. Well, specifically with respect to the closing, did you bring an engineer with you to the closing?

A. I certainly did and I asked if he could come through during the walk-through.

Q. So you were trying to protect yourself as a buyer?

A. Yes, I was, especially when prior to being asked not to come back to the site I noticed
that my front staircase was approximately three feet from the front door when the blueprint said it had to be six, so I thought maybe there might be a little problem somewhere.

Q. Could you describe to the Commission your experience during the construction process of trying to inspect your home?

A. I immediately asked to bring someone private in to make sure that these problems are dealt with and at first I was confident that the builder would take care of them, but, again, when we got closer to the move-in date, things weren't being done and that staircase was still there, I decided it was time before I signed those papers to have an inspector come in.

Q. Specifically with reference to the staircase, what was your experience with the staircase? Could you describe that?

A. They gave some cock and bull story about how they got the wrong staircase and they were going to have to change it. I did order a special staircase. It was a solid oak staircase so it had to be pre-fabricated somewhere else and apparently what they did was they used the measurements from the actual blueprint not knowing
that the house would not reflect the blueprints.

The stairs didn't fit.

Q. You say the stairs, not referring to the size of the stairs, did not reflect the blueprint? What did you mean by that?

A. The blueprint shows the amount of steps, the amount of stairs and what angle they have to be pitched, how far it is to be from the front door, et cetera, et cetera. I assume it says something about height. That I couldn't know. But being that I'm not the first one to have purchased an oak staircase, I would have imagined that they have done this before and the manufacturer had pre-set numbers with which they went by.

Q. Well, did the staircase not fit into your home?

A. No, it did not.

Q. Do you know why?

A. I know why, because the house is two feet short.

Q. The house is two feet short?

A. Yeah.

Q. Explain that to the Commission.

A. Well, it's supposed to measure 35
feet from one end to the other and it measures 33.

It's actually 21 inches short.

Q. So at the time that you discovered the problem with the staircase did you realize the house was too short?

A. No. I never did, no.

Q. And what was -- what did the builder explain to you was the problem with the staircase?

A. As I mentioned before, they came back with many, many different excuses. At some point they got it to almost where it was supposed to be but I pointed out to them way long before, before the staircase that the framing was crooked even to the layman's eye and they said they would take care of all of that and that I would be invited to come back during the framing inspection to verify for myself that it was all taken care of and that never took place.

Q. You were not invited back?

A. I was not.

Q. So as a result, you attempted to bring an engineer with you to inspect the house prior to closing?

A. That's correct.

Q. And you were prohibited from having
him go through the walk-through with you?

   A. Yes, I was.

   Q. Could you explain to the Commission what they told you?

   A. Their answer was the house was not legally mine, that the inspector wasn't covered under their insurance or some malarkey to that effect and after we went to closing, all concerns I had would be dealt with and he could then go through the house -- in other words, after I signed the check.

   Q. After you closed on the property, did you attempt to get the builder to address your concerns?

   A. Yes, I did. During closing I even gave them a list of things which I had found prior to that and after we moved in, the list got bigger and longer.

   Q. Was there a process that you had to go through to notify the builder of the problems that you discovered at the home?

   A. Yes, there was. We had to go back and forth at that time during -- to the sales office, let them know and they would give us a punch list and they would give me a schedule as to
when the person would be back to fix the problems. However, when they got -- when the problems became very, very serious, communication between myself and the builder got less and less.

Q. And, again, at this point did you believe that the problems were primarily cosmetic?
A. At about that point I realized they had to be more than cosmetic.

Q. At some point in this process did you have contact with the State and the Department of Community Affairs?
A. Yes, I did. I contacted them initially not knowing where to go or what agency was involved with overseeing this type of thing and I was put in contact with DCA and the consumer whatever it is.

Q. And what did they tell you?
A. They told me to go back to the builder and if not, I always had the opportunity to go through warranty.

Q. Did you pursue your options under the warranty?
A. Yes, I had no choice but to. The year was coming to an end quickly and if I was to get in under that one year deadline to make them
responsible for all that I knew was wrong, I felt
I'd at least get the warranty people involved.
Maybe then they would do something about it.

Q. You refer to the one year deadlines. Could you explain that?

A. When you purchase a home, they give you a bogus pamphlet that says the house is under warranty, whether it's 10, 15, it could say 40 or 50 years, and that within that time, if anything goes wrong, Tinkerbell is basically going to come fix those things for you. So you believe like all good consumers do that this is some sort of an organization and their sole purpose is to help the homeowner and that is more or less an insurance policy for you when you buy something.

Q. And what about the one year -- is there some time limit to the one year?

A. Yes, there is. The one year covers basically everything from cosmetic to the structural. After that, I believe it goes to 10 years and under the 10 years, they don't cover many of the things. Then I think it goes to plumbing and electrical and after that it all has to do with structural issues which can be verified and seen.
Q. Was there a fact finding inspection conducted at your home to provide information to a warranty company?

A. Yes, there was.

Q. And can you describe to the Commission what the inspector did?

A. The inspector basically went through with my list, looked at everything, made their decision and got back to me via U.S. Mail.

Q. At any time did the warranty company indicate to you as a result of their inspection that you had structural problems with your home?

A. No. Hindsight being 20-20, they saw firsthand, if they were any kind of inspector, that there were little things missing like trusses and bracing and parts of a flooring system, little things like that.

Q. Did you end up pursuing your rights to go to binding arbitration?

A. I had no choice but to. When they gave me their decision, basically they covered very minor cosmetic things which I could have hired any handyman, you know, $400 to come in and do. So my only alternative at that point was to go to binding arbitration.
Q. And what were the results of going through binding arbitration?
A. Binding arbitration found on all 52 points that I had ruled in my favor; however, they didn't rule beyond that because they were never submitted initially. It was a point I didn't realize at that time.

Q. Were you satisfied with the process that you went through under the homeowner's warranty program?
A. Absolutely not. It's like the most useless, misguided lie ever perpetuated on any prospective homeowner.

Q. Did you continue to discover problems with your home after you had completed the warranty process?
A. Yes, I have and to this day we continue to discover things as they crop up as the houses become older and the problems become more evident.

Q. Mr. Acevedo, on August the 1st or thereabouts, did Commission Special Agent Charlie Kuyl and Mike Foley come to your home and make a video of the conditions of your home?
A. Yes, they did.
MR. GLASSEN: At this time, we would like you to watch excerpts of that videotape which is now marked Exhibit 191.

If you'd like to comment, feel free as you're viewing this.

(At this time, the videotape was shown.)

BY MR. GLASSEN:

Q. Mr. Acevedo, did that exhibit accurately reflect the condition of your house some six or seven years after you moved in?

A. Yes, it did and looking at it now, a lot more has been uncovered since then and some that I just forgot to mention during the taping.

Q. How much additional expense has this house cost you?

A. Without exaggeration, it has cost me close to if not a hundred thousand dollars, to rip out tiles, to rip out bathrooms, to reinforce things and just to fix the house, not to mention the drainage -- I had to put an entire drainage system throughout the property. The cost was staggering, just kept on going.

Q. And at any point in the process did you hire an attorney to assist you?
A. At one time I tried and even the attorney told me, Tony, you're going to spend so much money trying to fight with these guys, you're going to end up paying more to me to be your attorney to not get any results for years, possibly, when it's probably just cheaper for you to just take the money and fix the problems yourself and don't think that the builders don't know that.

Q. Do you still have unresolved issues in your home?

A. Yes, I do, to this day as does everyone else in the community big and small. I've got neighbors that the entire facade of the house has been torn down. Does the town do anything? If I were to do that to my home, I would have a time limit, that has to be done by such and such a date. This builder with the town's telling them to do it and the DCA behind them saying you must fix tore the house down, left it halfway done and has not come back to fix it. Instead they lie and they say these people don't want us in the house. Does that make any sense to you? They tear down the house and they say we're going out to dinner, you can't come today?
MR. GLASSEN: Thank you, Mr. Acevedo.

CHAIRMAN SCHILLER: When you say that, you're absolutely right. It has been consistent and prevalent and certainly is a pervasive way of allowing builders to abuse some homeowners and we appreciate your sharing on the depth of that frustration with us and hopefully we'll be able to accomplish something to benefit of all of you, not just you but all the people in New Jersey.

Sometimes I know it's frustrating sitting out there wondering what it all means. We will certainly do the best we can to achieve some of the many changes that we feel and you have articulated very well that have to be changed and while many of you have suffered through it, the pain of that suffering may have --

MR. ACEVEDO: The suffering is not an issue. The issue is that this is going on today. I can take you to any building site, any -- you pick it, I'll take you there. We'll bring a real engineer, not these Mickey Mouse engineers that they hire, and we'll guarantee you, you pick a house, there's going to be violations
there. The law is not adequate.

CHAIRMAN SCHILLER: Well, as one of the Commissioners mentioned earlier, it is a system that is broken and has to be fixed and there is no question about that and without your input that could not happen, so we are deeply appreciative of your being here today and taking the time out to come and I don't know if the Commissioners have any questions. As you said, this has been so repetitious that it's overwhelming in its sheer volume. So it has to be dealt with.

Thank you very much, Mr. Acevedo.

MR. GLASSEN: The final witnesses for today are Special Agent Charles Kuyl and Chief Accountant Joseph Becht.

Beginning with you, Agent Kuyl, would you state your name?

MR. KUYL: Charles A. Kuyl.

MR. GLASSEN: How are you employed?

MR. KUYL: Employed with the New Jersey State Commission of Investigation.

MR. GLASSEN: And prior to working for the SCI, by whom were you employed?

MR. KUYL: Prior to SCI, I served 29
years with the New Jersey State Police, achieved the rank of Captain. After that, I served as a confidential aide, Deputy Chief of Investigations for the former Prosecutor at the Ocean County Prosecutor's Office and I left there and served as Chief Investigations and Executive Staff Member to the State Appointed District Superintendent, Newark school system prior to coming here.

MR. GLASSEN: And were you assigned to the New Home Construction Issues Investigation?

MR. KUYL: Yes, sir.

MR. GLASSEN: Chief Accountant Becht, could you state your name, please?

MR. BECHT: Joseph Becht.

MR. GLASSEN: And how are you employed?

MR. BECHT: Currently with the State Commission of Investigation.

MR. GLASSEN: And what is your position with the SCI?

MR. BECHT: I am a Chief Accountant.

MR. GLASSEN: And prior to working for the SCI, by whom were you employed?

MR. BECHT: I was employed for 20 years by the State of New Jersey, Division of
Criminal Justice and approximately four years with
Prudential Insurance Company as a health care
investigator.

MR. GLASSEN: Were you also assigned
to the New Home Construction Issues Investigation?

MR. BECHT: Yes.

MR. GLASSEN: Special Agent Kuyl, as
part of your assignment, did you investigate a
matter related to Manalapan Chase development?

MR. KUYL: Yes, sir.

MR. GLASSEN: And in the course of
that investigation, what records did you have
occasion to look at?

MR. KUYL: I reviewed a voluminous
amount of records. I reviewed all Notices of
Violation records pertaining to all 52 homes,
construction permits, inspection logs, inspection
technical reports, engineering reports provided by
the homeowners, and engineering certification
reports from the developer. I reviewed all
homeowner's complaints, Code of Ethics policies,
all correspondences, investigative documents, on
site inspection documents and other relevant
documents prepared by investigators and staff of
the New Jersey Division of Community Affairs
Office of Regulatory Affairs and I reviewed all the transcripts of testimony that was given at the Ocean County Construction Appeals Board hearings.

MR. GLASSEN: Based on your analysis of files, records and interviews with homeowners, did you find numerous code-related problems occurring at the development?

MR. KUYL: Yes, sir. Every home experienced significant code violations and each home had workmanship issues.

MR. GLASSEN: Did you find that the homeowners initially had problems getting anyone to take their complaints seriously?

MR. KUYL: Yes, sir. Initially, the homeowners complained to local officials who refused to investigate their complaints. Instead they told them to make warranty claims against the builder's insurance.

MR. GLASSEN: Did the homeowners eventually have to hire engineers at their own expense to assess their homes?

MR. KUYL: Yes, sir. Not satisfied with the cooperation given by the Township, the homeowners were forced to hire engineers to inspect their homes at their own expense and as a
result of the inspections, they revealed numerous
code violations throughout the homes.

MR. GLASSEN: Did the builder's
engineer also examine the homes?

MR. KUYL: Yes, sir. The builder's
own engineer identified code violations in all the
homes and corroborated what was reported on by the
contractual engineering that was done by the
homeowners.

MR. GLASSEN: So they verified that?

MR. KUYL: Yes.

MR. GLASSEN: Chief Accountant
Becht, based on what you have learned, should the
deficiencies or problems that were identified have
been detected earlier if the proper inspections
had been conducted?

MR. BECHT: Absolutely, the best
time for the inspection is when the home is open.
Problems with the trusses, the roof wasn't
strapped down, the engineer's reports indicated
that a heavy wind would have blown the roofs off.
There were missing bolts. There were missing
lally columns. There were bolts missing from the
lally columns. There were support columns missing
and the trusses that were missing braces, they
were missing struts. It was just a whole plethora of problems.

MR. GLASSEN: And I believe you said that because the home was exposed, those violations could be seen better or could be inspected at that point in time?

MR. BECHT: As the home is going up, that's the best time to inspect the home because everything is open. Once the wallboard is put up, you don't know what's behind the wallboard. Once the roof is put on and the insulation is put in, you can't really see those problems.

MR. GLASSEN: Were COs issued on the properties?

MR. BECHT: On all 52 homes, yes.

MR. GLASSEN: Did you find that the inspection reports did not all have proper signatures?

MR. BECHT: Some of the inspection reports had improper signatures and some of the reports had no signatures.

MR. GLASSEN: Agent Kuyl, during the course of your investigation, was there an arrest of one of the Manalapan Sub-Code Officials?

MR. KUYL: Yes, sir, there was.
Joseph Cerankowski, a former electrical sub-code inspector who was working part time was reported to have been arrested by the Monmouth County Prosecutor's Office for failing to conduct electrical inspections and falsifying official inspection documents.

MR. GLASSEN: Can you provide the Commission with some of the details?

MR. KUYL: Yes, sir. Apparently, Mr. Cerankowski had indicated he had inspected several homes at Manalapan Chase. One of the homeowners had complained and indicated he had never shown up for an inspection and he apparently filled out the inspection form indicating that he did indeed inspect the home. Subsequently, a follow-up investigation revealed similar other events occurring to other homeowner's houses.

MR. GLASSEN: Can you provide the Commission with some examples of some of the obvious things that were missed during inspections of Manalapan Chase?

MR. KUYL: Yes, sir. A lot of the homes, upon flushing the toilet, they leaked profusely. There was missing insulation that caused pipes to freeze; there was numerous
-PUBLIC HEARING-

1 electrical outlets that didn't work properly. A
2 number of windows at Manalapan Chase leaked when
3 the rain would blow against the windows. As
4 mentioned earlier, a house is built two feet more
5 narrow than specified. All houses are not bolted.
6 There was broken trusses in all the homes, as well
7 as missing parts included with the trusses, and
8 trusses definitely were not properly assembled as
9 specified by the manufacturer's plans.
10 There's also, in addition, missing
11 squash blocks, missing TJI Joists, unbolted lally
12 columns, missing beams and support columns to hold
13 up the houses.
14 MR. GLASSEN: Did the Department of
15 Community Affairs eventually get involved with the
16 Manalapan Chase development?
17 MR. KUYL: Yes, they did. After the
18 homeowners hired their own engineer and had a
19 public meeting, the DCA became involved.
20 MR. GLASSEN: When they looked at
21 the development, what did the Department of
22 Community Affairs find?
23 MR. KUYL: They inspected and
24 identified numerous code violations at Manalapan
25 Chase including deficiencies which coincide with
the contractual engineer that was hired by the homeowners.

MR. GLASSEN: Was DCA able to locate the required documents for their inspections?

MR. KUYL: Initially when DCA requested the truss documents and approved plans to adequately evaluate the homes, Manalapan Construction Department was unable to supply DCA with the required plans and truss documents. They requested the same required documents from the builder and found that the documents supplied by the builder did not adequately depict the home being evaluated. Neither the town nor the developer had the proper plans in file for a house at Manalapan Chase when asked by DCA.

MR. GLASSEN: Are such documents supposed to be on site?

MR. KUYL: Yes, sir. There should be two sets of documents to be filed with the town prior to construction and one set is to be maintained by the builder on the site.

MR. GLASSEN: Were the plans on file at the construction office?

MR. KUYL: Definitely not.

MR. GLASSEN: How did DCA address
the code violations?

MR. KUYL: They directed the Manalapan Construction Office to issue notices of violations to all affected homes at Manalapan Chase directing the builder to inspect, identify the code violations, propose a repair and certify the repair as complete all within a specific period of time.

MR. GLASSEN: How did this plan work?

MR. KUYL: The developer contracted the services of an engineering firm to address the violations and found during DCA’s inspection design plans to address the violation in all 52 homes in the Manalapan Chase development. Once the engineering evaluation was completed, a report detailing repairs to each of the homes would have to be submitted with the permit application to Manalapan Construction Department to issue permits.

As a result of these inspections by the engineering firm, they determined that many of the violations should have been detected by the inspectors during original construction.

MR. GLASSEN: Who contracted with

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the engineer for this process?

MR. KUYL: The developer/builder was responsible under the notice of violation.

MR. GLASSEN: Did the engineer's certification state that the home was built to code or, rather, that the engineering fix had been completed?

MR. KUYL: It noted that the engineering fix had been completed and a certificate of approval was issued. Presumably the engineer fix would bring the home into code compliance. However, many of these code violations are hidden because many are covered. Once a house is built, they are difficult to detect and discover. That is why it is imperative that inspections should occur during various stages of construction.

MR. GLASSEN: But there was no certification that the homes then met code, is that correct?

MR. KUYL: That's right. There was no certifications from the Manalapan Construction Code Department indicating that the repairs were made to code. They relied on the engineering contract by the developer.
MR. GLASSEN: Chief Accountant Becht, who is the engineering firm responsible for inspecting to verify the house is code compliant after the inspections were made?

MR. BECHT: The developer hired the firm to do the inspection. After the inspection was done, the same firm certified that the work was done.

MR. GLASSEN: Did we find throughout the investigation that the confidence of the homeowner is shaken by this practice?

MR. BECHT: Definitely. They expected the municipality to do the inspection but instead they were relying on the engineering firm who was hired by the builder and recommended the repairs and then inspected the repairs as the one that was going to issue the certificate of approval.

MR. GLASSEN: Did the Commission subpoena Richard Hogan, the current Manalapan Chase Construction Official, into private session in regard to the homes receiving COs despite obvious code violations?

MR. BECHT: Yes.

MR. GLASSEN: What did he say?
MR. BECHT: On the issue, Mr. Hogan stated, "It doesn't mean that we are certifying that the structure complies. What the CO is is the application, the certificate, all right -- that their Affidavit or their certificate -- request for a certificate -- that the builder takes a responsibility to meet code."

MR. GLASSEN: In other words, did he, in essence, indicate that the Construction Official is not necessarily responsible for detecting these violations?

MR. BECHT: What I think he's saying is that the builder is responsible for the home to meet code.

MR. GLASSEN: Was the builder assessed a fine in this instance?

MR. BECHT: Yes, he was.

MR. GLASSEN: And did the builder appeal that fine?

MR. BECHT: Yes. The original fine was approximately 212, $215,000. He appealed to the Construction Appeals Board and the fine was reduced. The hearing officer stated that both the Construction Department and the builder are responsible and the fine was downgraded to
MR. GLASSEN: Can you give us some significant examples not necessarily code-related that homeowners ended up not getting what they paid for at this or other developments?

MR. BECHT: There was a purchaser in Manalapan Chase who purchased a surround sound system for her home. She paid about $10,000 for the system and instead of going out -- she said she could get it cheaper if she went outside but felt what when the wall was open, it was the best time to install the system. When she came at the closing and she's doing the walk-through, she wanted to listen to the system. When they put it on, she said to the individual I don't hear anything and the answer was well, that's the beauty of the system, you're not supposed to.

You have the instances of the garages that were too short. That wasn't the only development at Wall Township. There were other developments where we have very similar pictures where the stairs were out. You have the instances, and I think a number of the homes in Manalapan Chase were short meaning that that structure was approximately two feet short and
what they did was expand and in one of the homes only about three inches of the sill is sitting on the foundation which, you know, it's going to cause problems down the line.

There were other instances where a homeowner contracted for two car garage and, in fact, got a three car garage, so she made out on the deal. But it just shows that they don't pay attention to the plans.

MR. GLASSEN: Special Agent Kuyl, based on a recent New Jersey Superior Court ruling, are homeowners throughout New Jersey now being held responsible for code violations in their homes?

MR. KUYL: Yes, sir. DKM Residential Properties versus Township of Montgomery states that, in essence, once a CO was issued and the title passes, the homeowner is responsible for the dwelling even if the builder made mistakes or errors.

MR. GLASSEN: Have we seen instances in the past few weeks where homeowners are now being issued NOVs rather than the builder for code violations?

MR. KUYL: Yes, sir. If there is a
significant safety and health issue requiring immediate correction, it would have to be the responsibility of the homeowner to take care of it.

MR. GLASSEN: Has there been any action taken against the inspectors who are responsible for inspecting these properties at Manalapan Chase and issuing certificates of occupancy?

MR. KUYL: Not yet, sir.

MR. GLASSEN: Agent Kuyl, based on your analysis, what contributed to the problems here?

MR. KUYL: Well, number one, the homes definitely were not built properly and conclude that the houses were not inspected properly and the same was noted during testimony at the Ocean County Construction Board of Affairs indicated the same.

MR. GLASSEN: And could you comment on the ramifications to the homeowners of what occurred at Manalapan Chase?

MR. KUYL: Sure. The homeowners have endured the fear of losing their homes, number one. They realize that their homes may not
be safe. They personally endured considerable
expenses in making repairs and hiring engineers.
There were numerous invasions of their homes by
inspectors and repairmen during the fix stages
which actually interfered with the use and
enjoyment of the home.

MR. GLASSEN: Thank you very much.
No further questions.

CHAIRMAN SCHILLER: I want to thank
you, gentlemen, for a sum up analysis and again,
it's just reiterating the same plights, but the
difference is you have provided back-up facts that
the homeowners have been complaining of.

So with your testimony, that will
conclude today's testimony and tomorrow will be at
9:30 in the morning in this room and just to
remind everybody that this is ongoing testimony,
so we'll have tomorrow's hearing, then we'll be
resuming again in January. And I want to thank
particularly Denise Housel, our stenographer, for
being so patient and hanging in there. So we'll
see you all tomorrow at 9:30 and I really
appreciate everybody's participation.

(Hearing adjourned at 5:03 p.m.)
CERTIFICATE

I, Denise C. Housel, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness and/or witnesses were sworn by me to testify to the truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

Certified Shorthand Reporter
XI01029
Notary Public of New Jersey
My Commission expires 10-30-07

Dated: ____________________