
Commission Meeting

of

STATE HOUSE COMMISSION

LOCATION: Committee Room 3
State House Annex
Trenton, New Jersey

DATE: May 2, 2011
9:00 a.m.

MEMBERS OF COMMISSION PRESENT:

Dominick DiRocco, Chair
Senator Bob Smith
Assemblyman Joseph Cryan
Assemblyman Jon M. Bramnick
Robert L. Peden
Robert A. Romano



ALSO PRESENT:

Robert J. Shaughnessy Jr.
Secretary

Gary A. Kotler
Counsel

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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DOMINICK DiROCCO (Chair): I'd like to convene this meeting of the State House Commission.

Mr. Secretary, could I have the Open Public Meeting statement read, please?

MR. SHAUGHNESSY (Secretary): Yes. Good morning, sir.

The State House Commission is in compliance with the Open Public Meetings Act. Notice of this meeting was given by way of notice filed with the Secretary of State, given to the State House press corps, and posted to the Office of the State House Commission.

We have a quorum, sir, and may proceed.

MR. DiROCCO: May I have a roll call, please?

MR. SHAUGHNESSY: Assistant Counsel DiRocco.

MR. DiROCCO: Here.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Here.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Here.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Present.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Here.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Present.

MR. SHAUGHNESSY: Again, we have a quorum, sir.

MR. DiROCCO: And can we dispatch with approval of the minutes, please.

MR. SHAUGHNESSY: Surely.

First, approval of the November 22, 2010 minutes. May I have a motion?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Second?

DEPUTY TREASURER ROMANO: Second.

MR. SHAUGHNESSY: All in favor? (affirmative responses)

Any opposed? (no response)

Next, on to No. 2, approval of the December 9, 2010 minutes. May I have a motion for the approval of those minutes?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Second?

SENATOR SMITH: Second.

MR. SHAUGHNESSY: Any discussion? (no response)

All in favor? (affirmative responses)

Any discussion? Pardon me -- any noes? (no response) Okay, that's approved.

MR. DiROCCO: Thank you. And I think we should probably move into new business first, since we have a number of action items in the -- Under old business, we have more of discussion items that, perhaps, we should leave for the end; and we can move quickly through our new business items.

ASSEMBLYMAN CRYAN: I have a question.

MR. DiROCCO: Yes, Assemblyman.

ASSEMBLYMAN CRYAN: What does it take to get the agenda on the internet? We talked about this; it's in the minutes, long

away. They're not on the internet. I mean, it's 2011 -- does it take an act of God? What does it take? I thought we moved this as a Commission. What's the deal?

MR. SHAUGHNESSY: May I address the Assemblyman?

I had previously attempted to get that on the internet. With your recent inquiries, I again attempted to do that. What I have learned is that we really don't have a web page. I thought the legislative web page was our web page. The bottom line is, Assemblyman: I guess I'm somewhere now between the Legislative Branch and the Executive Branch IT world. And I think the next step that has to happen, according to what I have learned, is that we need to have, perhaps, an Executive Branch web page of some sort established, and then there'd be a link to the legislative web page. So I'm somewhere between that world. And that's what we need to do.

ASSEMBLYMAN CRYAN: It's 2011, man. I mean, do you need a motion-- You know, I'm sure you're not thrilled saying it, just like I'm not thrilled hearing it, as anybody else is. I'm sure we're all cringing at least a little bit.

MR. SHAUGHNESSY: Yes, sir.

ASSEMBLYMAN CRYAN: Do you need a motion from anybody here, a phone call? What does it take?

MR. SHAUGHNESSY: I think that-- I tell you what. Let's try one time again, and maybe with you or your office's assistance we can get it completed. We are in compliance with the Open Public Meeting Act, but I agree with the Assemblyman. It needs to be even more accessible.

ASSEMBLYMAN CRYAN: All right, thank you.

MR. DiROCCO: Thank you, Assemblyman.

Can we move into new business, please? Item No. 5?

MR. SHAUGHNESSY: Item No. 5-- Perhaps-- It's a discussion item; would you like to move to -- with the Chair's permission--

MR. DiROCCO: Let's move to No. 6; thank you.

MR. SHAUGHNESSY: Item No. 6 -- RPR 11-07, Block 6801, part of Lot 1, Winslow Township, Camden County.

Treasury, on behalf of the Department of Human Services, requests approval to grant an easement to New Jersey American Water for the installation and maintenance of new water lines necessary to service the Ancora Psychiatric Hospital. DHS has agreed to discontinue use of the current wells at Ancora Psychiatric Hospital and not construct new wells. The easement will be granted for \$1 because it directly serves the State.

Is there any discussion of this item?

SENATOR SMITH: Move to approve.

ASSEMBLYMAN BRAMNICK: Second.

MR. SHAUGHNESSY: Thank you. I'll call the roll.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: I just want to put on the record now, for early on. We did this last time; we're going to defer the ethical discussion, which I'm fine with. But in good faith -- and I'm sure we all did the same -- I've checked for donors as best we could all the way around here. Just want to reiterate on the record, again as best and with whatever documentation is here, I don't find any conflicts -- as best you can in three days' notice -- anywhere along the line.

So with that, I vote yes.

MR. SHAUGHNESSY: So then we're on to Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: Thank you. That matter is approved.

Next is No. 7 in your agenda. It's RPR 11-09, Bank Street Garage, Block 3803, part of Lot 2.01, Trenton, Mercer County.

New Jersey Department of the Treasury requests approval to grant a temporary construction easement to PSE&G to perform an environmental remediation project on the property known as the Bank Street Garage. The temporary easement will be granted for one year for \$36,000, which will cover the loss of parking spaces located within the garage, in essence for a staging area for the project. The State also retains the right to charge PSE&G an additional \$120 per month for any additional parking loss.

Is there any discussion on this matter?

SENATOR SMITH: Not on this matter, but Assemblyman Cryan now has me thinking about conflicts of interest. Would it be Counsel's opinion that if we had ever received a campaign contribution

from New Jersey American Water -- if that would have been a conflict on the last one, if we had ever received a campaign contribution from Public Service Electric and Gas then that would be a conflict on this one? Or does it have to go some beyond that? Does it have to be a matter, for example, if we as lawyers represented them in a land use matter, that would be a clear-cut conflict. How about the campaign contribution issue?

MR. KOTLER: Well, I think first of all, we would need to find out how much--

SENATOR SMITH: The facts.

MR. KOTLER: The facts, and how much of a contribution is made. I don't think contributions in and of themselves necessarily result in a conflict. I believe the current limit is \$300.

SENATOR SMITH: For report--

MR. KOTLER: For reportable--

SENATOR SMITH: Yes, but can you be a little bit pregnant, or are you pregnant? That's the question.

Could we get an opinion on that from Counsel, for the future? I don't-- FYI, I don't know of a campaign contribution from Public Service, or from New Jersey American Water, but that last question had me thinking about this. I mean, I don't want to get myself in a jam on any of this stuff.

MR. DiROCCO: I think this gets to the heart, really, of the two issues Assemblyman Cryan was getting at, which is getting notice out earlier, if we can get on the web site, which we'll definitely work to do so there's more time to do legwork on that; and *(b)*, having some sort of a -- which we'll discuss later -- having some sort of a form ahead of time where

at least there's notice to you guys as far as who the players are involved in each application. And I don't know that necessarily it should be this body making the determination, but maybe if we can get you the notice early enough then you can have the Legislative Ethics folks review it, or at least get it in time that you can have the proper review take place, whatever form that may be. But I think the timeliness is really going to be the key, and we can discuss that later as far as how we get that information to you guys more quickly.

SENATOR SMITH: It wouldn't it be the worst thing to get a note over to ELEC and ask their opinion, or the State Legislative Ethics Committee.

MR. KOTLER: Like I said, we think that is the proper form.

SENATOR SMITH: Yes, but ask questions -- ask them for an opinion, so that one way or another we know whether we have an issue or not.

ASSEMBLYMAN CRYAN: I just want to declare, on the record: I mean, we're sitting there on a Sunday trying to go through the ELEC-- And this is the real world here; sitting here trying -- on your home computer trying to figure out whether somebody-- It's not the easiest database on God's green earth to hit. And when you're trying to figure out whether something's there, if your treasurer's away, like mine was this weekend, I don't have my 2002-- Did somebody send me something under \$300 stuff? You guys know how this works, and when you're voting for a lease here, we've had questions about appraisals along the way on, it's a bad spot to be. I'm just going to say now, as best I know -- and I'm sure Bob's in the same boat--

SENATOR SMITH: Same boat.

ASSEMBLYMAN CRYAN: --we're voting in good faith and conscience -- I'm sure Jon is, as well. But you know, we've got to get this thing resolved. I need to hear it, and I sure don't need to read about it one day -- that you did something that you weren't supposed to do when you're trying your best not to.

ASSEMBLYMAN BRAMNICK: Just a question to Counsel: We vote all the time in the Legislature on issues that may affect, for example, New Jersey American Water, and we have received a campaign donation. Are the rules different as to a vote in the State House Commission, as opposed to what happens on the floor on the Legislature?

SENATOR SMITH: Let's find out.

ASSEMBLYMAN BRAMNICK: Well, the reason I'm asking is, I would suspect that based on campaign donations and issues in legislation, that we are constantly under the gun, but I've never seen that to be an ethics issue. If that is an ethics issue, then we need--

SENATOR SMITH: We need to know it.

ASSEMBLYMAN BRAMNICK: We need to move rapidly towards that, because I have a lot of votes here, and I don't know-- To be honest with you, I don't know if there's been campaign donations or not.

MR. DiROCCO: All right, it's a good question. I think that the proper channel, really, is at least start with ELEC, and we'll have our folks recheck with ELEC and see if we can get some clarification on that.

SENATOR SMITH: That being said, I move No. 7 for approval.

ASSEMBLYMAN CRYAN: I second it.

MR. SHAUGHNESSY: Okay. So we have a motion and a second on No. 7. Any discussion? (no response)

I'll call the roll.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: The matter is approved.

Next, on to No. 8: RPR 11-14, North Jersey Developmental Center, Block 156.02, Lot 1, Totowa Borough, Passaic County.

Department of Treasury, on behalf of the Department of Human Services, requests approval to lease property located at the North Jersey Developmental Center to the Borough of Totowa to be used as recreational fields.

The recreational fields were originally constructed by the Borough under an old lease, a lease that has since expired. The Borough will make a number of improvements to the fields and will also be responsible for all maintenance associated with the property. The term of

the lease will be for five years with two, five-year renewals. Since this lease directly benefits the citizens of New Jersey, the annual rent will be \$1. And a side benefit here is the Department of Transportation, the adjacent property owner, will be permitted to utilize the parking area constructed by the Borough for employee parking.

Any discussion on this matter?

ASSEMBLYMAN CRYAN: So is that the real deal here? It's parking for open space? Is that the idea? Because the lease number by itself, respectfully, doesn't-- I mean, it doesn't look like it's the best use to me. I mean, others may see it differently. So how much parking is there involved as well?

MR. SHAUGHNESSY: I'm not sure; is there anyone here to speak to that?

Okay, would you please come up and put your identities on the record.

N O R D A N M U R P H Y: (Off mike) Sure. My name is Nordan Murphy.

MR. SHAUGHNESSY: You can have a seat too.

MR. MURPHY: My name is Nordan Murphy. I work for the Alaimo Engineering Group. We are the Borough engineers for the Borough of Totowa.

MR. SHAUGHNESSY: And you, sir?

R O B E R T C O R R A D O: I'm Robert Corrado; I'm the municipal attorney for the Borough of Totowa.

MR. SHAUGHNESSY: I think the question is how much parking is there that will benefit DOT.

MR. MURPHY: I believe the area in question is actually a staging area -- it's not delineated parking. It is an area that is used for parking, but it's a staging area where the DOT maintains materials and equipment for their various maintenance operations.

MR. CORRADO: We have utilized the property since 1977, and we've worked with the DOT. There's never been a problem for the children using the fields or the DOT.

ASSEMBLYMAN CRYAN: Is it delineated in the lease?

MR. CORRADO: Well--

J A M E S D A R R A R: (off mike) Do you need a DOT rep?

ASSEMBLYMAN CRYAN: I don't know. I just--

MR. SHAUGHNESSY: That would be helpful for us.

MR. DARRAR: Hi, Bob.

MR. CORRADO: Hey.

MR. SHAUGHNESSY: Good morning, Mr. Darrar.

MR. DARRAR: Jim Darrar, Department of Transportation, Property Management Section.

We received the usual request for disposal from Treasury awhile back. We had circulated this particular parcel of interest to our northern maintenance region, and I guess for a period of years there had been, I guess you can call, unofficial use by the Department and the Borough of the Human Services property. And the Department and the Borough had both been using a parking spot that was, I guess, serving the ball field that was there. And outside the ball field there was an area that the Department had been using for storage of mulch, and grass cuttings, and wood chips, and stuff like that that they picked up off the highway.

We wrote back to the Treasury and also to Human Services to let them know that we'd still be interested in jointly using the parking spot; mostly the parking the employees use is during the day. It's not at the same time that the Borough has their games, and the area that they currently use for their mulch, and their grass clippings, and branches is off away from the area that they play the games on. I'm not sure which area that the Borough is currently going to be leasing. We do have an easement that runs across the Human Services property -- that's how we get into our maintenance facility.

And I'm not sure that there's any much more information I can provide to the Commission other than that.

ASSEMBLYMAN CRYAN: My question is, is it in the lease? I mean, first it was parking, but it's not now -- it's a staging area. Is it in the lease that what we're using it for is appropriate and all good to go?

MR. DARRAR: As far--

MR. SHAUGHNESSY: Assemblyman, we could make sure that that provision gets in the lease.

MR. DiROCCO: We can make that a contingency?

MR. DARRAR: We had reached out to the Human Services Director and the Department just saying, "This is what we would like to continue using, from the DOT's standpoint," and we thought we could work together with Totowa. We didn't think there would be any problem with jointly utilizing the facility, as we have been unofficially for many years.

ASSEMBLYMAN CRYAN: I'm just looking to make sure it's in the lease. I mean, the story's changed in the past 10 minutes from parking to staging, so--

MR. CORRADO: It's not a problem on our part that it be in the lease.

ASSEMBLYMAN CRYAN: And you, as the town attorney Mr. Corrado--

MR. CORRADO: Yes.

ASSEMBLYMAN CRYAN: Corrado (indicating pronunciation) -- is that correct?

MR. CORRADO: Yes.

ASSEMBLYMAN CRYAN: Can you represent to me what-- It was represented to us, as you heard in the opening, that there are a number of improvements that the Borough will do. Is that delineated in any way in the lease as well? Is there--

MR. CORRADO: Not yet.

ASSEMBLYMAN CRYAN: --financial requirement, or how does that work?

MR. CORRADO: The capital improvements that are going to be made are made to the playing area, not the staging area we're putting down. This area was originally used during the construction of Route 80, and during that time they used it to make their cement. So the base of the ground is filled with cement and it drains very poorly. What we were able to do is get a grant from the county to improve the drainage and improve the ball fields so that the soccer program, the softball program, and the marching band that utilize the field can use it when the weather permits.

And we're really going to put in drainage facilities and new sod, and no structures.

ASSEMBLYMAN CRYAN: Okay, then it's the same question. I'm glad you are; that's great. But from where we're sitting, we're approving a lease that's been represented as part of the lease you're going to do the improvements. Is it in the lease or do we need to-- I'm just asking: how much? Do you have any idea?

MR. CORRADO: How much we're going to spend?

MR. DARRAR: A dollar figure?

MR. SHAUGHNESSY: Assemblyman Cryan--

MR. DARRAR: A dollar figure?

MR. SHAUGHNESSY: Well, that may be fine, but I think the lease needs approval first by the Commission and those conditions will absolutely be--

ASSEMBLYMAN CRYAN: Will be part of the lease?

MR. SHAUGHNESSY: --put in the lease when it's documented.

ASSEMBLYMAN CRYAN: Okay.

MR. DARRAR: Joe, if I could make--

ASSEMBLYMAN CRYAN: I'm good.

MR. SHAUGHNESSY: So we appreciate your--

ASSEMBLYMAN CRYAN: You'll put that in as part of it.

MR. DARRAR: If I could just make one comment.

Originally we talked to Mary Paine (phonetic spelling) and Katherine Flynn (phonetic spelling); we had suggested if the staging area of the DOT wasn't something they used on a regular basis, you actually

wouldn't even need to incorporate it into their lease. But if it's some area that when they're not using it for staging -- because I don't know how often the Department puts their mulch and cuttings -- from liability purposes it would be easy just to cut out that back corner that they're using, and then the Borough wouldn't have to worry about the lease.

We had sent a map over to the Human Services Division. I assume they had a chance to share that with the Borough, but I just want to share that, if it's not necessary, then it's up to what you guys feel is most appropriate.

MR. SHAUGHNESSY: We understand there's no objection, though, from the Borough to put the concerns that the Assemblyman has raised.

MR. CORRADO: No, absolutely not. We've worked with them for the last 35 years.

MR. DiROCCO: So I'm sensing that there's a comfort level if we make the contingencies that we discussed part of the lease. We'll make sure that that's in there.

MR. CORRADO: Correct.

MR. DiROCCO: I'm sensing that there's a comfort level after those contingencies are made.

ASSEMBLYMAN CRYAN: How long does it take from this process for an actual lease to occur?

MR. CORRADO: I wish I could give you an answer to that. We're anxious-- We've already awarded the contract and we can't get underway until we get the lease. So we will do everything on our part to get

the lease expedited, and that's what we're working toward. We needed to get through today so that we can get the lease.

SENATOR SMITH: Who does the lease?

MR. SHAUGHNESSY: We usually have a draft of the lease, which then goes out -- our office, Treasury. In our cases, the Treasury -- this is Treasury on behalf of the Department of Human Services, so we're doing this on behalf of Human Services. But I think the lease should be able -- after approval today with conditions as specified, we should be able to document it in a matter of weeks and get it done.

MR. DARRAR: If I could just raise a question then: I know usually in the DOT we send the leases over. There are usually two readings by the municipality because they'd have to see the terms of the lease. So I don't know how long the Borough would take to have their two readings.

MR. CORRADO: It will take us a month. They have two Council meetings a month; we'll introduce it the first Tuesday, and then adopt it the following two Tuesdays away.

MR. SHAUGHNESSY: Okay; any further discussion? If not, I'll take the roll call.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: And this motion is with the conditions that we discussed -- is that correct?

MR. SHAUGHNESSY: Yes, sir.

ASSEMBLYMAN CRYAN: Okay, then yes.

MR. SHAUGHNESSY: And Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: That matter is approved with conditions noted in the record.

MR. CORRADO: Thank you very much.

MR. SHAUGHNESSY: Thank you.

MR. DiROCCO: Thank you.

MR. SHAUGHNESSY: Okay, on to No. 9; actually, items 9 through 18 are DEP requests. The first matter is Atlantic City Public Beach, Block 1, part of Lot 126, Atlantic City, Atlantic County.

DEP, on behalf of the City of Atlantic City, requests approval to divert, through a 30-year-term easement, 0.13± acres of beach with the construction of an underground electric utility line by Fishermen's Energy, LLC to service an offshore wind energy project. The easement will be 10 feet wide by approximately 600 feet long. The line will serve a proposed offshore wind project that will include the installation of six electric generating wind turbines located approximately 2.8 miles off the New Jersey coast from the city, in State waters.

As compensation, the City proposes to accept \$42,500 cash to be used for the construction of a memorial statue honoring the life of

Leavander Johnson, a professional boxer from Atlantic City, at the Downtown Park.

Any discussion with regard to this matter?

SENATOR SMITH: Yes, a little bit.

The-- I have a fatal defect. I try to have rationality on the world. Where did the \$42,500 come as a number? Why is the statue the appropriate compensation?

MR. SHAUGHNESSY: We do have representatives, I know, from DEP and otherwise -- would please come up and identify themselves.

RICHARD BOORNAZIAN: Good morning. My name is Rich Boornazian, and I head up the Green Acres Program for DEP.

JUDETH PICCININI YEANY, ESQ.: I'm Judeth Yeany with the Green Acres Program.

Two things about that value: First of all, this is 6,000 square feet. It's a segment of the line. So this is the portion of the line that goes under the public beach, not the portion that goes from that point to the substation, which is going to run under city streets and it's not part of this application. And anything on the waterward side of the line is being handled by the Tidelands Bureau under separate valuation -- under their normal rules.

So this is, kind of, the middle segment of the line, and there was an appraisal that established the value.

SENATOR SMITH: Appraisal -- okay.

MS. PICCININI YEANY: We actually rejected an appraisal that valued it as a nominal value associated with an underground utility easement, and we required the appraisers to look at fair market value based

on highest and best use. And that number was calculated by looking at other comparable commercial uses in the beach area.

SENATOR SMITH: Good. But the Commission may remember the internal controversy we had with regard to the commercial easement through State property in northern New Jersey for a pipeline. And that value seemed to be out of the air. If you're saying it's being valued as a commercial easement, I have no issues with it.

MS. PICCININI YEANY: It is. This is a lump-sum payment for the third year easement, based on a commercial valuation.

SENATOR SMITH: Thank you.

MR. SHAUGHNESSY: Any-- I'm sorry, Assemblyman.

ASSEMBLYMAN CRYAN: Where did the statue come from? We're moving a statue here; Bob mentioned it.

MS. PICCININI YEANY: Our rules allow, for a small easement of this magnitude, that the money go towards park improvements. And the statue is what the city identified to us as something that they wanted to put the money towards, and that they could accomplish in a short period of time. We make them identify a project that can be completed in a reasonable amount of time so that we don't have to track where that money goes. And this was something that they felt was an appropriate expenditure of the money.

ASSEMBLYMAN CRYAN: Just out of curiosity, who's *they* from the city? Like who did you deal with?

MS. PICCININI YEANY: I believe there's a representative from the city here if you'd like to speak to him.

ASSEMBLYMAN CRYAN: Good -- please.

WILLIAM CRANE: Good morning. My name is William Crane; I'm the Planning Director for the City of Atlantic City.

I couldn't hear very well what you were saying. I know that there was a question; I'm not sure what the question was.

ASSEMBLYMAN CRYAN: Sorry -- could you explain where the statue came from and how that worked out?

MR. CRANE: Leavander Johnson was a professional boxer from Atlantic City, New Jersey.

ASSEMBLYMAN CRYAN: Yes, I read that.

MR. CRANE: We're very proud of him. He died an untimely death and the City Council, as well as the administration of Atlantic City, wanted to pay tribute to him. We commissioned a statue which has, I believe, been completed at this time. We're looking for a location for that statue, and we thought it would be fitting to locate it in what we call Downtown Park, which is in the downtown section of Atlantic City -- basically center city. There are many government buildings around it; the City Hall is there, the County building is there, the Courthouse is in the same location. And it's a very populated area during the day, particularly during the week, and we feel that that location there would be a lot of exposure for the statue.

ASSEMBLYMAN CRYAN: But this money can only be used, for lack of a better way of putting it, for this type of-- For Green Acres or for open space? It can't be used for general revenue for Atlantic City, can it?

MR. CRANE: Oh, no. It's used for-- Judeth can probably explain it better than I can. But my understanding is it's used either to

acquire property or to improve property. In this case, it would be improving property.

ASSEMBLYMAN CRYAN: So for those of us who might scratch our head a little bit -- and I just want to be clear that the city that's facing, for example, some public safety layoffs -- that you can't utilize this money for that. They are essentially two different colors of money, so to speak. Is that correct?

MS. PICCININI YEANY: That's correct.

ASSEMBLYMAN CRYAN: Okay. And when you see the Legislature emphasize tourism, as we have done in an effort, that you can make a point that this is part of a tourism effort and that that might make some sense. Is that correct?

MS. PICCININI YEANY: That's correct. We also made sure that it's something that we would have been willing to fund through the Green Acres program before we consented to that particular use.

ASSEMBLYMAN CRYAN: Okay.

MR. SHAUGHNESSY: Yes, Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Am I clear that this \$42,500 -- is that correct?

MR. CRANE: Correct.

ASSEMBLYMAN BRAMNICK: All of that money is going to the statue?

MR. CRANE: No, no.

ASSEMBLYMAN BRAMNICK: I'm sorry.

MR. CRANE: None of that goes towards that statue.

ASSEMBLYMAN BRAMNICK: Okay, because it says, “to be used for construction of memorial statue at the Downtown Park.”

MR. CRANE: It’s for the -- to construct the base on which the statue would be located, and the landscape improvements around that base. The statue has already been commissioned.

ASSEMBLYMAN BRAMNICK: I’m sorry; when you say already been commissioned, I’m not sure I know what you mean -- commissioned. In other words, paid for?

MR. CRANE: It was commissioned, paid for, and, I believe, it’s completed at this time. We haven’t received delivery yet.

ASSEMBLYMAN BRAMNICK: So the \$42,500 -- just so I’m clear -- is going to the surroundings of the statue?

MR. CRANE: Correct. The base on which the statue will sit, as well as the landscape treatment around it, which will be a combination of hardscaping and softscaping.

ASSEMBLYMAN BRAMNICK: Thank you.

MR. SHAUGHNESSY: Thank you for that clarification.

Is there any other discussion before we vote on the matter? (no response)

ASSEMBLYMAN BRAMNICK: Move for approval.

MR. SHAUGHNESSY: Thank you.

A second?

MR. DiROCCO: I’ll second.

MR. SHAUGHNESSY: Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: That matter is approved.

Okay, we're on to--

MR. CRANE: Thank you.

MR. SHAUGHNESSY: Thank you.

MR. DiROCCO: Thank you.

MR. SHAUGHNESSY: Okay, we're on to No. 11 -- Capoolong
Creek Wildlife Management Area.

MR. DiROCCO: Number 10.

ASSEMBLYMAN CRYAN: Number 10, aren't we?

MR. SHAUGHNESSY: Oh, pardon me.

SENATOR SMITH: Ten.

MR. SHAUGHNESSY: Yes, thank you; No. 10, Colliers Mills
Wildlife Management Area, Block 18301, part of Lot 1, Jackson Township,
Ocean County

DEP requests approval to enter into a boundary line agreement
with John and Clare Fink to establish with legal certainty the boundary
between the holdings of the State and the Finks. The agreement would be

mutually beneficial and is primarily intended to confirm the respective property rights of the Finks and the State. Monumentation shall be installed at the corners of the Fink property and will provide the DEP and the public with visual confirmation of the State's property boundary. Resolution of this matter through a boundary line agreement will avoid future quiet title litigation over the true legal location of the property. Based on the above, no additional compensation is proposed.

Any discussion on this matter? (no response)

ASSEMBLYMAN CRYAN: I make a motion.

ASSEMBLYMAN BRAMNICK: Second.

MR. SHAUGHNESSY: Okay, I'll call the roll.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: Okay, that matter is approved.

Now on to No. 11 -- Capoolong Creek Wildlife Management Area, Block 29, part of Lot 58, and Block 28, part of Lot 41, Franklin Township, Hunterdon County

DEP requests approval to convey an approximately 0.032± acres of State property in fee to Hunterdon County in connection with the replacement and realignment of the County Bridge F-45 on White Bridge Road over the Capoolong Creek. To compensate, the County will provide \$7,164 in time and materials to improve public access to the WMA, manage invasive species, and stabilize an eroded bank within the WMA.

Any discussion?

ASSEMBLYMAN CRYAN: Move it.

MR. SHAUGHNESSY: Second?

ASSEMBLYMAN BRAMNICK: Second.

MR. SHAUGHNESSY: Okay -- motion, second.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: That matter is approved. Thank you.

No. 12 -- Makepeace Lake WMA, Block 591, part of Lot 3, Hamilton Township in Atlantic County. DEP requests approval to convey a total of 0.039± acres of land in fee within the Makepeace Lake WMA to the New Jersey Department of Transportation in connection with the replacement of the Route 322 bridge over Big Ditch Creek. To compensate, DOT will provide \$12,000 in materials to be used to improve access roads within the WMA and to remit \$5,000 to be used by the DEP to acquire land to satisfy its replacement land obligations to the National Park Service.

Motion?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Second?

ASSEMBLYMAN CRYAN: Second.

MR. SHAUGHNESSY: Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: That matter is approved.

On to No. 13 -- Kittatinny Valley State Park/Paulinskill Valley Trail, Block 302, part of Lot 1, Knowlton Township, Warren County.

DEP requests approval to convey a driveway easement across approximately 0.10 acre of the Paulinskill Valley Trail to Fernando and Antonia Semiao, S-E-M-I-A-O, the owners of the adjacent private property. The driveway easement is needed by the Semiaos to establish with certainty the legal access to Block 31, Lot 4, which is approximately 34 acres. In exchange, the Semiaos will convey to the State a 25-foot-wide corridor presently being used as their driveway and the Trail; donate a 0.75-acre parcel of Paulinskill riverfront property (Block 29, Lot 2); and sell a conservation and/or agricultural easement to the State to limit future development of Block 31, Lot 4, which is the 34-acre parcel, to one single family home and associated agricultural structures.

Any discussion?

SENATOR SMITH: Question on that.

MR. SHAUGHNESSY: Yes, Senator Smith.

SENATOR SMITH: The conservation easement: Is the State going to pay for that, or is that part of the consideration?

MR. SHAUGHNESSY: We'll ask the experts here at DEP.

Could you please identify yourself again?

MS. PICCININI YEANY: Judeth Yeany with the Green Acres Program.

We are going to pay for the conservation easement, but his willingness to sell the easement to us is a condition of the deal. He won't get his driveway easement unless he sells the conservation easement. We're

not looking to open up the property to four or five homes, or whatever could be built there.

SENATOR SMITH: Got it. But what if he says you're not paying me enough?

MS. PICCININI YEANY: Well then, I think the deal doesn't happen, and he's taking his chances as far as what his access to his property really is.

SENATOR SMITH: Yes, but once we vote on this, doesn't he get his-- I guess it's which comes first, the chicken or the egg?

MS. PICCININI YEANY: Right. We won't convey the easement until--

SENATOR SMITH: If there's not a legitimate price on the development rights, you won't convey the access.

MS. PICCININI YEANY: Correct.

ASSEMBLYMAN CRYAN: And what happens if nothing happens? Although there are comments in here about the appraised values, right? The compensation is \$67,085. What happens if nothing happens? If he refuses, what's next?

MS. PICCININI YEANY: Well, I think we have a situation out there, right now, where there's an area that's technically his property that's being used by the public as a cut-through on the trail. I think if he were to object to that, there is the ability for us to reroute the public back on to the trail and still not deprive people of access to that area. It's the area that people are used to going through now, and it happens to be -- I don't know if you can see it on the map -- but there's like a little stub of the trail; there's a dead end there, and there's some other houses that have the right

to cross the trail in that location. And they haven't been too thrilled about the public being that close to their houses. So having them cross where they cross now has avoided some of those conflicts. But if this deal falls apart and we have to prevent the public from trespassing on this property, we will, without closing that segment of the trail.

ASSEMBLYMAN CRYAN: Is there a timeframe? I mean, when is there closure?

MS. PICCININI YEANY: Well, the reason we put this before you now is that our project negotiator is actively negotiating the easement and does want to get that done, possibly by the end of the year -- I'm not sure. But we wanted to know that we had the approval for the driveway easement before investing more State resources into the acquisition of the easement.

SENATOR SMITH: Makes sense, makes sense.

ASSEMBLYMAN CRYAN: Okay.

MR. SHAUGHNESSY: Any other discussion? (no response)

Hearing none, we'll call the roll.

SENATOR SMITH: You need a motion.

MR. SHAUGHNESSY: Oh, pardon me -- motion.

SENATOR SMITH: Motion.

MR. SHAUGHNESSY: Thank you, Senator Smith.

ASSEMBLYMAN BRAMNICK: Second.

MR. SHAUGHNESSY: Thank you, Assemblyman Bramnick.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: That matter is approved.

Okay, the next two matters actually involve the same park. It's known as Ambrose and Doty's Brooks Park. This is No. 14 -- Block 496, part of Lots 1.02 and 9.01, Piscataway Township, Middlesex County

DEP, on behalf of the County of Middlesex, requests approval to allow the County to grant a $0.189\pm$ acre storm water drainage easement to Piscataway Township on a portion of Ambrose and Doty's Brooks Park. The drainage easement is necessary to allow Trammell Crow Development and Investment, Inc. to develop an adjacent parcel into a warehouse distribution center and related office facilities. The terms: To compensate for the easement, Trammell Crow has agreed to contribute \$50,000 to Middlesex County for the future acquisition of parkland. Middlesex County conducted public hearings on the proposed diversion; there were a number of concerns expressed by the public. Despite these concerns, both Piscataway Township and the Middlesex County Planning Board approved the proposed warehouse project as consistent with the Township's Master Plan, and other applicable local and County requirements.

I don't know if there's discussion on this matter. Oh, someone in the audience, I think-- Someone wants to be heard?

A M Y H A N S E N: Hi, Commission -- hello. Thank you for the opportunity to testify. Just brief comments: I'm with New Jersey Conservation Foundation -- Amy Hansen.

We are just concerned. We know this is a small amount of property, but we're concerned about chipping away at the public parklands for private benefit here. And we're also concerned that despite there'll be two stormwater basins on the property, there's a pipe requested and that would go pretty much straight to the Bound Brook. There have been many problems with flooding over the years, and we're concerned that this will exacerbate that problem. And, you know, again it's using public parkland, diverting it for private benefit, which also may impact the people of Bound Brook.

Thank you.

MR. SHAUGHNESSY: Thank you.

Any other public comment on this matter? I know that-- Did any of the Commission members--

G L E N N S. P A N T E L, ESQ.: Yes, we would like to respond to the comment that was just made, if we could.

Glenn Pantel, the law firm of Drinker Biddle. We represent Trammel Crow, which is proposing to develop a facility adjacent to the requested diversion -- those drainage facilities, where this facility would be installed within this small diversion area.

And with us is Mark Janiszewski, the engineer from Maser Consulting, who put the plan together for Trammel Crow -- which, by the

way, has been approved by Piscataway Township Planning Board, Middlesex County Planning Board, Middlesex County Department of Parks and Recreation, and has full DEP permits and approvals for the installation of this facility.

And I think one very important point needs to be made in response to the comments that were just made, which is namely this does not degrade the environment; in fact, there will be an enhancement of the water quality and water quantity objectives of Doty's Brook; i.e., this project will enhance the flood protection of properties of the Doty's Brook Park.

And Mark, if you could just comment on that, please.

MARK JANISZEWSKI: Yes. The project as described does have two proposed detention basins on the property, and they have been designed in accordance with NJDEP stormwater regulations. And they will provide the required water quality and water quantity improvements that are necessary associated with the developments; and will thus, therefore, reduce flooding and promote water quality downstream of the Doty's Brook.

MR. SHAUGHNESSY: Sir, would you just identify yourself again please.

MR. JANISZEWSKI: Yes.

MR. SHAUGHNESSY: And your association.

MR. JANISZEWSKI: Mark Janiszewski with Maser Consulting.

MR. SHAUGHNESSY: Thank you.

SENATOR SMITH: One question -- make it two. The water quality basins and the diversion: Are they at all impacted by the improvement to County Road/South Washington Avenue?

MR. JANISZEWSKI: They are designed separately from the improvements for the county road widening that's also adjacent to the property.

SENATOR SMITH: Okay, so they are there primarily to service the private development?

MR. JANISZEWSKI: The two basins we're talking about, yes, are to serve the private development. But there's two--

MR. PANTEL: It's also worth noting that we have fully cooperated with the County and the Township--

SENATOR SMITH: That's not an issue, not an issue.

MR. PANTEL: --in connection with the Washington Avenue improvements, and have granted easements to accommodate the stormwater runoff from the adjacent roadway improvements.

SENATOR SMITH: Okay. And this is strictly a drainage easement?

MR. JANISZEWSKI: Yes.

SENATOR SMITH: Just by way of addressing the concern indicated earlier: Middlesex County has an extremely aggressive record of acquiring open space. They have an open space tax; since the inauguration of the open space tax they've acquired over 7,000 acres of open space in the county. They live by high environmental standards, and I have to believe that if Middlesex County and the Township approved this that the environment is not at risk here, nor is the park at risk. And it seems to me

that it's minor in nature and a reasonable request. And it looks like you're paying top dollar for it, too.

MR. SHAUGHNESSY: Any further discussion or public comment? (no response)

Okay, at this point we'll take the--

MR. DiROCCO: Motion?

MR. SHAUGHNESSY: Oh, pardon me -- motion first.

ASSEMBLYMAN BRAMNICK: So moved.

SENATOR SMITH: Second.

MR. SHAUGHNESSY: Thank you -- motion and second.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: The matter is approved.

On to the next related--

MR. PANTEL: Thank you very much.

MR. JANISZEWSKI: Thank you.

MR. DiROCCO: Thank you, gentlemen.

MR. SHAUGHNESSY: On to the next matter, No. 15: Ambrose and Doty's Brooks Park, Block 457.04, Lot 2.03, and Block 500.01, Lot 1.02. Again Piscataway Township, Middlesex County.

DEP, on behalf of the County of Middlesex, requests approval to allow the County to dispose of approximately 0.34 acres of Ambrose and Doty's Brooks Park to the DOT, New Jersey Department of Transportation, in fee for right-of-way purposes, and to divert an additional 0.58± acres of parkland for various easements associated with the Department of Transportation's Route 18 Extension road improvement.

To compensate, the Department of Transportation will construct a six-foot-wide asphalt walkway along 2,000 linear feet of Ambrose and Doty's Brooks Park at a cost of approximately \$65,000, and provide an additional \$17,500 cash compensation to be used for future acquisition of parkland.

Do we have any discussion or public comment on this matter?

SENATOR SMITH: Move it.

ASSEMBLYMAN BRAMNICK: Second.

MR. SHAUGHNESSY: Okay, a motion and a second.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: That matter is approved as well.

No. 16: This is Old Short Hills Park, Block 2702, part of Lot 19, Millburn Township, Essex County.

DEP, on behalf of the Township of Millburn, requests approval to allow the Township to grant access easements to two homeowners to continue the use of 0.167 acre of Old Short Hills Park to service two adjacent residential properties located on Block 2502, Lot 5 and Lot 5.01. To compensate for the private use of parkland for access of two residential properties, Millburn Township has agreed to permanently dedicate approximately 3.35 acres of land along the East Branch of the Rahway River for public recreation and conservation purposes. The Township has agreed to install benches and fencing, plant trees, extend municipal water service, and create a community garden area on the replacement land to facilitate public use of the property, of which the cost is estimated -- the value is estimated to be \$12,000.

Any discussion on this matter?

ASSEMBLYMAN BRAMNICK: I just have a question; maybe Senator Smith can answer it, because you have experience in land use. They built these houses without real public access to begin with -- everything was through the park? Is that the history, or-- You see the map? Or maybe someone else can help me with that?

MR. SHAUGHNESSY: Well, I know there's a representative from DEP here.

ASSEMBLYMAN BRAMNICK: I just find it an interesting scenario that, I guess, the only access was through a Green Acres park.

MR. SHAUGHNESSY: And I saw that there's some litigation surrounding this matter.

ASSEMBLYMAN BRAMNICK: I don't want to spend a lot of time on this; I just have-- It's my district and I'm just interested in how that came about. When they originally built the houses they didn't have any real public access except through the park?

MS. PICCININI YEANY: Our understanding-- Sorry; Judeth Yeany from Green Acres. Our understanding is that the town had agreed to provide access, but didn't actually execute the easement before the house was completed. If that's incorrect, the Township attorney can contradict me.

MR. PANTEL: That's correct.

SENATOR SMITH: How old are the houses?

MS. PICCININI YEANY: Excuse me?

SENATOR SMITH: How old are the houses?

MS. PICCININI YEANY: I believe we put the date-- I mean, the original house is very old; I think it's been there since the 1930s, and the other one was completed 2002, 2003 -- somewhere in there.

MR. PANTEL: 2006.

MS. PICCININI YEANY: Oh, sorry -- 2006.

ASSEMBLYMAN BRAMNICK: So when the recent house was built, an easement was granted by the--

MR. PANTEL: No -- that's the problem.

ASSEMBLYMAN BRAMNICK: I was just interested -- you build a house with limited access--

SENATOR SMITH: The answer to your question, from a land use perspective--

ASSEMBLYMAN BRAMNICK: Yes?

SENATOR SMITH: As part of your application to the local jurisdiction, you're supposed to provide not only a plat showing subdivision of the house -- whatever -- whether a variance or no variance, but you're also supposed to provide a title search to show not only that you own the property, but you have access to the property. So somebody dropped the ball somewhere. The 1930s house I can totally understand; but the 2002 (*sic*) house -- I agree with you: I have a little problem understanding why the local board didn't catch it.

ASSEMBLYMAN BRAMNICK: Okay, thank you.

MR. SHAUGHNESSY: Okay, is there a motion on this matter, and a second?

ASSEMBLYMAN BRAMNICK: So moved.

MR. DiROCCO: I'll second it.

MR. SHAUGHNESSY: Okay.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: No.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: Okay, that matter passes.

The next matter is No. 17 -- St. John's Park, Block 163, part of Lot 15, Keansburg Borough, Monmouth County.

DEP, on behalf of the Borough of Keansburg, requests approval to allow the Borough to expand a cell tower diversion area, approved in 1998, from a 30-foot by 30-foot area to a 50-foot by 50-foot area to accommodate the replacement of the existing tower and allow additional space for the carriers' equipment cabinets underneath the tower. As it has in the past, the Borough will dedicate all revenue collected from the cell carrier tenant leases for park purposes. The Borough anticipates two new tenants can be accommodated once the tower is replaced, and that the additional cell carrier leases will generate annual revenue of \$20,000 per each of the tenants. The Borough conducted a public hearing on January 5, 2011, regarding the proposed diversion of parkland, at which time there was no public opposition. And it's noted that in 1998, originally there was no public opposition to the proposal.

Any discussion on this matter, No. 17?

SENATOR SMITH: One question: By *park purposes* -- does that mean capital improvements to the parks, or does that mean the operating budget of the municipality?

MR. SHAUGHNESSY: Yes, please step up and identify yourself, sir.

DAVID SMITH: Sure. My name is Dave Smith with the Green Acres Program. And there's park improvements, capital improvements through the municipal recreation program.

SENATOR SMITH: Okay. And have we ever audited to make sure that that's what the money is being used for?

MR. SMITH: Not to my--

SENATOR SMITH: Yes, I have no problem with the revenues going to the park, but just as there was a problem that Judeth mentioned before about money going into the general revenue -- so I know how tough-- Municipalities are strapped, and so on. But I'd like to suggest that DEP at least check that the money is being used for park improvements, as opposed to the operating budget.

MR. SMITH: We have a municipal resolution from the governing body committing the revenue for these specific park improvements.

SENATOR SMITH: For park improvements -- okay. Thank you.

MR. SHAUGHNESSY: Do we have a motion?

SENATOR SMITH: So moved.

MR. SHAUGHNESSY: Second?

ASSEMBLYMAN BRAMNICK: Second.

MR. SHAUGHNESSY: Okay.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: That matter is approved.

Okay, the next one is No. 18, which I believe is the last of the DEP requests. Cultural and Recreation Area, Block 7801, part of Lot 17, Vineland City, Cumberland County.

DEP, on behalf of the City of Vineland, requests approval to allow the City to continue the use of its police training facility at its present location on 11.3 acres of parkland, known as Block 7801, part of Lot 17. The training facility has been at this location since 1986. In addition to requesting the legalization of the existing facility, Vineland City is requesting approval to expand the police training facility by 5.3 acres, for a total area of approximately 16.594 acres.

To compensate for the diversion, the total of 16.594 acres of Green Acres encumbered parkland, Vineland City has agreed to permanently preserve approximately 102.534 acres of land for public recreation and conservation purposes.

Any discussion on this matter? (no response)

If not, I'll call the roll.

Oh yes, pardon me -- motion?

SENATOR SMITH: Motion.

MR. SHAUGHNESSY: Thank you.

Second?

MR. DiROCCO: I'll second.

MR. SHAUGHNESSY: Okay, we have a motion and second.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: The matter is approved.

Okay, we're moving on to No. 19, and the DOT request -- the Department of Transportation request.

No. 19 is an Application for Outdoor Advertising Permit Numbers 70659, 70660, 70661, 70663; Block 45, Lot 11.01, Wall Street, Easton Avenue, New Brunswick, Middlesex County.

The Department of Transportation, on behalf of the City of New Brunswick and the New Brunswick Parking Authority, requests approval to waive -- waiver from outdoor advertising regulations to allow issuance of outdoor advertising permits, as previously stated, for four off-premise signs which would be mounted on the parking garage of the Gateway Project at Easton Avenue and adjacent to the train station in New Brunswick. The Gateway Project is a mixed-use transit village project which emphasizes the quality of the urban fabric. The signage is designed for outdoor advertising and public service announcements.

The issuance of outdoor advertising permits requires waivers from the following regulatory requirements as indicated, more particularly in the public agenda. The Department of Transportation has determined that it is in the best interest to grant these waivers to promote the success of the Gateway Project. The waivers would be granted subject to conditions which ensure public safety and compliance with Federal regulatory requirements, as in the members' packets.

ASSEMBLYMAN CRYAN: I do. Who gets the money?

MR. SHAUGHNESSY: Do we have any discussion on this matter? Do we have any representatives to help us with that?

Thank you; come on up, gentlemen.

MITCHELL KARON: Hello; Mitch Karon, Executive Director of the Parking Authority.

MR. SHAUGHNESSY: Thank you, sir.

STUART BROOKS: Stuart Brooks, Manager of NJDOT's Office of Outdoor Advertising Services.

MR. SHAUGHNESSY: Okay. The Assemblyman's question is, who gets the money?

MR. KARON: The revenue stream-- We get a percentage of the revenue. I think it comes out to \$70,000 a year. And then the--

ASSEMBLYMAN CRYAN: Who gets the rest?

MR. KARON: What's that? Seventy thousand.

ASSEMBLYMAN CRYAN: All right; but there's more than \$70,000. (Indiscernible)

MR. BROOKS: Right. And the billboard-- The operator of the billboard would also get the money.

ASSEMBLYMAN CRYAN: The other guy gets the rest of it?

And so what's the public good? Somebody help me. Maybe you could -- from DOT.

MR. BROOKS: Certainly. They are various: First, the project itself is a project that was assisted by grants from various agencies of the State, and it does add to the fabric of the urban environment. It adds more--

ASSEMBLYMAN CRYAN: No, not the project -- the billboards. We're voting on the billboards, right?

MR. BROOKS: Correct.

ASSEMBLYMAN CRYAN: All right. What is the public good of the billboards? I'm with you on the project -- the project's wonderful.

MR. BROOKS; The visual component of the billboards are a part of the project. There's an illustration -- a graphic illustration of the three signs along Easton Avenue. Were it not for those signs you would see typical parking garage: concrete, rather simple extensions of the parking

garage as it goes up for, I believe, it's four or five floors. The signs themselves break that up. It adds to the visual components of the cityscape.

MR. KARON: We're also -- excuse me -- we're also looking to put public service announcements on the billboards.

ASSEMBLYMAN CRYAN: You're talking about these?

MR. BROOKS: Yes -- signs one, two, and three.

ASSEMBLYMAN CRYAN: I guess I'm still mystified. The good here is what?

MR. BROOKS: Well, there's an aesthetic good, and that's what those signs add to. There's also a financial good in it's a benefit to the Parking Authority.

ASSEMBLYMAN CRYAN: All right, so just so I understand. So you design a parking garage a certain way, right? You can design it any way you want. And part of the aesthetics, which are a part of the public good, are having these signs. Is that correct?

MR. BROOKS: Correct.

ASSEMBLYMAN CRYAN: Okay. And then the money goes to the Parking Authority and the provider of the signs.

MR. BROOKS: Correct.

ASSEMBLYMAN CRYAN: And our only vote here today is to allow it to have the easement, because it doesn't meet the requirements of separation of space and so on. Is that correct?

MR. SHAUGHNESSY: My understanding is the statute requires that the State House Commission approve the waiver from their regulations, which is being recommended. So we're actually statutorily

required to approve, disapprove -- whatever -- the waivers from their regulations, which are being recommended to the Commission.

ASSEMBLYMAN CRYAN: Last question: Who built the garage?

MR. KARON: The Parking Authority.

ASSEMBLYMAN CRYAN: So who approved the aesthetics of it, just out of curiosity?

MR. KARON: Well, that was-- Actually, it went in front of SHPO because it's close to little Queen's Campus and the train station.

ASSEMBLYMAN CRYAN: I couldn't hear you. Could you say it again?

MR. KARON: I'm sorry; is there a button I could press? (referring to PA microphone)

ASSEMBLYMAN CRYAN: Do you have your mike on? Red means *on* down here. (laughter)

MR. KARON: There we go.

It was approved by SHPO, because it's right down the block from little Queens and the train station.

ASSEMBLYMAN CRYAN: SHPO?

MR. KARON: That is the historical committee -- the State's historical committee.

ASSEMBLYMAN CRYAN: Okay. All right, thank you.

SENATOR SMITH: Let me just throw a thought out here. This is a city that I proudly represent. New Brunswick has been the phoenix rising out of the ashes. If you saw it 40 years ago, the city was in awful condition. And because of, I think, very progressive City

governments, New Brunswick Development Corporation -- DEVCO -- the city is literally the model for urban redevelopment in the State of New Jersey. Now, the signage that's proposed for the garage for this area -- the Gateway Project -- is what the city wants. I know because the Mayor called me and said, "This is a very good project." And it's what they believe to be an enhancement to their cityscape. Quite frankly, that's enough for me. They know what they're doing in New Brunswick, and it sounds to me like they found a way to not only improve the aesthetics, which is part of their cityscape look, but also generate a little revenue. God bless America; capitalism works. I move the approval.

MR. SHAUGHNESSY: Is there a second?

ASSEMBLYMAN BRAMNICK: Second.

Just a comment -- so it has that kind of Times Square look with those signs?

SENATOR SMITH: Yes, kind of.

ASSEMBLYMAN BRAMNICK: I'll go with that.

MR. SHAUGHNESSY: We have a motion and a second.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: Okay, that matter's approved.

Okay, we're on to two other Department of Transportation matters -- Nos. 20 and 21 in your agenda.

Twenty: Route 4 -- Current Route 52 -- Section 1, Parcel VX8F1B, Block 1815, adjacent to Lot 5, Somers Point City, Atlantic County.

The Department of Transportation requests approval to sell by direct sale to the only adjoining property owner, Platt's Inc. Corp., 696 square feet of surplus vacant land to be assembled to their adjoining commercial property for use as additional customer parking. The recommended sale amount shall be \$10,100, the appraised value. Platt's Inc. Corp. principal managing members are as follows: David C. Platt III, David Platt Jr., and Celeste Platt. Principal office is located at 25 MacArthur Boulevard, Somers Point, New Jersey.

Any discussion on that matter? (no response)

Hearing none--

ASSEMBLYMAN CRYAN: Motion.

ASSEMBLYMAN BRAMNICK: Second.

MR. SHAUGHNESSY: Motion and second.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: The matter's approved.

On to 21: Route 78, Section 5D; Parcels VX153B, VX154B, VX155B, VX156B, VX157B, VX158B, and VX159B; Block 5403, adjacent to Lot 1, Union Township, Union County

The Department of Transportation requests approval to sell by direct sale to the only adjoining property owner, Hollywood Memorial Park Company -- a cemetery company -- to be assembled to their adjoining commercial property, which is an active cemetery. The parcel is approximately 16,566 square feet. The recommended sale amount shall be \$30,000, the appraised value.

Any discussion on that matter? (no response)

Is there a motion?

ASSEMBLYMAN BRAMNICK: So moved.

SENATOR SMITH: Second.

MR. SHAUGHNESSY: Senator Smith seconded? Thank you.

Assistant Counsel DiRocco.

MR. DiROCCO: Yes.

MR. SHAUGHNESSY: Deputy State Treasurer Romano.

DEPUTY TREASURER ROMANO: Yes.

MR. SHAUGHNESSY: Deputy Director Peden.

MR. PEDEN: Yes.

MR. SHAUGHNESSY: Senator Smith.

SENATOR SMITH: Yes.

MR. SHAUGHNESSY: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Yes.

MR. SHAUGHNESSY: Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MR. SHAUGHNESSY: That matter's approved.

Okay now, we'll be moving on now.

May I have a motion to sit as the Judicial Retirement System Board of Trustees?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Second?

MR. DiROCCO: Second.

MR. SHAUGHNESSY: Thank you very much.

We'll be moving on to the three items under this matter. First, there's approval of the minutes of the meeting held on December 9, 2010.

MR. DiROCCO: (indiscernible)

MR. SHAUGHNESSY: Yes; oh, yes. We'll take a roll call vote on the motion to sit as the Judicial Retirement System Board. Thank you, Mr. Chair.

All in favor? (affirmative responses)

Okay. Any opposed? (no response)

Okay, that motion passes.

The first is the approval of the Judicial Retirement System Board minutes for the meeting held on December 9, 2010.

May I have a motion on that?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Second?

SENATOR SMITH: Second.

MR. SHAUGHNESSY: All in favor? (affirmative responses)

Any opposed? (no response)

That motion's approved.

Next, we move on to the confirmation of death claims, retirements, and survivor benefits as listed in the members' board packages.

May I have a motion there?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Second?

MR. DiROCCO: Second.

MR. SHAUGHNESSY: Okay. Any discussion? (no response)

Okay, all in favor? (affirmative responses)

Okay, any opposed? (no response)

Okay; the last, No. 3: With regard to the financial statements in the members' packets for the period June 2010 to January 2011.

Motion?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Second?

ASSEMBLYMAN CRYAN: Second.

MR. SHAUGHNESSY: All in favor? (affirmative responses)

Okay, that matter is approved as well.

So may I have a motion now to reconvene as the State House Commission?

ASSEMBLYMAN BRAMNICK: So moved.

MR. SHAUGHNESSY: Second?

SENATOR SMITH: Second.

MR. SHAUGHNESSY: All in favor? (affirmative responses)

Any opposed? (no response)

Okay, that matter's approved.

That concludes, I believe, Mr. Chair, the new business. So now we can return to the old business.

MR. DiROCCO: All right, so let's move to Item 3 under old business -- ethical disclosure.

MR. SHAUGHNESSY: Yes, I believe we've had some discussion on that matter. And very quickly, as previously stated, certain members of the Commission, in order to perform easier due diligence, I think -- transparency -- had requested certain disclosures be made. I believe the departments have heard the Commission members' concerns, and I believe in this board book you'll see the departments are trying to address those concerns. But it was my suggestion, with the Commission's blessings, that perhaps I or a legislative member reach out to the State Legislative Ethics folks or department to try to get an opinion; or also, perhaps, to go to ELEC. Now, I don't know what, especially, the legislative members have to say about that, but--

SENATOR SMITH: I'd prefer if you would make the request, indicating that the legislative members of the Commission have asked, under these circumstances, are there conflicts.

MR. SHAUGHNESSY: Okay. And is there a particular place? I mean, would it be the State legislative ethics officers? ELEC; the State Ethics-- Marci Hochman, who--

SENATOR SMITH: Probably Marci.

MR. SHAUGHNESSY: Okay.

SENATOR SMITH: Marci, I think, is the Ethics officer for the Legislature.

MR. SHAUGHNESSY: Okay.

SENATOR SMITH: Don't be surprised if you get an equipment-related (indiscernible). (laughter)

ASSEMBLYMAN BRAMNICK: That's true.

Just a question: The first question is whether or not disclosure is required or an abstention is required if you received a campaign donation at any time from any of the parties involved in any sort of transfer. My guess would be probably not, but that's--

SENATOR SMITH: Let's ask the question.

ASSEMBLYMAN BRAMNICK: --that's the main question. The subsequent information as to all of the disclosures that are made or, should I say, that we would search for-- Hopefully, that would eliminate the search process.

MR. SHAUGHNESSY: Okay, thank you for putting the essential question on the record.

SENATOR SMITH: By the way, good secondary question.

MR. SHAUGHNESSY: Yes?

SENATOR SMITH: I think there's a clear-cut conflict if you're currently representing one of the parties -- no question. But if you're not

currently representing, but you formerly represented, years ago, what's the point at which there's an issue?

MR. SHAUGHNESSY: So current representation or former representation of an applicant.

SENATOR SMITH: Right. It would be a good thing to know.

MR. SHAUGHNESSY: Okay, we'll take that up with Marci Hochman -- whoever she designates. Thank you very much.

ASSEMBLYMAN BRAMNICK: Just to put in the record: Recent hearings before the Ethics Committee -- my understanding is that there is still some provision that says "an appearance of impropriety," which has not ever been defined and creates tremendous risk to all of us. So I don't think unless that's changed, whatever we do there will never be an ultimate answer.

MR. SHAUGHNESSY: Thank you, Assemblyman.

The next matter on the agenda is No. 4, discussion of correspondence received from Warren, Sussex, Union, and Hudson counties on the approval granted at the December 9, 2010 meeting by the State House Commission to the Department of Human Services for their rate-setting methodology.

Yes, is there anyone from DHS here? Yes, please come up, gentlemen. I believe you've been before the Commission before, but please -- your identities, please, and your association. Thank you.

J O E L D. T e B E E S T: Good morning. I'm Joel TeBeest; I'm the Finance Director for Human Services.

M A R K S T E I N: Hi, good morning. I'm Mark Stein; I'm Supervisor of the Bureau of Rate Setting.

MR. DiROCCO: Just make sure you guys are using your mikes.

Could you just give us a quick presentation on the correspondence that the State House Commission has received, and your take, essentially, on the issues presented?

MR. TeBEEST: Yes. Is this on now? (referring to PA microphone). Okay.

Well, thank you for having us back to speak with you regarding psychiatric rate setting charged to the counties for patients with mental illness requiring treatment in State and county facilities. I would also like to thank the various counties for their comments related to the Calendar Year 2011 rates as expressed in recent letters addressed to the State House Commission's Secretary, Robert Shaughnessy. I look forward to working with the counties in the future to hear their concerns, have an exchange of ideas, and I invite them to contact me directly.

I would like to make the following comments regarding the issues brought to light in the letters from Warren, Sussex, Union, and Hudson counties. I will try and address the major themes from the various letters submitted by the counties. But keep in mind that any accommodation of their requests would require a change to the State's Fiscal Year '12 recommended budget and changes to the rates approved this past December, Calendar Year '11.

The counties have expressed concern regarding the impact that the rate methodology for the funding of psychiatric hospital costs provided to county residents places on county government. These costs are incurred at State hospitals impacting all 21 counties. Costs are incurred at county hospitals in the counties of Union, Essex, Hudson, Camden, Burlington,

and Bergen. For patients who do not require inpatient care any longer, they can receive care in community settings. The counties do not share in the cost of this, however.

A major concern expressed by the counties is that the Calendar 2011 State psychiatric hospital blended rate increased by 17.5 percent compared to the prior year rate. More than half of this increase results from the continuing decrease in the number of patients served at our patient psychiatric facilities. The Department of Human Services is in the process of implementing census reductions at our State psychiatric hospitals as required by the U.S. Supreme Court Olmstead ruling.

In 2009, DHS settled Olmstead litigation requiring the State to ensure civil rights by discharging patients who no longer meet civil commitment criteria. At one point, roughly 50 percent of the patients no longer required that level of care. Over the last three years, the average number of patients in our four Medicare-certified psychiatric hospitals has decreased by about 450, or 24 percent. This decline is expected to continue.

During this time, the cost of providing psychiatric services has not decreased in proportion to the rate of census decline. This disparity results in upward pressure on the calculation of per diem rates representing the daily cost of patient care at these facilities. Many of the facility costs are fixed overhead costs associated with operating these large hospitals. Thus, the Department has recommended closure of a facility, rather than operate vacant units in each hospital, as a means to most efficiently reduce fixed costs.

Some counties have speculated that the State simply passes the cost burden on to the county and, therefore, is not motivated to strive for efficiency. However, it needs to be pointed out that it is in the State's best interest to control cost, not just in response to its partnership with the counties in the administration of psychiatric services, but also for more direct State budgetary reasons. It is worthy of noting that a rate increase represents not only an increase to the counties for their current 15 percent share of their cost, but also a very substantial increase to the State General Fund which covers 85 percent of the cost for the county patients and 100 percent for patients who have not established a minimum of five years of residency within a county.

Additionally, it is significant that the counties benefit with patients served in the community in lieu of State and county facilities, because at present the county is not required to participate in the cost of their placement.

Further, the Department has taken steps to control costs in recent years. For example, overtime costs have decreased by approximately 17 percent since FY '08 to the present. Overall, full-time FTEs have also been reduced as the census has declined. The Department is also taking steps towards closing a facility, which should allow us to become more efficient in providing these services. To the extent that we are successful in this initiative, cost savings will be reflected in future billing rates to all counties, which we anticipate will provide some measure of relief to county budgets.

County psychiatric hospitals are subject to the same Olmstead reduction mandates as the State hospitals. As we operate under a shared

county and State psychiatric care system in New Jersey, the county and State governments may face further Olmstead-related challenges if we do not support community living for eligible individuals.

Another large contributor to the 17.5 percent increase in the State hospital rate was a significant increase in prior year carry-forward adjustments applicable to the current rate, as compared to the previous rate. This upward adjustment to the Calendar Year 2011 rate is not a result of expected cost increase in the coming year, but rather an adjustment associated with the finalization of cost from Fiscal Year 2009. Each year, when we recommend an estimated rate to the Commission, this rate contains a settlement of a previous year estimated rate. These adjustments to actual costs can be positive or negative. In the case of Fiscal Year 2009, we determined that the prior rates were underestimated. This means that the counties were effectively undercharged during prior years, and our cost-based system requires a settlement. The counties will pay their applicable share of this undercharge at the end of this calendar year, along with the estimated cost of Calendar Year 2011 placements. This payment will not be subject to a cost-of-money interest rate.

In addition to the deferral of cost previously described -- which is a standard part of our rate setting methodology -- there is a provision in the carry-forward guidelines whereby the Department may elect to further defer the adjustment forward to the next two billing periods. The Department has considered this option; however, the methodology does not permit us to use this procedure if the ultimate effect will only intensify the variances in future billing periods. We believe that deferring two-thirds of the Fiscal 2009 carry-forward adjustment, as suggested by Hudson and

Union counties, would result in significant rate increases for Calendar Years 2012 and 2013, as compared to the currently approved Calendar Year 2011 rate. Therefore, the Department decided against implementing this provision.

Hudson and Union counties have suggested the elimination of all base-year adjustments included in the rate as part of a possible solution. These adjustments represent an effort to accurately predict actual Calendar Year 2011 cost. While the removal of these adjustments could result in a reduction to the current estimated rate, we must be mindful of the financial impact that would occur at a later date in the form of still higher carry-forward adjustments.

Hudson and Union counties have also requested a 3.75 percent reduction of the Fiscal Year 2009 carry-forward adjustment due to increases in the county cost-share percentage. The theory is that the cost incurred when the county share expectation was lower -- 10 percent or 12.5 percent -- that it hasn't been moved to the current Calendar Year 2011 rate when the county share expectation is higher -- 15 percent. Unfortunately, there is no provision in either the governing SHC rate methodology or the State budget language implementing the change in cost-share percentage which supports this type of adjustment. Additionally, if this logic were applied consistently across State and county hospitals, there would be a material and negative impact on Bergen Regional Hospital, since the hospital has significant negative carry-forward adjustments for each of the years subject to the changing county share.

The FY 2011 Budget Appropriation enacted a capping mechanism to be applied to county hospital rates. Hudson and Union

counties experienced a minimal impact and have questioned whether this cap has been properly implemented by the Department. The appropriation language refers to implementation of the cap with reimbursement rates beginning in January 2011. The counties feel that this should be delayed until Calendar Year 2013 when actual cost is available. The Department has reviewed the language and has determined that the cap was implemented in accordance with the written provisions and the intent of the appropriation language.

In light of the issues raised in the county letters, the Department is interested in exploring alternative rate-setting methodologies with input from all of the county governments in New Jersey. We have had some preliminary discussions in this regard with the consultant representing Hudson and Union counties, and internally with our Division of Mental Health Services. Nonetheless, continuing declines in census will negatively impact rates until fixed costs are reduced. As the Human Services Director of Finance, I plan to reach out to the various counties during the upcoming weeks to assist me in developing proposed methodology revisions which we could present to the State House Commission for their approval.

MR. DiROCCO: Thank you, Joe.

Mark, did you have anything to add?

MR. STEIN: No, I'm just available to answer any questions that people from the various counties may have.

MR. TeBEEST: Before we continue that, I'd like to bring out another point.

As confusing as our rate-setting methodology is -- and it isn't easy to understand, but it is a cost-basis system -- there's also the

assemblance of a budget for each of the counties. So we use the rate that comes out of this Commission and prepare an estimated budget for the counties based on information we have at our disposal. That process can be confusing as well, and when you hear concerns, complaints coming your way, it could be a mixture of what goes into setting this rate and what, ultimately, ends up in the budget for the county.

So I did want to point out a couple of things here: Looking at all county budgets -- the 21 counties -- for their participation in State hospital costs, the 2011 budget was at approximately \$50 million this year, as compared to \$44.5 million last year. That's about a 12.6 percent increase. So first thing to note: 17 percent increase in the rate; 12.6 percent increase in the overall budget. But to break it down further, that 12.6 percent is a product of a few different items. We do have a 17.5 percent interest in the rate applied to an expected number of billable days in Calendar Year '11; however, expected billable days are reduced by 10 percent in this budget, and that's about 50,000 less billable days to the county. And so with that reduction of 50,000 days, but applying the currently higher rate, that's about a 6.8 percent increase in their budget as it pertains to Calendar Year '11 placements.

The balance of why there was a 12.5 percent increase is a result of settling of Calendar Year 2003 through Calendar Year 2008 previous budgets. In this particular year it happened to be a \$2.2 million positive due to the State. And again, just like in the rate-setting model, these type of adjustments can go in either direction. Last year, it was a net \$289,000 due the counties. So a very large piece of the rate increase in the budget itself is associated with prior year settlements. And, in fact, the counties are

benefiting from our reduction in proposed census. And those 50,000 billable days go to the community where, at present, the county is not required to contribute to that cost.

So I wanted to add that perspective.

SENATOR SMITH: I want to ask you a question, if I might. I think you mentioned in your remarks that one of the major factors driving the reimbursement rates is the fact that the census has gone down, but yet we still have as many psychiatric hospitals with fixed costs. If one or more of those hospitals were to close, would the-- Who would benefit from the reduction in the fixed costs? Just the counties that are serviced by that psychiatric hospital, or all counties?

MR. TeBEEEST: All counties, because for State hospitals we charge a blended rate to the counties.

SENATOR SMITH: Okay.

MR. TeBEEEST: So everyone will benefit.

SENATOR SMITH: And where do we stand on the closing of psychiatric hospitals right now? Is there something in the works?

MR. TeBEEEST: It's certainly our intention to close a hospital, and that's up for discussion. There was a recent task force that was not 100 percent conclusive about whether a hospital should close and which one it is, so it remains to be decided. But it's the Department's opinion that it needs to happen.

SENATOR SMITH: One or more?

MR. TeBEEEST: At this point, we're feeling one.

SENATOR SMITH: Okay, thank you.

ASSEMBLYMAN CRYAN: Just so I understand: Now, say you do a forecast, right? So did anybody tell the counties that, in line with the 2 percent cap, they were going to get a 17 percent hit? And when did they tell them?

MR. TeBEEST: You bring up a very good point.

ASSEMBLYMAN CRYAN: Thank you. Now, can you--

MR. TeBEEST: We told them in November, December, primarily when we approached the State House Commission and--

ASSEMBLYMAN CRYAN: You did?

MR. TeBEEST: Well, that's one of the things that I think deserves attention on our part. You know, it's one thing for us to come to you and say, "We have very good reason to present a rate to you that suggests a 17 percent increase." It's another thing to give that rate to the county and give them almost no time to react to it. So our discussion internally is that we need to provide some information to the counties periodically, and if we think we're leaning towards a rate increase than we ought to be sharing that.

ASSEMBLYMAN CRYAN: Well, here's my problem: You represent the-- You do forecasts, and I appreciate that. But I looked at the November minutes here, and our December minutes, like on page 28 here; you note the cap in the November ones, but what's the rate-- I'm on page 15 here. You noted-- You forecast it to be 10 percent, in terms of the minutes. That's in December. Does that sound right -- December 9? A question from Senator Smith? Does that sound about right, because that's when you probably finalized your costs. About 10 percent lower, on page 16 -- the overall percentage. Does that make sense?

MR. TeBEEEST: It's stating 10 percent?

ASSEMBLYMAN CRYAN: Right.

MR. TeBEEEST: I think I need to hear that in context.

ASSEMBLYMAN CRYAN: All right, well, can-- I'm not challenging you; my problem is the forecasting, you know what I mean? This is where I'm really; I'm not really interested in-- How is-- You have two counties here that, population-wise -- by the way, at least I know Runnells is at 99 percent full, okay? So they're doing their job, all right? It's pretty obvious -- they have a waiting list and they have a demand. And yet if I understand your comments here correctly, what you're saying is we fixed the last six years -- 2003 to 2008, five or six years, whatever it is -- and that they were underpaying somehow in those years even though we had-- By the way, we had the Olmstead requirement then too, did we not?

MR. TeBEEEST: Yes.

ASSEMBLYMAN CRYAN: As a matter of fact, we've had the Olmstead requirement for a fairly long time that we haven't met -- is that correct?

MR. TeBEEEST: I don't know how far it dates back, but yes, I think that's true.

ASSEMBLYMAN CRYAN: And if I understand you here correctly, what you're telling me is you do forecasts, but we didn't tell them 17 percent; but we're supposed to be grateful because we did an adjustment in 2009, and actually we were getting -- the counties were getting a break, so to speak. And as a result of the denominator being changed a little bit, essentially if I understand this form correctly, that therefore this 17 percent

increase actually just corrects some previous cost structures. Is that correct? Do I basically have it right?

MR. TeBEEST: To some extent, yes.

ASSEMBLYMAN CRYAN: And that in essence here, Hudson and Union are, for lack of a better way to put it, the losers in the blended formula. Even though their populations are full they therefore need to pay more; and even though there's a 2 percent cap, by the way, you're going to take a 17 percent hit. Do I basically summarize that about right?

MR. TeBEEST: Basically.

ASSEMBLYMAN CRYAN: Okay. Because that's nonsense, all right? This idea of a forecast when the numbers-- I mean, I flipped through this; I don't see anything here that I can tell with any sort of-- There's certainly-- There's nobody in this room who got a forecast of above a 2 percent hit to any local government where we passed on the cost, which is what a county government is -- it's a local agency.

I really have a problem with this methodology. I really have a problem with this formula. I think you ought to go back and look at these particular counties that are being treated, in my view, egregiously here. You've laid out their case pretty thoroughly. I think your memo to us in particular, where you lay out the points in terms of cost and so on, makes the case pretty clear that if we're not forecasting correctly, what are we doing just handing these guys a bill?

As a matter of fact, your comment here, Mr. Shaughnessy, on page 4 of 8, Blended Rate for State Psychiatric Hospitals: "The 2011 rates resulted in charges to counties that are significantly more than the 2 percent cap applicable to county budgets for Calendar Year 2011."

MR. SHAUGHNESSY: Assemblyman, it's not my statement, actually. I provided the materials to the Commission.

ASSEMBLYMAN CRYAN: I know you did.

MR. SHAUGHNESSY: But yes, it came from me, but--

ASSEMBLYMAN CRYAN: But you're a member. So -- that you were kind enough to provide to us.

I think it's outrageous, is what I actually think. I think it's just a lack of forecast, a lack of partnership, and I think handing these folks these types of percentage increases, as you and I know, will affect care because of the cost increases. When the county, by the way, is living under a 2 percent cap, right, they don't get a waiver on this, do they?

MR. TeBEEEST: No.

ASSEMBLYMAN CRYAN: No, they don't, okay? So we hand off a 17 percent increase -- 17-and-a-half -- we don't give any sort of cap waiver. We don't give them any time, and we don't forecast it properly with any sort of sense, and we tell them somehow you're supposed to be grateful because we fixed something from 2003 to 2009. That's an absurd proposition -- absurd -- in my view.

MR. TeBEEEST: I do not-- I'm not suggesting they should be grateful. I am trying to present--

ASSEMBLYMAN CRYAN: I know, and it's probably an unfair term; I apologize.

MR. TeBEEEST: --the full picture. And I do want to just, for a moment -- I'm sorry to interrupt--

ASSEMBLYMAN CRYAN: No, go ahead.

MR. TeBEEEST: You know, you're saying 17 percent over and over again, but at--

ASSEMBLYMAN CRYAN: Seventeen-point-five-two.

MR. TeBEEEST: That's the increase in the rate. But again, with 50,000 less billable days, we're talking about a 6.8 percent increase to the counties' budgets.

ASSEMBLYMAN CRYAN: Okay, so if your argument is, is that they're providing less services -- okay -- the reality is-- Okay; let me give you-- If you take a student out of a school, do the costs of the school actually change? One student out of the classroom? If the teacher's teaching 29 instead of 30, do the costs really change? No, okay? No. we all know that, right?

MR. TeBEEEST: Yes, I mean, because of the large level of fixed costs -- yes.

ASSEMBLYMAN CRYAN: Is the heat on in this room, okay? Are the lights on? Let's-- We know there are fixed costs associated with this. We don't even have a plan associated yet, to my knowledge, that's been effectuated through the Legislature that actually closes a facility, which changes this formula, right? The only way to change this formula is change the population, in terms of the denominator -- is that correct?

MR. TeBEEEST: That's a goal, I think, that we very--

ASSEMBLYMAN CRYAN: So we have goals, and we have real. And real is we have caps, and real is we have financial concerns. And real is that we are sticking it to a couple counties that seem to be doing business the way we want them to do it. They're full -- at least the Runnells memo says they're 99 percent full -- so they're not obliterating the cost.

They seem to be in the middle of the pack in terms of dollars. I had a conversation with the Hudson County Executive over the \$160,000 hit to his county. You guys have to fix this. I mean, this just doesn't work. This process doesn't work. And I can tell you that the idea of goals doesn't really work. You're in a cap world now, okay? We're not in the goal world; we're in the cap world. And what's going to effectuate here is there is going to be some sort of population impact, whether it's a level of care or whether it's availability, or the things that go with it.

Now, I guess there's-- I don't know if there's anything I can do at this point. If there is, I'd like to ask if there are any options.

SENATOR SMITH: I have a suggestion. I've been thinking about what you said. You think, Assemblyman, that it would be possible to put budget language in this budget that says that the reimbursement rates can, if justified by the costs, increase by no more than 2 percent? And above that, it becomes a State responsibility. If that's true, how many dollars are we talking about?

MR. TeBEEEST: I guess something I'd like to point out -- and again, I fully understand 2 percent cap is a major issue for counties and I'm not suggesting we should ignore that.

ASSEMBLYMAN CRYAN: Right.

MR. TeBEEEST: On the other hand, the Department of Human Services has very strict cost restrictions across its entire Department. Many parts of our agency have been cut.

SENATOR SMITH: I'm not saying take it--

MR. TeBEEST: To the extent that we have a 17 percent increase in this one area, does not suggest we don't live within our larger restraints.

SENATOR SMITH: I'm not suggesting we take it out of your hide.

MR. TeBEEST: But I--

SENATOR SMITH: Not suggesting that. We just--

MR. TeBEEST: Well, I guess I just want to bring a perspective. You know, 2 percent cap, as difficult as that is -- that does not suggest that every line item in a budget lives within that 2 percent. It's a balancing of unavoidable increases at times in some areas, and savings found in others. And again, that doesn't suggest you should look at the State of New Jersey and say, "Fine, where do I sign? I'm good with that." But I think we put a lot of thought into this, and we've been very careful about the way we assembled this, and I do believe there's a fair amount of logic that explains what's going on here. And this is a system that has a lot of increases and decreases over time, because it's based on actual costs. If you look at the six county hospitals in recent years, between 2008 and 2009, there was a 19 percent increase in rates at county hospitals. And that happened where the State of New Jersey is contributing upwards of 85 percent -- 85 to 90 percent of their cost that year. So these fluctuations in costs happen; in 2008 and '09, Essex Hospital brought in a brand new facility that was a large contributor to this large rate spike. Right now, we have Greystone coming on line as of 2009. And that large capital-related cost with this state-of-the-art facility was brought into our rate. So we have a momentary increase as well. This is a product of a cost-based system.

You know, if our goal is to properly reimburse the entities involved at their actual cost, we're going to see some fluctuation like this and it's going to work to the advantage and disadvantage of all parties at different points in time. You know--

ASSEMBLYMAN CRYAN: Come on.

MR. TeBEEST: That bothers you?

ASSEMBLYMAN CRYAN: Yes, I get it. You're doing a nice job with it. We just got lucky that this portion of the 2 percent cap in the Department got passed along to local government, as opposed to staying in the State? Come on. I mean, come on. It just--

SENATOR SMITH: How much money are we talking about? If you said you could raise the reimbursement rates by 2 percent, what are you forecasting now as the increase in the reimbursement rates next cycle?

MR. TeBEEST: I don't know that we have enough information. There's a possibility that they're going to remain flat from '11 to '12. We have to continue studying the cost reports that are made available to us.

MR. STEIN: With our continuing decline in the census that's expected, that's going to continue to be a driver of our average rate -- higher.

I just wanted to reiterate what Joe was saying about the opening of the new Greystone facility. It was constructed at a cost of about \$225 million, and carries with it annual capital-related costs of approximately \$14 million a year; which is being added into the overall costs system, where you didn't have that with the old, century-old Greystone facility that was closed.

ASSEMBLYMAN CRYAN: When the folks voted for the new Greystone, anybody give them a little-- Was there a head's up that, "Hey, by the way, we're going to jump rates for every -- for agencies, 17.5 percent, because this thing's going to come on line?" Was that part of your forecasting?

MR. STEIN: Well, I'm just saying that that's contributing to it, overall. If I looked at--

ASSEMBLYMAN CRYAN: I'm with you. My question to you is, is that, "Yay, new Greystone." But when it was voted, I'll ask: Did anybody, anywhere, say, "By the way, as a result of this and the formulas" -- because you're using the term forecasting, not me -- did anybody tell folks, "When we get this nice, new facility, everybody's going to pay more as a result?" Did we do that? Because if we did, you know, I chaired Human Services, I don't recall it. I mean, if you have something that says that, I'd sure like to see it. I doubt it.

MR. STEIN: Was some sort of notification sent out to that effect? Not to my knowledge.

ASSEMBLYMAN CRYAN: No, no of course not. You know, so--

MR. STEIN: As Joe had previously mentioned, the county side brought on a significant addition to the county psych complement at Essex, okay?

ASSEMBLYMAN CRYAN: And again, did anybody-- You guys talk about forecasting a rate; you talk about it's a complex formula. You're putting a hammer to counties that can't afford it, and you're telling me about forecasting goals. And when I ask you, all right, the two things

you point to when you forecasted those -- did you tell anybody that they'll increase costs? I'm not feeling the love that says yes here, okay? So I mean, come on.

MR. TeBEEST: I'm not arguing with you. I agree with you. I believe that we need to do a better job of describing our cost experience to the counties. And my sense is that hasn't happened very much in the past, and possibly part of the reason is that we weren't in such tough economic times and counties had a tendency to accept what was being passed on to them with maybe not this level of questioning. Now that money is tight, and we hear these questions, we also realize that they've got to live with the cost that we're passing on. And this is a partnership; I think we need to share more. Now, exactly how we're going to do that, I don't know, but that is my suggestion.

SENATOR SMITH: Part of the problem, I think, is that -- especially when you're talking about the new facilities -- is that because we have blended rates, everybody has to live with the higher costs. Would these county-- For example, would Essex County have gone forward if they knew they were going to bear the greater portion of the cost because it would not be included in the blended rate? Or same thing for Greystone. I mean, wouldn't that affect the locals' decision about going forward if they knew they were going to get their higher percentage of the costs, rather than sharing with all the other hospitals?

MR. TeBEEST: Possibly.

SENATOR SMITH: Might be something you should take a look at. Because you know, it's real easy when somebody else is paying for it to say, "Let's go build another one." Not that it may not be needed, but--

MR. TeBEEST: And I will say I don't know the history of the decision that led up to a blended rate. But you bring up a good point.

SENATOR SMITH: And by the way, do they-- Who gives them approval? Do they have to get your approval to build a new facility?

MR. TeBEEST: That's not our approval. I mean, the Department goes through annual budget hearings and it's vetted out there, which is a very public discussion.

SENATOR SMITH: Process, right?

Thank you.

ASSEMBLYMAN BRAMNICK: Tell me again why the rate setting comes to the State House Commission.

MR. DiROCCO: That's a good question I think we're all asking ourselves. It's just a function of a vestigial section of statute that puts it here, and I don't know why. The folks in this room don't really have a great deal of -- at least I can speak-- I can't speak for anybody else; I know I don't have a great deal of expertise in this area. It doesn't seem --

ASSEMBLYMAN BRAMNICK: But we agreed it comes to us to what the rate setting is; but is the ultimate determination made, or could be made, by the Legislature, either through budget or through -- or basically through budget?

SENATOR SMITH: Budget.

ASSEMBLYMAN BRAMNICK: Or through other legislation.

MR. DiROCCO: Right. As I understand it, I don't think that it's-- Right, I don't-- I think, obviously, you can take care of it in the budget, but I think you can do it through stand-alone legislation if that were the case. And there's no prohibition that I know. The Department --

the way it's worked historically, I think, is that the Department comes up with the formula, it's vetted here; pursuant to some statutory reference, they're required to come before us, and then we move forward. But I don't think there's any prohibition in statute to having the Legislature change the way that works. And I think the Department's committed to working with the counties and I think we'll hear from some county folks.

ASSEMBLYMAN BRAMNICK: It just seems as if that decision as to what portion of funds go to these facilities surely should not be left in some limited area of decision making. It's a major portion of funding services.

ASSEMBLYMAN CRYAN: And to your point, don't you have a timing issue? Isn't that part of the reasons here? You don't have formulas set up, right? Isn't there an issue-- Based on how you do it today, would we have that information to be able to be processed for a budget vote in June?

MR. STEIN: No, I don't believe so.

ASSEMBLYMAN CRYAN: It's part of the reason that they're here.

MR. STEIN: With the reporting process for the county psychiatric hospitals, their cost reports for the last year are due by June 1.

ASSEMBLYMAN CRYAN: So you have some timing issues, to Jon's point -- to Assemblyman Bramnick's question.

MR. STEIN: Yes, and that largely comes off of the Medicare cost reporting requirements that the counties are subject to report by a certain day.

ASSEMBLYMAN CRYAN: But the other part of it is, we could follow Senator Smith's potential suggestion about simply capping it as part of the language, and then you restrict it anyway, right? At the end of the day, the budget document rules. Would that be correct, or not correct?

MR. TeBEEEST: Yes, that's something that, I guess, State and county hospitals would have to live with. That's the question. I mean, my concern here is that we're dealing with very different entities, and a small number. There are five State hospitals and there are six county hospitals. So if we're going to cap, if we're going to try to move to a market-rate system which allows you to predict, that also means that certain entities are going to live with reimbursement that is below their cost. And it's a little unpredictable which ones they'll be.

SENATOR SMITH: Is the State picking up the balance?

MR. TeBEEEST: What's that?

SENATOR SMITH: Is the State picking up above 2 percent? I wasn't saying that they were living with those increases; but the worst increase the locals would suffer is the 2 percent.

MR. TeBEEEST: Okay.

ASSEMBLYMAN CRYAN: By the way, the county facilities, do they just take folks in that county, or do they take folks from anywhere?

MR. TeBEEEST: I think it's primarily their county, but sometimes they're asked to receive patients from others.

ASSEMBLYMAN CRYAN: My final point with this is obviously my frustration -- and I'll note it again for the record -- I think this is a terrible system. I think it's patently unfair. I think it should be reviewed. You've noted you will, but without any timeframes -- and I

suspect it wouldn't be fair to ask you for any -- but I think it absolutely needs to be changed. And if I remember right, though we vote, this thing passed already, right?

MR. SHAUGHNESSY: Yes, sir.

ASSEMBLYMAN CRYAN: I mean this is a discussion about a past vote, right?

MR. SHAUGHNESSY: Yes, sir.

ASSEMBLYMAN CRYAN: I'd like to ask, through the Chair, whatever you do for the future, for those who are on this Commission, that documentation that is applicable to rates be given to the Commission at the time that it's actually done -- not wait for the next Commission meeting, and so on -- so that members who participate in the process can have it. Because this is lousy.

ASSEMBLYMAN BRAMNICK: Just one final comment -- or question: Do you actually have members or representatives of your Department out there on a regular basis doing performance audits, as opposed-- Is that done?

MR. TeBEEST: Of the State hospitals?

ASSEMBLYMAN BRAMNICK: Of those facilities that you involved this rate setting formula.

MR. TeBEEST: Yes, there are routine audits of both the State hospitals and the county--

ASSEMBLYMAN BRAMNICK: Are those paper audits or are those-- Do you have, actually, people there at the hospital walking around, finding what people are doing and determining whether it's efficiently run?

MR. TeBEEEST: Both. You know, there are some desk reviews that you refer to. It depends on the entity doing the auditing.

ASSEMBLYMAN BRAMNICK: Right. Just how often are those desk reviews done, where people are actually there monitoring the facility? I mean, is that done every few months, once a year, where physically someone's there?

MR. TeBEEEST: You're asking when the desk reviews occur, or when the--

ASSEMBLYMAN BRAMNICK: Desk-- If you call it desk review, okay -- desk review. I'll make my point simple: My concern with any type of formula -- if I ran my law office with a formula, I'd be out of business. I understand there has to be some basis for your decision, but how often do people go out there and look at what they're doing, see the quality of the facility, see how it's running, how they're doing, how efficient they are -- you know, those, really, eyes and the ears of the people present.

MR. TeBEEEST: Well, there are a number of attempts--

ASSEMBLYMAN BRAMNICK: Attempts? That's probably a bad sign. (laughter)

MR. TeBEEEST: Well--

ASSEMBLYMAN BRAMNICK: They don't let you in?

MR. TeBEEEST: One effort is contracted by the Department of Human Services where annually one county hospital and one State hospital is audited. And we hire a CPA firm to do so.

ASSEMBLYMAN BRAMNICK: Yes.

MR. TeBEEEST: So that happens every year.

ASSEMBLYMAN BRAMNICK: Yes, if they sent a CPA into my firm, they couldn't figure it out either.

You know, just making this one comment about government -- and you hear this discussion, and you hear this broad-based rate setting and it's based on a lot of moving parts, and I assume there's a good intent there. You know, I've always thought that the reason government grows and the reason we get into this situation is-- I would prefer to have real experienced people who've run facilities be out there, walking around on a regular basis saying, "Guess what? There's nobody here on a Friday." Because you get so lost in the weeds on these formulas that bad results happen. And that's true of all administration. I don't know if we have that luxury, but that would always be my vote. God bless the CPAs, but I'd rather have an experienced former administrator there once every three weeks walking around on surprise visits.

With that, I'll end. Thank you.

MR. SHAUGHNESSY: Yes, I believe there are several people in the audience who may be interested in saying things; if they remain interested in saying anything, please come up and identify yourselves.

A L F R E D P I N O: Good morning. My name is Alfred Pino; I am President of Pino Consulting Group. I represent Hudson County and Union County in this matter. I'm also a former Director of Finance for the State Department of Human Services, and was the person who was involved in developing the initial rate-setting methodology that went into effect back in, I think it was, the mid-80s.

SENATOR SMITH: So you're the guy we blame. (laughter)

MR. PINO: I'll tell you what -- I'll give you the background if you're interested in it. I mean, I'm not interested in sitting here boring you and reading the letters that came from both Union County and Hudson County; I'm sure you can read it on your own. I would like to just mention one thing about the rate cap adjustment that was applied to both Meadowview Psychiatric Hospital, which is Hudson County's facility, and Runnells Specialized Hospital. I believe those are the only two facilities that got a rate cap.

The rate cap went into effect with some pretty simple budget language -- appropriation language. And it was very vague, and the way it was applied, in my opinion, is inappropriate. It was an arbitrary approach. And as Mr. TeBeest mentioned, the rates are based on a prior year, and then there's adjustments to estimate the 2011 year. What they did was, they looked at the actual cost for 2009, which is the base year, to use as a base to establish 2011. So it's really an estimate. And then there are base year adjustments that can be made to that to reflect increases in population, decreases in population, decreases or increases in cost. What they did was, they looked at the actual 2009 per diem rates of the four State hospitals -- a blended rate. And then they looked at the actual per diem cost of the county facilities. And based strictly on that, they excluded carry-forward and capital-related costs so it would be on an even keel.

So they determined that in Runnells Hospital, the Runnells' actual costs for 2009 was \$13.57 higher than the blended rate for the four State psych hospitals. In Meadowview, it was \$6.86 or something like that. The problem with that is they based that on 2009 actual costs. That's not what the law said. So what they did after that was they then proceeded to

make significant base-year adjustments to the blended rate for the State psychiatric hospital, which brought the rate up significantly -- significantly higher than the rate that was struck for both Runnells and Meadowview psychiatric hospitals. But they applied a rate cap.

I think it's an arbitrary approach; there was no process to this, there was no discussion. They applied that.

The way I would see this happening is they would have to wait until the actual 2011 costs come in from all the cost reports and then determine who is higher or lower than the average of the State psychiatric hospitals. But to apply this rate reduction based on 2009 actual cost, and then proceed to make base-year adjustments, essentially lowering the denominator -- the patient days -- which made the rate spike, and still apply a rate adjustment to these two facilities, is totally inappropriate. And Hudson and Union counties were hoping to get relief from the State House Commission on that matter. We're talking about a lot of money; we're talking about \$177,000 that I estimated for Union County Runnells, and \$166,000 for Hudson County Meadowview facility. To me it's a major flaw in the way they applied this thing.

Having said that, we also had made recommendations as to the blended rate for the State hospitals, as Mr. TeBeest mentioned. They decided not to do certain things, and I can understand their position on that. But the bottom line is it represented a significant increase to the counties. Counties' costs are coming down at these facilities. They know they have a 2 percent cap. And the trend is it is coming down. One of the reasons why the rates at the State psychiatric hospitals have gone up so much is because of depopulation, old facilities -- they can't get rid of their

fixed costs fast enough to stay in line with the reduction of patient days. So this base-year adjustment that they made to the 2009 base, to protect 2011, spiked these rates significantly.

To give you a little background from way back: You mentioned why does the State House Commission set these rates? Well, it's a good question, but it goes back years. And when I was the Director of Finance at Human Services in the '80s, these rates were struck by Human Services and they were not coming to the State House Commission for approval. And I was in charge of reimbursement for the Department -- State hospitals, county hospitals, Medicaid reimbursements and so forth -- and then I became the Director of Finance. And we had an opportunity -- I had the Rate Setting unit under me, and we had an opportunity to make changes to the way counties were charged for State hospitals, as well as the way the State paid for the county hospitals. And I said to my boss, "I'm going to establish these rates; we're going to do it in compliance with the law." And the law has not been followed for God knows how many years. So the statute for the State House Commission to fix these rates goes back many years prior to 1985.

So we did a very detailed analysis at all the counties involved; it probably took a good year and a half or more to get the methodology in. At that methodology, because the old methodology was based on budgets and based on estimated populations, they didn't represent cost at all. And way back then, depreciation and interest expense -- capital-related expenditures were not included in the rates. So the big issue here was, we can't go to a new system and come up with rates that would be significantly

higher for the State hospitals and charge the counties for that big rate increase.

What we did was, we established a maximum rate of increase. And we used a base year, and we established a maximum rate increase to the State hospitals. Then in 1991, when the whole formula of financing the State and county hospitals changed -- back in the '80s and for many years it was a 50-50 cost sharing. And also you have to remember that the developmental centers were a responsibility of the counties prior to 1991, and that was a very big expense to county government. Well, in 1991 when the laws changed it took the responsibility away from the counties for financing any of the cost of the developmental facilities. So the counties lost that big expense and they were very happy with that. It also changed the formula for the 50-50 cost sharing to a 90-10 cost sharing -- 90 percent State, 10 percent for the counties.

So at that time, they took the existing rate-setting system, converted it to, really, a retrospective cost-based system. It was also based on cost; but they established the process to come up with these carry-forward adjustments. And that whole concept was, they want to pay for what is really incurred. So carryforward is no more than a settling up a prior year cost report -- you either got paid too much or got paid too little, and it was a settlement. It was a lump-sum amount, and it would just be rolled forward into a future rate. The problem with that is that when counties go to establish their budgets, it's very tough to predict, with a two-year lag, what that carryforward is going to be; especially if you have fluctuations in patient days, which we're seeing right now with the State hospitals.

So it's an equitable system, but the problem is that it causes too much variance from one year to the next. We've had discussions with Human Services, and I recommend, perhaps, going back to the way the system was initially: putting a cap on the rate of increase that applies to all facilities -- not just the county facilities. And that rate of increase can be established based on certain criteria. But I also emphasize that there should always be room for exemptions for unusual circumstances and so forth. And one unusual circumstance would be if you're building a new hospital. And by the way, when a county builds a new hospital, it is prior approved by the State Department of Human Services, Division of Mental Health Services.

So those are just some of the thoughts, some of the background. The rate increases on the State hospitals -- the 17.52 percent -- actually resulted in about 12.2 percent increase to the charges to the counties. That's not 17.5 -- because reduced patient days and so forth -- but it was about 12.2. And some of the counties got hit with 168 percent increase -- Burlington County; Middlesex County, 93 percent increase; Monmouth County, 49 percent increase; Somerset, 92; Sussex, 55; Union was 19 -- it's kind of in line with the rate increase; Warren County, 112 percent; Hudson County actually had about a 12 percent increase. So it has a lot to do with yes, the rates, but it's also how many billable days are being charged to the different counties.

And the big problem there is the system that the State uses to bill the counties is flawed. And they may underbill, in one year, number of days; and then they catch up the next year and there's a huge difference. That, combined with the rate increase, causes these 167 percent increases in

charges to the counties. And the counties, they don't want to hear it. They don't really-- They understand the general parameters of the system, but they just don't understand how they can get a 168 percent increase.

Now, having said that, if you go back a couple of years you might see that they had reductions as well. So you kind of have to look at it over a period of time. But even if we fix the rate-setting system and put some kind of a cap on all facilities -- how much the rate can go up -- this problem with the billable days is going to continue to be a problem. And if you put a 2 percent rate cap on all hospital rates, you still could have 15 percent increases or more -- 50 percent increases in billable days. So it's a combination of the two.

MR. DiROCCO: Thank you, Mr. Pino.

Any questions for Mr. Pino at this time? (no response)

Anyone else who wants to be heard on this matter?

Ma'am? We're running way over, so just please try to be as concise as possible. Thank you.

KAREN KUBERT: That's the trouble with going last. I will.

MR. DiROCCO: We had a lot on the agenda.

MS. KUBERT: Thank you.

Good morning. My name is Karen Kubert. I'm the Warren County Adjuster, and the Human Services Director. And I just wanted to give you a little bit of background about why I've come to you today.

First of all, I was at the Hagedorn Task Force, and I can tell you that my perception of what happened there was a little different than what I heard this morning. The Task Force voted, and a majority voted to keep Hagedorn Hospital open. And the reason it did that was simply there was

really no assurance that the money, if it was closed, would actually go into the community to help the mental health clients live and be able to function, because the budget was in such disarray no one really knew if that could happen.

So I don't think-- I think the only conclusion you can draw from that is that most of the people wanted to keep it open, but with this kind of a budget no one really knew what would happen with the money.

I have worked in Warren County for about 30 years, and as the Adjuster of course you know my goal is to oversee the civil commitment process and determine if patients are responsible for their care. But I've been concerned about this issue of the county rate and the county share since about 2008, and I've been working on it since then. And I brought you several copies of some documentation I've sent to various people on this, and put that for the record.

As you know, as you heard from Mr. Pino, who very, very aptly described everything, the counties were hit with a 10 percent increase, and then a 12.5 percent increase in their share, and then a 15 percent increase. But today I'm here to talk to you about the issue of the county rate. And I know the numbers have been bandied about -- 17.5 percent, 12 percent. The issue here is that the counties have a cap, and they can't afford it. And the other issue that hasn't been raised is that the reconciliation of the bills doesn't occur until five years after the actual patients are in the hospital; so our issue, as far as the counties are concerned, is that the counties sort of have to upfront this money -- have to pay this money for five years until their bills get reconciled.

So I am definitely in favor of any kind of formula that could be changed. The reconciliation process needs to be more timely. I think that-- Mr. TeBeest and I have been working, actually, together. We've made a lot of progress, but what really needs to happen is the same consideration I would hope you would give to the county hospital -- the methodology, the formula -- could be also given to the counties in terms of their share for the State hospital.

Just to give you some idea of the actual numbers, though, I did bring a chart -- that I would ask that each of you get a copy -- oh, I need one -- that will show what's happened since 2005. In the chart you'll see the county share is listed, the county blended rate is listed, and the increase is listed. And what you'll see when you get this is, quite simply, that if you look at 2005 to 2010, the average increase in the blended rate for the counties was about 8.6 percent. But when you look at the rate increase from 2010 to 2011, that's more than twice the average rate increase of all the past five years. So the issue for the counties is this has been going on a long time; it's not just 2011. And they've been trying to live with first a 4 percent cap; now a 2 percent cap. These numbers are greater than those numbers.

Thank you. Any questions?

MR. DiROCCO: Thank you, Karen.

MS. KUBERT: Thank you.

MR. DiROCCO: You know, I appreciate you working with the Department on this, too; I know you know a lot about this program. You're one of the few people in the state who knows -- like Mr. Pino -- has a historical perspective on this. So I appreciate that.

MS. KUBERT: Thank you; thank you very much for your time, and for being allowed to go on the record for the counties.

MR. DiROCCO: Anyone else wish to be heard on this matter?
(no response)

Seeing none, I guess we can-- We do have one more item on the agenda; I don't know if we have time to--

MR. KOTLER: You need to mention that we've lost our quorum.

MR. DiROCCO: Right, we've lost our quorum at this point. So maybe we can table that matter for next meeting; or should we--

MR. SHAUGHNESSY: Yes, whatever is your pleasure. We'll table it and put it on the next agenda.

MR. DiROCCO: Okay.

MR. SHAUGHNESSY: Okay. We need a motion to adjourn.

MR. DiROCCO: Yes, we just need a motion to adjourn.

ASSEMBLYMAN CRYAN: Motion.

MR. SHAUGHNESSY: And a second.

MR. DiROCCO: Second.

All in favor? (affirmative responses)

(MEETING CONCLUDED)