
Commission Meeting

of

STATE HOUSE COMMISSION

LOCATION: Committee Room 14
State House Annex
Trenton, New Jersey

DATE: June 21, 2004
9:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Daren Eppley, Chair
(Representing Governor James E. McGreevey)
Senator Bernard F. Kenny Jr.
Senator Bob Smith
Senator Walter J. Kavanaugh
Assemblyman Anthony Impreveduto
Assemblyman Peter J. Biondi
Charlene M. Holzbaur
Manuel Fernandez
(Representing John E. McCormac)



ALSO PRESENT:

Edward R. McGlynn, Secretary
Robert J. Shaughnessy, Counsel

Meeting Recorded and Transcribed by
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MR. DAREN EPPLEY (Chair): Good morning, everybody, and thank you for coming. This is the quarterly session of the State House Commission. This meeting is an Open Public Meeting and has been advertised as such. We'll begin the proceedings today.

We do have an extensive agenda. In order to try to do this as expeditiously as possible for our Assemblymen and Senators that are present -- to get them out of here -- we will be doing voice vote, unless a roll call is requested by one of the members.

We will also be trying to combine several of the agenda items. We understand one agenda item in particular is of importance today. If you haven't signed up to testify, please do so. If you are commenting on a particular matter, obviously we would like you to sign up. But we are going to be trying to move through the agenda very quickly, so please make yourself known by flailing your arms, or some other motion, so that we know that you do want to comment, and we'll begin our proceedings.

We'll go through some of our old business first, then we will move agenda Item No. 46 up so that we can take action on that. We're aware that people would probably like to testify on that matter.

Without further objection, we'll begin.

MR. McGLYNN: Thank you, Mr. Chairman.

We do have a quorum. Just let me take roll call.

Director Holzbaur.

MS. HOLZBAUR: Here.

MR. McGLYNN: Assemblyman Biondi.

ASSEMBLYMAN BIONDI: Here.

MR. McGLYNN: Assemblyman Impreveduto.

ASSEMBLYMAN IMPREVEDUTO: Yes.

MR. McGLYNN: Senator Kenny.

SENATOR KENNY: Here.

MR. McGLYNN: Senator Kavanaugh.

SENATOR KAVANAUGH: Yes.

MR. McGLYNN: And Chairman Eppley.

MR. EPPLEY: Here.

MR. McGLYNN: The first item is the approval of the March 22, 2004, State House Commission meeting minutes.

SENATOR KAVANAUGH: So moved.

MR. EPPLEY: Second.

MR. McGLYNN: All in favor? (affirmative response)
Any opposed? (no response)

Item No. 2 is ratification of lot number change for recordation purposes only. Admiral Farragut Park, Block 36, Lot 1.02-2, in Pine Beach Borough, Ocean County, replacement parcel correction from Block 36, Lot 1.03-1, Lot 1.05.

SENATOR KAVANAUGH: So moved.

MR. EPPLEY: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

Item No. 3, Six-Mile Run Recreation Area, Block 57.01, Lot 49, in Franklin Township, Somerset County. This was previously approved at the September 25, '03 meeting. The approval was for Block 50, Lot 48. The submission shall correct the lot and block number to Block 57.01, to Lot 49.

MR. EPPLEY: So moved.

SENATOR KAVANAUGH: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

Item No. 4, White Oak Branch Wildlife Management Area, Block 6201, part of Lot 13.01, Franklin Township, in Gloucester County. The New Jersey Department of Environmental Protection, Division of Fish and Wildlife, requests approval for the mutual exchange of access easements with the Gloucester County Sportsmen, in Franklin Township.

SENATOR KAVANAUGH: So moved.

ASSEMBLYMAN IMPREVEDUTO: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

We may now turn to, Mr. Chairman, which it is your desire, to Item No. 46, because I know there are many people here who wish to be heard on this item.

Item No. 46 is the DeKorte Tennis Complex and Municipal Park, Block 2547.03, Lot 2 and/or Block 2514, Lot 1.01, in Franklin Lakes Borough, in Bergen County. The New Jersey Department of Environmental Protection, on behalf of the Borough of Franklin Lakes, requests approval to authorize the disposal of 0.169 acre of parkland to a private developer to provide access for a 100-unit apartment complex, in partial satisfaction of the Borough's affordable housing obligations. University Heights is the owner of an adjacent

12.5-acre parcel and plans to construct approximately 100 rental housing units on the property, under a settlement negotiated with the Borough of Franklin Lakes, in the context of a builder's remedy suit.

There are numerous items that have been received by the State House Commission during Thursday and Friday of last week. Among those is a resolution from the Borough of Franklin Lakes Municipal Council, asking that the matter essentially be held. Copies of that resolution are available to -- on the table to the right. (indicating) There is also a letter from Price, Meese, Shulman, and D'Arminio, who represents the New Jersey Audubon Society and Franklin Lakes Open Space Preservation, asking that the matter be either denied or held. Copies of that letter are available. And there is a letter from Mr. Neil Yoskin, who represents the developer, indicating his client's desire to see the matter approved today. Copies of that letter are available.

And there is a letter from the Commissioner of Environmental Protection to the Mayor of Franklin Lakes, dated June 17 of 2004, indicating essentially -- and if you would help me with this, I don't know if I've seen this -- that there will be a payment of \$100,000 in a dedicated account for the municipality, for future acquisition of parkland.

MR. EPPLEY: Right. There was a condition, and previously-- And that condition has been met.

MR. McGLYNN: Okay, with that, Mr. Chairman--

MR. EPPLEY: Okay. Do we have a list of commentators?

MR. McGLYNN: May we hear from Ted Korth, is it, from the New Jersey Audubon Society?

T H E O D O R E J. K O R T H: Yes. Good morning. Ted Korth, New Jersey Audubon Society. New Jersey Audubon represents--

MR. McGLYNN: Excuse me, Mr. Korth, would you press the button. It will turn red, which means it's on. (referring to PA microphone)

MR. KORTH: I've got red here. (referring to PA microphone)

All right. New Jersey Audubon Society opposes this diversion. Aside from the ecological issues that it brings up, the heart and soul of this diversion is to make a new bright-line test where public properties can be transferred, diverted from State use, from public use, for private interest. There is no question that the revision of affordable housing is important in New Jersey. It likely is a public purpose that we all need to support. In this case, using affordable housing units to meet the public purpose threshold does not pass muster.

In January of '04, the DEP's position on the issue was that providing 15 affordable units and \$28,000 did not meet the public-purpose threshold. From January '04 to June '04, the ratio changed. Now we have a 20 percent affordable unit amount at the development, and \$100,000. In that time period, we increased a few units and we increased some money and, suddenly, we meet the public purpose threshold.

If this is a new bright-line test that the DEP will apply to all diversions, what we have here is de facto rule making. It should be vetted through the APA and not only through this Commission. If the DEP will not be applying its 20 percent ratio in the future, then this decision is simply arbitrary. At 15 units, it did not pass the public-purpose threshold. At 20 units, it does. There is no rhyme or reason for that.

Public housing is important. It needs to go in many towns. It likely needs to go in Franklin Lakes. The Green Acres Program saves parklands, open space, for citizens across New Jersey. We already divert public lands for other public purposes. Cape May recently diverted some lands for a college. College is definitely a public purpose. In this case, we will be creating 100 units, only 20 of which will be affordable. That's a very quasi-public purpose when the access is really for people who can afford the other homes.

The Florio administration turned the diversion down. The Whitman administration turned the diversion down. Apparently, you can keep coming in until you get an administration that's willing to create the right hoops to jump through and get you the diversion. In this case, the public-purpose threshold is used for that tool. Can we leverage that to get this diversion through? The answer should be no. If we're going to start using public lands for private developments when any COAH application comes along with it, that should be vetted through the APA and created as a new rule in the Green Acres Program.

The Green Acres Program is currently going through a rule-making process. It's a perfect time to vet that and not try to run these things in before the new rules come into order. Because of that, New Jersey Audubon does oppose this diversion.

Thank you.

MR. EPPLEY: Thank you.

Any questions? (no response)

Next we have Amy Hansen.

AMY HANSEN: Good morning, and thank you for the opportunity to speak today. My name is Amy Hansen, and I work with New Jersey Conservation Foundation. We're strongly opposed to this diversion, which would rob the public of parkland they purchase with their tax dollars and would only benefit a private developer.

The State of New Jersey should not be in the position of undermining the public trust and facilitating developments that adjoin parkland. There is no compelling need for this diversion when Franklin Lakes has clearly identified alternative sites, immediately available for affordable housing, elsewhere. New Jersey Conservation Foundation is fully supportive of creating more affordable housing in New Jersey. One of these alternative sites should be used for this development. There's no justification for fragmenting 100 acres of public woodlands that would only afford a huge financial gain to the private developer.

The possibility of the developer paying the Borough \$35,000 per unit, up to five additional, affordable housing units, has been discussed. If the diversion goes through and this money is paid, the fund should go to Green Acres to compensate the public loss, and not to the Borough's affordable housing coffer. The land that's being proposed for diversion and sale is important public parkland that was purchased in the public trust. An alternative site should be chosen for Franklin Lakes affordable housing.

Another important issue to consider is that the DEP is currently writing new Green Acres regulations that may provide guidance for diversions involving low-income housing. How may the Franklin Lakes diversion conflict with these new regulations?

I urge the DEP to reconsider its position and deny the diversion, to do the right thing for the people in New Jersey. New Jersey parkland is precious. Let's not give it away.

Thank you.

MR. EPPLEY: Thank you.

Next we have Gregg Meese.

GREGORY D. MEESE, ESQ.: Thank you.

Good morning. I'm Greg Meese, from Price, Meese, Shulman, and D'Arminio, representing Franklin Lakes Open Space Preservation, or FLOSP. We're here to speak against the diversion. The resolution that was adopted by the Borough of Franklin Lakes, on Friday, requests the Commission to delay action on this request, because there are many unanswered questions with

respect to the application. Probably, most importantly, as there is disagreement between the Borough and the Commissioner as to what is the compensation to be paid for the diversion and what is the public benefit -- that being the number of units that is proposed as part of the diversion.

In the resolution, the Borough Council makes the following findings: The Borough Council did not authorize, nor does it approve of, the letter sent by the mayor to the Commissioner of the DEP, dated March 24, 2004, which the Commissioner misunderstood to reflect the Borough's endorsement of the developer's proposal. The contents of the mayor's letter does not reflect the view of the Borough Council. The Borough has not consented to the terms of the granting of the diversion permit, as set forth in Commissioner Campbell's letter, dated June 10, 2004.

The terms of the granting of the diversion permit, as set forth in the Commissioner's letter of June 10, 2004, are contrary to and inconsistent with the proposal which the Borough has received from University Heights and which was the subject of a resolution considered by the Borough Council. But after careful consideration, the Borough Council, on June 7, 2004, unanimously agreed to remove from its agenda, because of the need for further clarification of the facts and analysis of the legal issues in this complex matter.

On numerous prior occasions, including but not limited to an April 18, 2001, letter from Thomas Wells, administrator of Green Acres Program, to the Honorable Jonathan N. Harris, Judge of Superior Court -- which is part of the record in the University Heights litigation -- and did a March 12, 2002, letter from Judith Piccinini, Chief, Bureau of Legal Services and Stewardship, the Green Acres Program, to Borough Administrator Robert S. Hoffman (phonetic spelling), the DEP has stated that Old Mill Road is a park road for which a diversion permit is required. The park road is not currently contained in the diversion permit application.

There are several additional open issues with respect to the proposal which require further study; and the Borough, first, requests the Commissioner to withdraw the matter. Secondly, unless the Commissioner voluntarily withdraws the matter from consideration by the State House Commission, the Borough requests the State House Commission delay consideration of this proposal. And that was a resolution that was adopted by the Borough on Friday.

The project which is the subject of the diversion is also the subject of two pending lawsuits. There is no reason that this matter has to be rushed

to judgment today. This matter will create a terrible precedent. First, with respect to the public trust -- Green Acres land enjoys an almost sacred status of land acquired by the public and for the public, and unparalleled, universal support by the public which transcends all political affiliations. This is the first time that the Commission has been asked to divert the Green Acres property and to give it to a private developer. Indeed, it's a small piece of property, yet it's a very large legal precedent.

There's a past history of denials of the same application with both the Whitman and the Florio administrations. In both of those cases, it was a *Mount Laurel* component development, just as it is before the Commission today. The only difference is the project has gotten larger.

The developer of this application is a political insider. And to set this precedent on this day to a political insider is unseemly, at best. What will be the impact on the public support for the Green Acres Program and the public confidence in government should this application be approved?

Yesterday, the *Record* contained another editorial. And their editorial states: "The proposal to turn over to a developer a tiny swathe of Green Acres land in Franklin Lakes was a bad idea when it first came up, and it's still a bad idea."

Some of the unresolved issues include a significant public benefit. In February, the Commissioner indicated that 15 units did not represent a significant public benefit, in light of the overwhelming benefit to the private developer. The Commissioner's letter of June 10 states that the construction of 20 units on site, which would allow for a credit of 40 units, would meet that test. But what was that criteria based on? To our knowledge, there has been no change in the regulations, although we do understand that the Green Acres Program is in the process of promulgating new regulations.

The latest letter of June 17, the Commissioner now changes the position, and is inconsistent once again. Because now we're back to 15 units to be constructed on site, with a payment for the other five units. Again, what was that decision based on? Is this ad hoc decision making or sound administration action?

The monetary compensation -- what is it based on? Has there been a fair appraisal of the property, or is this just a sum of money that has been offered by the developer? Certainly \$100,000 is more money than \$40,000 or \$28,000, but what is it based on?

MR. EPPLEY: I'll ask you to wrap up your comments, please?

MR. MEESE: I will.

The most recent correspondence and the application before the Commission -- it omits any reference to the park road. The value of the park road alone could be well in excess of \$1 million, which would be a loss to the State of New Jersey. Is this an omission, or is this an official action to no longer require a diversion for the park road?

Alternative sites in Franklin Lakes -- even before the court, there was a listing of 19 alternative sites which, an environmental consultant testified, at least eight of which had less environmental harm than the subject site. The same environmental report indicated extensive environmental harm which would ensue from the granting of the diversion and the construction of the project.

We ask you to delay action. Or if you do take action, we ask you to deny this action. This would set a terrible precedent in the State of New Jersey, and there are just too many questions that are left unresolved in the proposal before the Commission.

Thank you.

MR. EPPLEY: Thank you.

Any questions from the members? (no response)

Tom Lambrix.

THOMAS LAMBRIX: Is it on? (referring to PA microphone)

My name is Tom Lambrix, and I'm a resident of Franklin Lakes, New Jersey. I've been a resident there for almost 12 years. And I would just like to add my voice to the three people who have already testified in urging you to oppose this diversion. I'm not going to repeat all the reasons you've already heard.

But what I'd like to try to paint for you is a picture of what we have here in Franklin Lakes. Over 30 years ago, the Borough administrators and the Council had the vision to use the Green Acres funds available to acquire almost 100 acres of wetlands and woodlands in the heart of the community in Bergen County. And those wetlands and woodlands have been preserved in its natural state to this day. This 12-acre, private piece of property abuts those wetlands and woodlands. If you could see the resource that we in Franklin Lakes have there, you can get some sense of how rare these wetlands and woodlands are. To divert parkland for a massive housing project that will be built on six acres of this private property, right in the middle of this beautiful wetlands and woodlands, is a travesty.

The developer may say, “Well, look, this is just a bunch of neighbors that don’t want low-income housing in their backyard.” That’s not true. We are actively supporting the provision of low-income housing in Franklin Lakes, but this is not the place to put it. You have to ask yourselves, why is the Sierra Club, the Audubon Society, the Conservation Foundation identifying this as one of the most important issues statewide? This has precedent-setting nature, a significant environmental impact. It’s the wrong project for this site.

When that park road was built, the reason it’s an issue is, the land under the road was acquired with Green Acres funding. Back when they built the road, they built it because they put a tennis court complex in. And the road was built to access the tennis courts. That’s why Green Acres said, “We don’t need to divert land for that road.” Ordinarily, we would have had to divert land. So now the issue is the park road. The land under that is encumbered with Green Acres restrictions. And that’s been the position of DEP, officially, up and to this day. We have not heard any other official correspondence from the Department why this road isn’t included in this diversion. And somebody could be liable for a lot of money for the value of that property.

Again, this is the wrong project for this site. I have to ask myself why the Commissioner has even put this forward to you today. The Borough of Franklin Lakes is the applicant, is opposed to it, doesn’t want it here, and I urge you to vote no on this diversion.

Thank you.

MR. EPPLEY: Thank you.

Any questions from the members? (no response)

Paul Chrystie.

PAUL CHRYSTIE: Good morning. My name is Paul Chrystie, and I’m the Executive Director of the Coalition for Affordable Housing and the Environment. We are comprised of 40 housing, environmental, and planning organizations.

We believe that Commissioner Campbell’s recommendation, that the number of affordable homes in the development under consideration be raised from 15 to 20, is appropriate. It’s completely consistent with the *Mount Laurel* doctrine. As in it’s *Mount Laurel II* decision, the Supreme Court wrote about the percentage of affordable units in an inclusionary development, “20 percent appears to us to be a reasonable minimum.”

It was suggested in the newspaper last week that the additional units were not necessary for the Borough to meet its affordable housing requirements. That is, in fact, inaccurate. While the 15 units may meet the Borough's existing obligation, under the rules proposed by the Council on Affordable Housing last fall, the market rate units in this development will create an additional obligation. So, in fact, if the Borough's existing and prospective obligations were to be addressed through this development, 21 units, not 20, should be reserved for affordable housing.

It was also suggested that an alternative to requiring actual units would be for the developer to contribute money into a fund for future affordable housing requirements. In two separate decisions in 2002, the New Jersey Supreme Court made clear that money does not equal housing. Accordingly, requiring units -- that will become available with the rest of the development -- instead of money that may never be spent is also appropriate.

Thank you.

MR. EPPLEY: Thank you.

Any comments or questions? (no response)

Thanks.

Is John Lee here?

JOHN LEE: My name is John Lee. I'm the managing member of the Franklin Lakes Open Space Preservation Group. And we represent close to 200 families who live in the neighborhood where this diversion is being proposed. I'm not going to repeat anything that Mr. Meese or Mr. Lambrix have said, but I would like to add one comment.

The gentleman who was just up here, when he spoke about money versus units-- Why is this being considered now if we're back to the 15 units with some additional money being set aside? I'm not quite sure why the 15 units meets that COAH level of 20 units.

Just on behalf of the residents who do live in the neighborhood, the 100 acres that's been referred to is a beautiful piece of parkland, and we sincerely believe that building a 100-unit development in this parkland will have a significant detriment to the surrounding area. And we ask the Commission, please, to consider -- either deny this diversion, or at least tabling it until the Borough Council has further time to consider the ramifications of this diversion. They met on Friday; they sent you a resolution on Friday asking for this additional time. And since they are the applicant, we hope that their request is respected.

Thank you very much.

MR. EPPLEY: Thank you.

Any questions? (no response)

Mr. Yoskin.

NEIL YOSKIN, ESQ.: Thank you.

My name is Neil Yoskin. I'm an attorney with Bennett and Yoskin in Princeton, New Jersey. I represent University Heights, which is the developer of the adjacent property. It's not actually the applicant. The Borough is the applicant.

I'd like to address three issues: One is the issue of affordable housing. Second is compliance with the Green Acres rules. And the third is the environmental impacts associated with the project. You've heard comments today on a variety of issues related to the compliance with the Green Acres rule and the issue -- in particular whether the park road is being diverted. I would defer to DEP with respect to many of these issues. I know that you've been provided with staff memoranda which analyzes extensively both the factual background and compliance with the Green Acres rules.

With respect to the park road, however, I would remind the Commission that there was a letter written that nobody has seen fit to tell you about, which is the-- When the road was built in 1969, the DEP raised the issue of whether it was a park road or not. And at that time, the staff at the Green Acres office wrote to the Borough of Franklin Lakes and said, "Because this road is also on the Borough of Franklin Lakes master plan, and because it will serve a large office complex" -- which was the IBM office complex just to the north of this property -- that they deemed it to be not just a park road, but also a township master plan road, and that the construction of the road was therefore not a diversion of Green Acres land.

Let me begin by talking about the affordable housing issue. So far, all of the objector groups have said that they support affordable housing, just not here. I was in the courtroom when Judge Harris began his comments, ruling -- granting summary judgment in favor of University Heights, granting a builder's remedy by saying that, as a lifelong resident of Bergen County, he was offended by the presence of representatives of the Borough of Franklin Lakes in his courtroom. Because, since the inception of affordable housing as a constitutional right in 1983, the Borough of Franklin Lakes had not built one unit of affordable housing. It has still not built one unit of affordable housing. The fact that a developer is doing that is simply a function of the way our

constitutional rights are enforced in this state. If municipalities won't do it, then the statute says that builders will do it.

The affordable housing litigation involved a fairness hearing, in which many of these issues regarding so-called *alternative sites* were vetted out by experts from both sides. Judge Harris found that this site was suitable and appropriate, from an environmental perspective, which he is required to do. The Borough's special counsel, Mr. Koenig, for affordable housing, in a letter to DEP some years ago, pointed out that with respect to the issue of alternatives, even if the Borough developed every site which is reasonably developable, that the Borough of Franklin Lakes would not meet its affordable housing commitment. Now, the reason for that is, Franklin Lakes is a town with a lot of woodlands, a lot of wetlands, a lot of topographic relief. There are relatively few places to build.

That takes me to the environmental issues associated with the site. The suggestion is that this is an environmentally sensitive site. It's a 12.5-acre site -- the development parcel, not the Green Acres parcel. It's a 12.5-acre site, about half of which is wetlands and transition areas. The approved plan -- and DEP has issued wetlands permits for this project -- utilizes about six acres of the site, leaves the other six undisturbed, leaves the entirety of the Green Acres complex that runs around it -- the more than 100 acres -- undisturbed. The objectors' own environmental consultant -- before the Planning Board and before the Borough Council -- testified that with respect to issues like threatened and endangered species, the site was not a sensitive one. These same arguments were raised and dismissed. The arguments that are being raised today were raised and dismissed in front of the Planning Board, in front of the governing body, and in front of Judge Harris.

Finally, I'll close with -- in terms of the Green Acres process -- with respect to the Borough Council's resolution on Friday. The resolution -- I've only seen it briefly, I only saw it this morning for a minute -- tables its own action on endorsing this modified application. This is the Borough's original application, which was filed in January 2002, for a diversion. Consistent with the Green Acres regulations, it included an appraisal that the property -- the little sliver parcel we're talking about -- was worth \$28,000. The Green Acres rules require that if land is not being given in compensation for a diversion, that it be a monetary diversion and that the town substitute that compensation in a fund that's used for open space purposes. The appraisal was found to be accurate by DEP staff. That fact notwithstanding, Commissioner Campbell said that in

order to satisfy himself -- and this is what I understand from his letters -- to satisfy himself that the application meets the significant public benefit test, that he felt that there had to be more money going into the fund that the township uses for alternative open space, and that there be additional affordable housing units over and above that required by COAH.

My client, for its part, said, "If that's going to be the standard, we'll satisfy the monetary requirements." As I understand what the Commissioner had done -- the Commissioner has said to the Commission, "If these are the conditions that are included in the diversion, than I'm satisfied that it meets the significant public benefit test." My client, for its part, is prepared to do that.

I would, in closing, simply remind the Commission that the development parcel itself has never been subject to Green Acres restrictions. The 12.5-acre parcel itself went by escheat to the State. The original owners of the property died in 1970. It went to the State. The State sold it to a developer back in the 1970s, and it has passed down since then. The diversion area we're talking about is an area about the size of this room. The area required for the road crossing is about the size of this room. The entire so-called *diversion parcel* is on the east side of Summit Avenue, the rest of the parkland is on the west side of Summit Avenue. So with respect to impacts and setting a precedent for Green Acres, I think that Commissioner Campbell in his letters to the Commission, and the DEP staff and their recommendations to the Commission, took careful note of the fact that this is a fact-specific finding. This does not set, as been suggested, a statewide precedent for diverting parkland for private development. If we were talking about a 12.5-acre diversion and a 0.16-acre private land, I might agree. But we have the opposite. We have an area of about 7,000 square feet which will facilitate the development of affordable housing in a town which has not one unit of affordable housing. And to the extent that that sets a precedent, and I don't think it does, because DEP rules allow it, and allow you to make fact-specific distinctions, then my reading of the Green Acres regulations is: that's perfectly permissible.

Thank you.

MR. EPPLEY: Thank you, Mr. Yoskin.

Go ahead, Assemblyman.

ASSEMBLYMAN BIONDI: Is there no other access to the 12-acre site that's being proposed for development other than the Green Acres?

MR. YOSKIN: That's correct.

ASSEMBLYMAN BIONDI: Thank you.

SENATOR SMITH: I have a question.

And I apologize for being late -- there was an accident on Route 1, which was the problem.

MR. EPPLEY: It's still good to see you, Senator.

SENATOR SMITH: Thank you so much.

In our notes -- the issue of this efficiency of compensation came up, and the issue impressed me. I don't think the precedent that's concerned here is one wherein this is setting an example for -- in these kinds of circumstances, with one exception. And that is, how did the DEP come to the 100,000 number, from 28,000 to 100,000, what's the basis for that?

MR. YOSKIN: I'm going to have to defer to DEP, Senator.

SENATOR SMITH: I know -- it seems to me, just reading the notes, that that's arbitrary. It could have been 150,000, it could have been 293,000. I don't know how you get to 100,000. And I would have appreciated some background on why the 100,000 number. Was there something other than an arbitrary number, so I can-- Is the DEP here?

MR. YOSKIN: DEP is here. The only way I can respond is that the Green Acres regulations require that the compensation at least equal fair market value. So we know it's over, if it's four times fair market value. How the number was picked, I'll have to defer.

SENATOR SMITH: Right, but that's the point -- that I saw in the notes, and it said the fair market value was 28,000. You now change it to 100,000. Isn't that arbitrary? I'm not arguing for a lower number for the State Government, but it seems to me that if you're talking about a precedent being set, the precedent seems to be that you're talking about an arbitrary number. Likewise, changing the number of affordable units from 15 to 20. Why not 18? Why not 23? What was the basis for it?

MR. YOSKIN: I don't know.

SENATOR SMITH: It seems to be arbitrary. That's the kind of a precedent-- I'm worried more about that precedent than any other precedent. Is this a property that's in the Highlands Preservation Area?

MR. YOSKIN: No.

SENATOR SMITH: Okay. I don't know the history of the Borough with regard to COAH. Have they done anything in the area with the regional contribution agreements?

MR. YOSKIN: I believe the settlement agreement that my client has -- and I didn't do the *Mount Laurel* litigation -- but I believe the settlement

agreement calls for the establishment of an affordable housing trust. And I believe Judge Harris's order allows them to RCA 49 percent of their obligation. It's my understanding that the recent flurry of correspondence concerns whether the last five units, these extra five units, would actually be inclusive -- you know, they'd be on the site, or whether it could be a financial contribution that goes into a RCA fund.

I would correct one thing that was said earlier today -- that it was said that the earlier denial of a Green Acres diversion was also for a project that was a *Mount Laurel* project. It's wrong in two respects. First of all, it was said to you that both the Florio and Whitman administrations denied a diversion for this site. That is not correct. Twice before, other developers of the site, or the Borough of Franklin Lakes, had preapplication meetings with DEP, at which they were told that if you apply, we will likely deny the diversion.

The second issue is this: There was an approval for 44 townhouses at that site at one time. But it was not inclusive. It was not going to create any affordable housing in the Borough of Franklin Lakes. It was just going to be a financial contribution to a trust fund, which, at that time, did not exist.

SENATOR SMITH: Was DEP already asked?

MR. EPPLEY: No.

SENATOR SMITH: No. Are they part of your list of witnesses?

MR. EPPLEY: They're here, and we'll ask them to appear.

SENATOR SMITH: Okay.

ASSEMBLYMAN BIONDI: A follow-up question?

MR. EPPLEY: Sure.

ASSEMBLYMAN BIONDI: Just for my understanding, Mr. Yoskin. Is this 12-acre property landlocked? Do you have no frontage, road frontage?

MR. YOSKIN: No. Well, the Green Acres so-called *sliver parcel* runs the length of the frontage of the property. There is a driveway and there's a driveway easement, that's a recorded driveway easement, over the Green Acres diversion that gets you access to the property. But it's at a location where it does not allow development. It's up near -- the northern boundary of this property is a railroad crossing. And Summit Avenue has an at-grade railroad crossing. And that driveway is about 40 or 50 feet from the railway crossing. We actually believe that there's a legal doctrine of a floating easement. We actually believe that that driveway may create rights across the Green Acres area. But in terms of, if you look at a tax map -- yes, it's landlocked.

ASSEMBLYMAN BIONDI: Thank you.

MR. EPPLEY: Any other questions?

SENATOR KAVANAUGH: When the State sold this property to the developer, what was the amount of the purchase?

MR. YOSKIN: I don't know, sir.

SENATOR KAVANAUGH: How many people have owned this property since the first purchase of the property?

MR. YOSKIN: My client is the second.

SENATOR KAVANAUGH: Second.

MR. YOSKIN: Yes. A party purchased it from the State, and I believe that party held title to it until they sold it to my client. There may have been one other intervening owner. It's been in private hands for about 30 years.

SENATOR KAVANAUGH: Is the purchase price public information?

MR. YOSKIN: Well, the deed is recorded and the--

SENATOR KAVANAUGH: And how much was that?

MR. YOSKIN: A little over \$2 million, sir.

SENATOR KAVANAUGH: Two million.

MR. YOSKIN: Yes.

SENATOR KAVANAUGH: For how many acres?

MR. YOSKIN: Twelve and a half.

SENATOR KAVANAUGH: All right. And this is, like, 1.8 acres that you need (indiscernible)--

MR. McGLYNN: Point-one-six.

MR. YOSKIN: No. No. The area -- 0.16, about 7,000 square feet. And of that, only 2,500 square feet is actually being disturbed for the driveway. This property runs -- at its widest point is 40 feet wide. It runs down to about 5 feet wide at the north end. It was severed from the balance of the Green Acres property when Summit Avenue was put through.

MR. EPPLEY: Mr. Yoskin, there had been mentioned that there's pending litigation. Is there pending litigation, and could you summarize, please?

MR. YOSKIN: I can try. The site plan approvals were challenged. I believe that the Law Division action was resolved in favor of my client, and it's on appeal to the Appellate Division. For the other litigation, you'd have to ask Mr. Meese to come back. I don't know what he's talking about.

MR. EPPLEY: Also, the local approval process-- This would be only one step in the process, and there's still a local process that would have to play out. What is the status of that, and what do you need to complete going forward?

MR. YOSKIN: Well, the project is actually approved at the local level. This project has been approved by the planning board. It has all of its DEP approvals. I believe that this is the last approval that's required before the project can move forward. But it does have planning board approval, it does have DEP approval. There may be an outstanding sewer extension permit. I'm not sure.

MR. EPPLEY: And why are we being requested to withhold action by Franklin Lakes?

MR. YOSKIN: I can't speak for Franklin Lakes. I saw the letter. Franklin Lakes is obligated by the settlement agreement it entered into with my client to apply for and diligently pursue the diversion application. Up to this point in time, it has done so.

MR. EPPLEY: Thank you.

Any other questions? (no response) That's it.

Thank you.

MR. YOSKIN: Thank you.

MR. EPPLEY: Jeff Tittel.

JEFF TITTEL: Thank you. Jeff Tittel, Director of the New Jersey Sierra Club.

We're here to oppose this diversion. And partially, and for a lot of reasons, is that just the whole concept of how we keep diverting land in this state is something that needs to be fixed, and we've been hoping for a fix for a long time. The other reason is that this site is environmentally sensitive -- it's PA-5. There's a tremendous amount of wetlands. And the amount of development that they're trying to squeeze onto a very small piece of property, I believe, will have a detrimental impact to not only the open space around it, but to critical wetlands in the headwaters to Hohokus Brook, which already has a series of environmental problems and at certain times of the year is used for water supply.

A concern I also have is that this site, and what we're doing to it by opening access, is really, I think, part of the problems that we see with this whole Green Acres diversion issue, which is that-- This site itself was at one time State land, just like Hamburg Mountain. We sold it probably for pennies

on the acre, back 30 years ago, just like with Hamburg Mountain. And now we're going to be using the State to now develop this property. When that road was originally put in, they could have put in access. In fact, they cut a deal to say that you can build one lot. That way we'll allow you driveway access for one lot. Now we're putting in 100 units. So I think that when this whole issue was originally set up by the town, and when they decided to locate Summit Road (*sic*) -- and I've been from that area, I know the Summit Road quite well -- they could have easily put in access, and they decided not to. Because at that time, I would assume that the town was not real happy with the diversion of this property. Yet, the State sold it.

We're here because the town itself doesn't want this to go forward, because they're still trying to figure out some things that they want to do. But from an environmental standpoint-- We just passed a bill that says we're going to fast-track stuff in PA-1 and 2, but here's PA-5, and here we are degrading it with a very high-density development that's completely out of character with the site.

Quite frankly, the fact that previous administrations saw this diversion as a problem and told applicants in premeetings, basically, that they would recommend against it, certainly tells you why this is a bad site and why this site should not be used, why this diversion shouldn't go forward. We shouldn't be cutting through our open spaces to allow very-high intensity developments going in environmentally sensitive areas. And no matter what money we get for it, it's not going to make up for the environmental impacts of a development that hard.

The other thing is that we are setting a precedent. And if we're going to be saying that it's okay to sell off or to cut through public open space because someone's putting in an affordable housing project, I think that just undermines the whole intent of the public trust when it comes to Green Acres -- because there's going to be hundreds of other sites, like this, throughout New Jersey. And quite frankly, the public benefit of affordable housing doesn't necessarily balance the public trust of buying open space and protecting open space for future generations. That's what we're really here for -- is that Green Acres diversion should only happen in very specific reasons and in very limited-- And I really think that, if we're looking down the road, that we shouldn't be putting roads through our parks.

Thank you.

MR. EPPLEY: Thank you, Jeff.

Any questions? (no response)

That's our list of people who have signed up. Are there any other members of the public wishing to testify on this matter?

SENATOR SMITH: I would like to ask a question of the DEP. Are they here?

MR. EPPLEY: Okay. I will call them.

Is there any public official from the Borough of Franklin Lakes present? (no response)

Okay. DEP is present, and would you entertain some questions, please?

ASSISTANT COMMISSIONER JOHN WATSON JR.: Good morning. I'm John Watson Jr., the Assistant Commissioner for Natural and Historic Resources for the DEP.

CATHERINE A. TORMEY: And I'm Cathy Tormey, Counselor to Commissioner Campbell. Good morning. Thank you.

ASSISTANT COMMISSIONER WATSON: Yes.

SENATOR SMITH: Where did the numbers come?

ASSISTANT COMMISSIONER WATSON: Senator, it's my understanding that the Commissioner sent a letter back to the Borough in January of 2004 saying that he did not think that the compensation was adequate enough to meet the public benefit test. And subsequent to that, the latest -- the only other documentation we have is that -- in June, the Commissioner's letter of June 10, to the Borough, basically confirms the offer that the township made, if they raised the compensation. So it appears, from our records, that the Borough actually increased the compensation to meet the test.

SENATOR SMITH: They set the number?

ASSISTANT COMMISSIONER WATSON: Yes. That's correct.

SENATOR SMITH: Who gets the money?

ASSISTANT COMMISSIONER WATSON: It will go into an open space fund, most likely in the Borough, for additional open space acquisitions.

SENATOR SMITH: It doesn't go to the State of New Jersey?

ASSISTANT COMMISSIONER WATSON: It does not.

SENATOR SMITH: Is that a problem?

ASSISTANT COMMISSIONER WATSON: We don't believe--

SENATOR SMITH: How do we sell State land and someone else gets the money?

ASSISTANT COMMISSIONER WATSON: It's local land. It's municipally-owned land.

SENATOR SMITH: Oh, this is local land.

ASSISTANT COMMISSIONER WATSON: Yes, it is.

SENATOR SMITH: We're just approving it.

ASSISTANT COMMISSIONER WATSON: Yes, that's correct.

SENATOR SMITH: All right.

MS. TORMEY: And that's a very common approach in our diversion applications. You see that many times with county or local holdings -- that the money goes back into that particular public fund that they hold aside.

SENATOR SMITH: Do we have any idea of what's the thinking by the Borough of Franklin Lakes? How they set the number?

ASSISTANT COMMISSIONER WATSON: I'm not sure at this point. I can't answer that, sir.

SENATOR SMITH: How about the increase in the total units from 15 to 20? Where did that come from?

ASSISTANT COMMISSIONER WATSON: Well, I think the Commissioner, basically, was not convinced that 15 percent of the units would meet the public threshold. He did recognize affordable housing as a public benefit, clearly. But in order to consider a diversion of parkland, of this 0.169 acres, that we would attempt to raise the bar, if you will, and raise the number to something that's more acceptable and more meaningful.

MR. EPPLEY: And that number is 20 percent.

ASSISTANT COMMISSIONER WATSON: That's correct.

MR. EPPLEY: And we're still 20 out of 100. The number has raised, but the number of units has not, correct?

ASSISTANT COMMISSIONER WATSON: That's correct.

MR. EPPLEY: Okay.

Any other questions? (no response)

Is that Mr. Lambrix? I think you're back there flailing your arms. Would you like to say something quickly?

MR. LAMBRIX: (speaking from audience) Can I speak from here?

MR. EPPLEY: Speak loudly.

SENATOR KAVANAUGH: The only thing is -- to get on the machine.

MR. EPPLEY: All right. Bring it up. Come up.

SENATOR KAVANAUGH: We want to make sure they hear you on the Internet.

MR. LAMBRIX: Thank you.

Just to clarify the paper trail. The Commissioner wrote to the Borough of Franklin Lakes, wrote to Mayor Donch, on February 10, denying the original application, because it did not meet the public benefit threshold. He said the compensation was too low for the amount of land being diverted. And 15 rental units was too low on site. Subsequent to that, on March 24, the Mayor of Franklin Lakes, over the objections of the Council, wrote to the Commissioner and said he was in negotiations with the developer, and those negotiations produced a proposal for \$100,000 for the property and 20 units. The Council did not authorize the Mayor to do that. Following that, the Commissioner, on June 10, wrote a letter back to the Mayor and said, "100,000 and 20 low-income rental units, for a credit of 40, would meet the threshold, provided the Borough Council approved it." Then on June 17, the Commissioner writes back and says, "Well, I understand that the developer is now talking to the Borough about money in lieu of the five additional units, at \$35,000 per unit. And if that's the case, that meets the public threshold test, too."

A couple of questions arise. How does it meet the threshold? What's the criteria? But you've got pieces of paper flying back and forth between the Mayor and the Commissioner over the objections of the Borough Council. That's why the Borough Council met in a special meeting on Friday and adopted the resolution you have before you. And the resolution says, in part: "Whereas the Borough Council did not authorize, nor does it approve, the letter sent by the Mayor to the Commissioner of DEP, dated March 24, which the Commissioner misunderstood to reflect the Borough's endorsement of the developer's proposal. And whereas, the contents of the Mayor's letter does not reflect the views of the Borough Council--" That's the record.

That's why the Borough wants more time to evaluate the monetary issues, to evaluate whether or not the park road should be part of this diversion-- You have to ask yourself, why are we rushing through this? Why is the Commissioner throwing this before you with all these unresolved issues? And the applicant itself says, "Don't do it."

That's the paper trail. Thank you.

MR. EPPLEY: All right. Thank you.

Okay. Any comments from the board members before we move forward?

SENATOR SMITH: Who is the applicant?

MR. EPPLEY: The Borough of Franklin Lakes.

SENATOR SMITH: Who is the Borough? Is it the Council, or is it the Mayor, or is it both?

SENATOR KAVANAUGH: Who what?

SENATOR SMITH: Who legally is the applicant? Is it the Borough, the Council? Is it the Mayor of the town?

ASSEMBLYMAN BIONDI: Is it a strong mayor, weak mayor, whose authority?

SENATOR SMITH: In other words, what I found disturbing in the last set of comments is that the applicant, who has to make the request to the State House Commission, is now saying, "We're withdrawing our request," or we're saying, "Put our request on hold," unless I'm misunderstanding the comment.

MR. LAMBRIX: That's correct. That is correct.

SENATOR SMITH: So how do you go forward?

ASSEMBLYMAN BIONDI: My comment is, we've heard a great deal of testimony. This was more complex than I was lead to believe originally. I commend Franklin Lakes for the perspicacity to preserve the -- what was it -- 100 acres preserved 30 years ago? This is something that will have an impact -- I won't say negative or positive -- but it will have an impact for perpetuity on the community. I have heard no one testify that time is of the essence. So I would suggest, at a minimum, we table it, get more information, let these lawsuits take place, see where we're going. And my recommendation, at a minimum, would be to table or reject.

MR. EPPLEY: Mr. Yoskin, I believe -- could you quickly respond to Senator Smith's query?

MR. YOSKIN: I can. The Borough is the applicant. The Green Acres application for -- originally, the application was signed by the Mayor and endorsed by the Council. That was all the paper that was required from the Borough until this recent exchange of correspondence between the Commissioner of DEP and the Mayor. And I want to clarify the record on that. What Mr. Lambrix represented to you, with respect to the Mayor saying there were negotiations between the developer and the Borough, is categorically untrue. The developer -- we just sat there and waited to be told what to do.

The dialogue was between the Commissioner of DEP and the Borough of Franklin Lakes.

Mr. Lambrix again just suggested to you that this is last-minute and that no action should be taken. The only thing that is last minute is the Borough writing this resolution, the Council, on Friday. This matter has been pending in one form or another since February. The Borough Council raised no objection to it until Friday. Now, what I would suggest to you is, if the Council said, "We veto the Mayor's action, and we don't want this application to move forward"-- They've already signed a consent decree that requires them to do it. If you table this action today and we were to go back to Judge Harris for a motion in aid of litigant's rights, Judge Harris, in addition to being indignant, would probably say, "Excuse me, they're offering four times the monetary compensation and five additional affordable housing units, and you're balking at this?" I think that's the bottom line.

SENATOR SMITH: Well, I don't necessarily disagree with your analysis whether it's a good or a bad deal, because quite frankly I'm not party to the negotiations -- and I really don't know enough about the development patterns in this Borough to know whether it's a good or bad deal. But the question is, what's the law? If the applicant withdraws an application and it says, "Don't act on it," what are we bound or not bound to do?

MR. EPPLEY: Franklin Lakes is a strong mayor or a weak mayor?

MR. YOSKIN: I don't know. I'm not familiar with the form of municipal government. But I don't see anything that precludes the Commission from, on this record, voting to approve this diversion with the condition that the five unit and additional compensation be ratified somehow. And then if we have to go back to Judge Harris to force the Borough to do what it's obligated to do, then we'll do that.

SENATOR SMITH: Let me put Mr. Shaughnessy to the test, and he'll earn some of those -- the legal fees associated with representing the board. What's the law?

MR. SHAUGHNESSY: Well, if the applicant-- I'm not certain in this case who the applicant really is. I have not reviewed the actual application.

MR. EPPLEY: Well, it is the Borough of Franklin Lakes -- is the applicant.

SENATOR KAVANAUGH: Well, who is the Borough? Is that the Mayor or the Council?

MR. EPPLEY: Right. But are we being -- we're being asked to delay action, not withdrawing the application, is my understanding.

MR. McGLYNN: That's correct.

MR. SHAUGHNESSY: I mean, that's something that can be researched more.

MR. EPPLEY: Right. But we're being asked to delay action. It's not a withdrawal of the application.

MR. SHAUGHNESSY: Correct.

ASSEMBLYMAN BIONDI: That's what my recommendation was.

MR. EPPLEY: That's your recommendation. But the legal question of -- "Do we have an application in front of us?" -- the answer is yes.

SENATOR SMITH: The answer is yes. Right. Well, I now understand that. Just a request to adjourn it at this point.

MR. EPPLEY: Okay.

Senator.

SENATOR KAVANAUGH: Mr. Yoskin, you, as the -- representing the purchaser, and they spent \$2 million to purchase this property. Is that correct?

MR. YOSKIN: That's correct.

SENATOR KAVANAUGH: Why would you buy a piece of property that's landlocked and have to go to the State to find additional remedies or relief?

MR. YOSKIN: Because at the time my client purchased it, it had already been approved for development by the Borough of Franklin Lakes. There was, actually, even a developer's agreement in place. And it was only when they sought to exercise the developer's agreement and act on the approvals that the Borough of Franklin Lakes said, "We changed our mind."

SENATOR KAVANAUGH: But you bought it. You bought it from the -- another purchaser, another builder or something?

MR. YOSKIN: That's correct. That's correct.

SENATOR KAVANAUGH: What is your remedy? How can you resolve it? Where is your \$2 million? If we say no, are you going to sit there and name this after us, or what? (laughter)

MR. YOSKIN: I suppose that's an interesting question.

I haven't given it a great deal of thought, and largely because my reading of the Green Acres regulations and the principles behind the diversion

rules would -- it raises little doubt in my mind that it's approvable. But I'm not sitting on that side of the table.

There's this issue of the floating easement. There's actually a somewhat more fundamental issue, but I don't want to dissuade the Commission from acting on the diversion. We actually believe that this land is not -- may not be subject to Green Acres restrictions at all. In 1985, the then Borough engineer for Franklin Lakes, in other litigation, signed a certification that said that this little sliver parcel was never intended to be created. They had intended -- and this goes to your question, Assemblyman -- they had never intended to create this little sliver parcel. They had tried to get the right-of-way at Summit Avenue to match the property boundary of my client's property. If that was the case, we would not be here today. And, in fact, if Judge Harris were to find that that was the case, then there would be no compensation paid to the township's open space fund.

We made the decision that-- We were concerned that if we argued that it's not subject to Green Acres at all, that my client would be even more heavily criticized than they are for attempting to build a project in the first place. So are those remedies out there? There are remedies out there. I'd prefer not to think about them, Senator. Because I think that the diversion will eventually, one way or another, be approved.

SENATOR KAVANAUGH: Thank you.

SENATOR KENNY: I have heard a long and complex history with respect to this development. To me the equities are clearly with the developer here. The developer has had -- and prior developers-- The equities are clearly there with him. He has the opportunity to develop this property if he gets this diversion. It's less than a fifth of an acre and would allow the development to proceed.

Franklin Lakes, the Borough, does not have clean hands here, over the past number of years. And to receive a letter on a Friday afternoon for a Monday morning meeting, to me, that is something that we're never going to be able to get to the bottom of, of what's going on in that town -- politically or otherwise. We have to focus on what's the issue here. And the issue before us is a narrow issue -- is whether or not we grant the diversion. A court has recognized the need to develop affordable housing in this town, and that's a major public policy of the State of New Jersey. And we ought to proceed today, in my opinion, and support this development and give this some finality. And whatever the rights of the town are, to appeal, or this decision that we may

make today -- well, let them do so. But they're all over the map on this matter. They're all over the map. And the developer had every right to rely on prior representations, including the town putting forward an application for a diversion.

So I'm of the opinion we ought to proceed. We ought to support the application, by the Commissioner supporting it. And we ought to move ahead. I'm not at all impressed by this letter on Friday afternoon. I don't know what's behind it, and it's really -- we'll never discern what's going on there. Our issue is narrow, and we ought to approve the diversion.

MR. EPPLEY: Any other comments? (no response)

We do have -- is that a motion, Assemblyman?

ASSEMBLYMAN BIONDI: Yes, sir.

MR. EPPLEY: We have a motion on the table to table the item. Is there a second?

SENATOR SMITH: Second.

SENATOR KAVANAUGH: Was it table or--

ASSEMBLYMAN BIONDI: Table.

SENATOR SMITH: Right. And there's a second. I don't disagree with the reasoning of my colleague, Senator Kenny, but I-- And I've only been on this -- as an alternate to this group for about a year. But in that year, I remember the case that we had -- in Hamilton Township, where we had a utility going through Hamilton Township. And the town -- Hamilton Township, Mayor Gilmore came in -- and requested that we hold it over so that some issues could be worked out, etc. In that case, you didn't have the applicant requesting the adjournment, you had an objector requesting the adjournment and showed deference to Hamilton Township. Here you have the applicant -- it appears to me. And somebody can correct me if I'm wrong. But it appears to me that the applicant itself is saying, "We'd like this adjourned." I don't know how you go forward. Not that Senator Kenny's reasoning is necessarily wrong or that on the issue, the ultimate issue, we may ultimately get to the point where you think it's appropriate. But I don't know how you go forward if the applicant says, "Please hold it."

So I have to second Assemblyman Biondi's motion.

MR. EPPLEY: Motion and a second to table the application for further proceedings.

We'll have a roll call, please.

MR. McGLYNN: Director Holzbaur.

MS. HOLZBAUR: No.

MR. McGLYNN: Mr. Hernandez, from the Treasury Department.

MR. HERNANDEZ: No.

MR. McGLYNN: Assemblyman Biondi.

ASSEMBLYMAN BIONDI: Yes.

MR. McGLYNN: Assemblyman Impreveduto -- no. I'm sorry, he indicated he wanted to vote in the affirmative on this before he left, but not in the affirmative to table.

Senator Kenny.

SENATOR KENNY: No.

MR. McGLYNN: Senator Kavanaugh.

SENATOR KAVANAUGH: Yes.

MR. McGLYNN: Chairman Eppley.

MR. EPPLEY: No.

MR. McGLYNN: Do I have everyone?

SENATOR KAVANAUGH: Senator Smith.

MR. EPPLEY: Senator Smith.

MR. McGLYNN: Senator Smith. I'm sorry.

SENATOR SMITH: Well, a question for you. I don't know if I get to vote?

MR. McGLYNN: Yes, you can vote. Yes you may.

SENATOR SMITH: I would vote yes.

MR. McGLYNN: I have three yeas and four nays.

MR. EPPLEY: Okay.

A motion on the application.

MS. HOLZBAUR: Second.

MR. McGLYNN: I'm sorry, Mr. Eppley. You moved it?

MR. EPPLEY: Yes.

Roll call, please.

MR. McGLYNN: Director Holzbaur.

MS. HOLZBAUR: Yes.

MR. McGLYNN: Mr. Hernandez, of Treasury.

MR. HERNANDEZ: Yes.

MR. McGLYNN: Assemblyman Biondi.

ASSEMBLYMAN BIONDI: No.

MR. McGLYNN: Assemblyman Impreveduto wished to be voted yes.

Senator Kenny.

SENATOR KENNY: Yes.

MR. McGLYNN: Senator Smith.

SENATOR SMITH: No.

MR. McGLYNN: Senator Kavanaugh.

SENATOR KAVANAUGH: No.

MR. McGLYNN: Chairman Eppley.

MR. EPPLEY: Yes.

MR. McGLYNN: I have four-three -- five-three.

MR. EPPLEY: Five-three. Five-three, the application is approved.

MR. McGLYNN: Thank you, folks.

MR. EPPLEY: Okay. As the room is clearing, are there any other members of the public wishing to testify on a separate matter, on a different matter? (no response)

Okay. Then we will return to our agenda, and we'll proceed, hopefully, in an expeditious fashion.

Thank you.

MR. McGLYNN: Thank you, Mr. Chairman.

Under New Business, we can move together Items 5 through 11 and number 16.

Item 5 is RPR No. 93-88, Block 1213, Lot 2, Bridgewater Township -- by the way, I'm sorry, all of these are DEP residential leases -- Somerset County. The Department of Treasury requests approval to lease a Department of Environmental Protection residential property, located at 324 Old York Road, to George Brickman, for \$609 a month with annual increases.

Item No. 6, RPR No. 93-90, Block 55, Lot 13, Branchburg Township, Somerset County. The Department of Treasury, on behalf of DEP, wishes to lease a residential property, located at 78 North Branch River Road, to Bruce and Roberta Lake, for \$876 per month with annual increases.

Item No. 7 is RPR No. 93-91, Block 55, Lot 1, in Branchburg Township, Somerset County. The New Jersey Department of the Treasury requests approval to lease a Department of Environmental Protection residential property, located at 921 Route 202 North, to ARC of Somerset County, for \$611 a month with annual increases, based on CPI.

Item No. 8 is RPR No. 93-106, Block 85, Lot 9, in Franklin Township, Somerset County. The Department of the Treasury requests approval to lease a Department of Environmental Protection residential

property, located at 272 South Middlebush Road, to Arthur and Anna Higgins, for \$740 per month with annual increases, based on CPI.

Number 9, RPR No. 93-109, Block 57, Lot 1, in Franklin Township, in Somerset County. The Treasury, on behalf of DEP, seeks to lease a residential property, located at 200 Cortelyous Lane, to Ellen Wilson, for \$818 per month with annual increases, based on CPI.

Item No. 10, RPR No. 93-111, Block 4, Lot 1, Upper Freehold Township, Monmouth County. The Treasury, on behalf of DEP, wishes to lease a property, located at 310 Clarksburg-Robbinsville Road, to Marion Stillwell, for \$640 per month with annual increases, based on CPI.

Item No. 11, RPR No. 04-06, Block 74.01, Lot 17, Franklin Township, Somerset County. The Treasury, on behalf of DEP, wishes to lease a residential property, located at 80 Blackwells Mills Road, to Scott and Barbara Hewitt, for \$1,200 per month with annual increases, based on CPI.

And Item No. 16, RPR No. 04-16, Block 58, Lot 7, in Franklin Township, in Somerset County. The Treasury, on behalf of DEP, wishes to lease a residential property, located at 7 Blackwells Mills Road, to Eileen Ignaut, for \$900 per month with annual increases, based on the CPI.

SENATOR SMITH: Motion.

MR. EPPLEY: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

I can do Items 12, 13, 14, and 18 together, as they all involve State Police property.

MR. EPPLEY: Please do so.

MR. McGLYNN: Item No. 12, RPR No. 04-08, Block 50.21, Lot 1, in Holmdel Township, Monmouth County. The Treasury, on behalf of Law and Public Safety, requests approval to dispose of a former State Police administrative office, in Holmdel Township. If Holmdel Township does purchase the property, it will be sold at fair market value to be determined by an appraisal. If not, it will still be sold by a fair market value.

Item No. 13 is RPR No. 04-09, Block 554, Lot 1, Bridgewater Township, Somerset County. The Treasury, on behalf of Law and Public Safety, requests approval to dispose of a former State Police weigh station. The property will be sold at the fair market price, and will be purchased by the Department of Transportation. If not, it will be sold via public auction.

Item No. 14, RPR No. 04-11, Block 70, Lot 36, in Dennis Township, Cape May County. The Treasury, on behalf of Law and Public Safety, requests approval to dispose of a parcel of vacant land that was a former State Police radio tower location. The property will be auctioned for fair market value to be determined by an appraisal.

And Item No. 18, RPR 04-19, Block 501.01, Lot 1, Edgewater Park Township, in Burlington County. The Treasury, on behalf of Law and Public Safety, requests approval to dispose of a former State Police patrol station, located on Route 130 South. We offered it to Edgewater Park Township at the appraised value. If not purchased by the Township, the property will be sold via auction for fair market value.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 17, RPR No. 04-17, Block 22B, Lot 28, Trenton City, Mercer County. The Treasury requests approval to lease up to 15 parking spaces in Parking Area 31 to MBI-Gluck Shaw, for a lease term for one year with four one-year renewal options, at a rate of \$100 per space, per month.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 19, RPR No. 04-20, Block 1503, part of Lot 10, Princeton Borough, in Mercer County. The Department of Treasury, on behalf of the Department of Military and Veterans' Affairs, requests approval to dispose of 3.4 plus-or-minus acres of vacant land on the grounds of the Princeton Armory. The property will be transferred to Princeton Borough to be used for recreational purposes.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Someone told me that I skipped 15.

I did. My apologies.

Item No. 15, RPR No. 04-12, Block 373, Lot 2, in Ewing Township, Mercer County. The Department of Treasury, on behalf of the

Department of Human Services, requests approval to sell a 27 plus-or-minus acre parcel of vacant land located on Bear Tavern Road. The property will be offered to Ewing Township at the appraised value. If Ewing Township does not purchase, the property will be sold via public auction.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 20, RPR No. 04-22, Block 18, Lot 3, in Mahwah Township, Bergen County. The Department of Treasury, on behalf of Ramapo College of New Jersey, requests approval to lease rooftop space to T-Mobile for the installation of a wireless antenna. The lease will be for a term of five years, with two five-year renewal options, at an annual rental of \$24,000 with annual increases of 5 percent.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 21, RPR No. 04-23, Block 2078-A, Lot 14 (*sic*), Jersey City, in Hudson County. The Treasury, on behalf of Education, requests approval to dispose of a parcel of vacant land on the grounds of the Jersey City Regional School to the adjacent property owner. The property will be sold at fair market value.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 22, RPR No. 04-24, Block 46, Lot 51 and Block 47, Lot 3, Camden City, in Camden County. The Department of the Treasury, on behalf of the Department of Corrections, requests approval to lease a parking lot located at the Riverfront State Prison to the City of Camden. In lieu of fair market value rent, the City of Camden will improve property located at the Riverfront State Prison and property adjacent to the prison for use as overflow parking at the prison. The lease will be for a term of five years, with one five-year renewal option.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

Assemblyman Biondi must go to a Committee meeting, he's leaving his votes in the affirmative for the balance of the agenda.

Item No. 23, RPR No. 04-25, Block 1287, Lot 5E; Block 1287.2, Lot 2C; Block 1286, Lot 5C, Jersey City, in Hudson County. The Treasury, on behalf of the Jersey City University, requests approval to dispose of property located on the grounds of the New Jersey City University to the Educational Facilities Authority. In lieu of fair market value, the Educational Facilities Authority will transfer to the State a similar property of like value.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

Item No. 24, RPR No. 04-26, Block 875.04, Lot 1.01, in Galloway Township, in Atlantic County. The New Jersey Department of the Treasury, on behalf of the Richard Stockton College of New Jersey, requests approval to grant a utility easement to Conectiv Power Delivery. The easement will be granted for fair market value, to be determined by an appraisal. The Richard Stockton College of New Jersey requests permission to negotiate the terms of the easement, and also requests approval that all proceeds from the easement be paid to the College.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

Mr. Chairman, Items No. 25 through 32 all relate to properties being disposed of by the Department of Transportation. Previously, when the agendas have been available at times, we have just moved them en masse, because anybody that was here could react to them. If it's the Chair's desire to do that, rather than my reading every one, we can do that.

MR. EPPLEY: Okay. Just a second, please.

Objection from members? (no response)

SENATOR SMITH: Just a note -- I think on 27 there's a typographical error. It says approval to sell an irregular-shaped parcel of land containing .03 acre plus-or-minus acres, or 12,632 -- Number 27.

MR. McGLYNN: It should be, probably, 1,263 square feet, would be my guess. It's 44,000 square feet, point-three, times 44. Right? Isn't that what an acre is? Somewhere around there.

SENATOR SMITH: Point three times 40 will be--

MR. McGLYNN: We will make sure that -- whatever -- that the figure is correct. Okay?

SENATOR SMITH: Right, whatever. Whatever the math is, right. Okay.

MR. McGLYNN: So we're moving Items 25 through 32, correct? There's been a motion and second.

All in favor? (affirmative response)

Opposed? (no response)

Item No. 33 is Route 21, Section 2, between Lombard and Fulton Streets, in Newark, Essex County. The Department of Transportation, Bureau of Right of Way, Property Management Unit, requests approval to convey a triangular-shaped parcel of vacant land containing 0.368 plus-or-minus acres, or 16,659 plus-or-minus square feet. The property is being conveyed at no cost to New Jersey Transit for the Newark Elizabeth Rail Link, upon its facilitation of the New Jersey DOT's needs for right-of-way clearance on Route 21 Contracts 1 and 2 construction projects.

SENATOR SMITH: Move it.

MR. EPPLEY: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 34, the property is Route 70, Section 11A, Parcel VX18, in Brick, Ocean County. The Department of Transportation, Bureau of Right of Way, Property Management Unit, requests approval to sell an irregular-shaped parcel of land containing 1.874 plus-or-minus acres, or 81,631 square feet. The property will be sold via direct sale at a price of \$44,400.

SENATOR SMITH: Moved.

MR. EPPLEY: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

The following are DEP requests: No. 35, Delaware and Raritan Canal State Park, Block 1, Lot 8, in South Bound Brook, Somerset County. The New Jersey Department of Environmental Protection, on behalf of the Division of Parks and Forestry, requests approval to enter into a 10-year lease

with the Borough of South Bound Brook for the development, maintenance, and operation of outdoor recreational facilities for the benefit of the public.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 36, the Brendan T. Byrne State Forest, Block 897, Lot 1.01; Block 899, Lot 1 and Block 898, Lot 1, in Pemberton, Burlington County. The New Jersey Department of Environmental Protection, on behalf of the Division of Parks and Forestry, requests approval to enter a 20-year lease with the Whitesbog Preservation Trust.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

By the way, I'm not reading each of the compensations because, as you know, the agenda is part of the minutes that we provide for everyone, and they're also in the final report.

Item No. 37, Wawayanda State Park, Block 42, Lot 7, in Vernon, Sussex County. The Department of Environmental Protection, on behalf of the Division of Parks and Forestry, requests approval to enter into a 10-year lease with the Vernon Township Historical Society for the education, cultural, recreational and interpretive programs, projects, and activities to encourage public use of the historic "James Barrett House." The landlord may offer the tenant a renewal of this lease for an additional 10-year period.

MR. EPPLEY: So moved.

SENATOR SMITH: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 38 is Beaver Brook Wildlife Management Area, Block 57, Lot 10, in Knowlton Township, Warren County. The New Jersey Department of Environmental Protection, Division of Fish and Wildlife, requests approval to enter into a 20-year lease with Knowlton Township for the preservation and restoration of the historic Ramseysburg Homestead location, in the Beaver Brook Wildlife Management Area.

MR. EPPLEY: So moved.

SENATOR SMITH: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

Item No. 39 is Rambling Pines Conservation Easement, Block 45, Lot 41, East Amwell Township, in Hunterdon County. The DEP, Division of Parks and Forestry, requests approval to release a Green Acres funded conservation easement for a total of 0.324 acre -- 0.069 acre in fee and 0.255 acre in easements -- of property in connection with the improvement of the intersection of Route 518 and Route 31 by the Department of Transportation.

MR. EPPLEY: So moved.

SENATOR SMITH: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

Item No. 40, Stillwater Mill Park, Block 3203-A, Part of Lot 1.02 and Block 3306, Part of Lot 12, in Stillwater Township, Sussex County. The DEP, Green Acres Program, requests approval to convey 0.216 acre, fee and easement, to the County of Sussex in connection with the replacement of the County Route 610 bridge that spans the Paulinskill River and the realignment of Route 610.

MR. EPPLEY: So moved.

SENATOR SMITH: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

Item No. 41, Preakness Valley Golf Course, Block 603, Part of Lot 1 and Block 1001, Part of Lot 1, in Wayne Township, Passaic County. The DEP, on behalf of the County of Passaic, requests approval to divert approximately 0.39 acre for the widening of Totowa Road and French Hill Road. The roadway improvements will consist of additional turning lanes and construction of a traffic signal for Totowa Road.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)
Opposed? (no response)

Item No. 42, Smith Field Park, Block 728, Lot 1, Parsippany-Troy Hills Township, in Morris County. The DEP, on behalf of the Township of Parsippany-Troy Hills, requests permission to allow the continued dual use of 125 parking spaces within Smith Field Park by commuters and park users. As compensation, the DOT will transfer to the DEP, on the Township's behalf, a

5.03 acre parcel located adjacent to the South Beverwyck Road Park and Ride, Block 722, Part of Lot 1.

SENATOR SMITH: Move it.

MR. EPPLEY: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 43, Von Neida Park, Block 920, Lot 1.01, in Camden City, Camden County. The DEP, on behalf of the County of Camden, requests approval to allow the disposal of approximately 2.0 plus-or-minus acres of Von Neida Park to the City of Camden, as the site of a new library, in exchange for approximately 19.635 acres to be transferred from the Delaware River Port Authority.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

No. 44, Dudley Grange Park, Block 1119, Part of Lots 3 and 4, in Camden City, Camden County. The New Jersey Department of Environmental Protection, on behalf of the City of Camden, requests approval to allow use of approximately 8.5 acres of Dudley Grange Park as the site of the \$39.9 million Catto School demonstration project, in exchange for approximately 20.9 acres to be dedicated and developed as parkland.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

Item No. 45 is--

SENATOR SMITH: Mr. Chairman, if I might, please have the record reflect that I'm recusing myself from Item No. 45. I may have a conflict of interest, and rather than even take a chance, I'll recuse.

MR. EPPLEY: Okay. Although we've taken a vote, did you want to comment on the item?

UNIDENTIFIED SPEAKER FROM AUDIENCE: No. I just had a couple of questions.

MR. EPPLEY: Please come to the table and--

RON CARPER: Good morning. My name is Ron Carper. I'm a Project Officer with the New Jersey Schools Construction Corporation, Land

Acquisition Division. And I just had a couple clarifications that I needed to get answers to so I can respond to our board, which has a meeting on Wednesday to approve the demonstration project. And primarily, I need to understand that the New Jersey Transit right-of-way inclusion in the approval is a requirement for the Green Acres diversion.

SENATOR KENNY: What project are we on?

MR. EPPLEY: Which one are you on?

MR. McGLYNN: The one we just did.

MR. CARPER: Number 44.

MR. McGLYNN: Here's what the agenda item says: "The City is committed to securing the lease of a right-of-way from New Jersey Transit to be developed as a recreational greenway to connect the Stockton Station replacement parcel with the Catto School and the remainder of Dudley Grange Park. Within two years of State House Commission approval, all shade tree replacement and affected recreational facilities on Dudley Grange Park will be relocated to the remediated Stockton Station replacement property, which is to be cleared of all buildings and remediated. However, given the complexity of the demolition and remediation, the DEP requests permission to extend the deadline by up to one year without further State House Commission approval, provided the City has demonstrated sufficient progress."

Does that answer your question?

MR. CARPER: Partly. I think where we're kind of missing a piece of information is with respect to the lease of the right-of-way from New Jersey Transit. We have no information in-house, presently, on what the terms of that lease agreement are, and we're hoping we could get some clarification today on that.

MR. McGLYNN: I-- I'm sorry.

Bob, what were you going to say?

MR. SHAUGHNESSY: I don't know that we have the facts and information in front of us to make that determination.

MR. McGLYNN: We don't -- in the documents that have been provided to us, there is no indication of a lease arrangement with New Jersey Transit.

MR. CARPER: It says in the final paragraph of Item 44, "The City has committed to securing a lease of a right-of-way."

MR. McGLYNN: Right. But -- I concur with that. But we have not--

MR. EPPLEY: And that's beyond us.

MR. McGLYNN: Yes, exactly.

MR. EPPLEY: That's beyond this board.

MR. CARPER: Okay, thank you.

I guess my final question -- I just need to better understand the established link between SCC putting out the dollars for the right-of-way as part of the demonstration project. As you may know, the Department of Education has not approved the right-of-way as an eligible cost at this point. And I need to understand whether or not it is a requirement for the project.

MR. McGLYNN: I'm sorry.

Mr. Hayman, do you have-- Would you come up so we can get this as part of the record?

This is Gene Hayman, from Treasury.

GENE HAYMAN: Actually, this board doesn't have purview over the New Jersey Transit property. The negotiations would be directly with New Jersey Transit for that.

MR. CARPER: Okay. Thank you very much.

MR. EPPLEY: Thank you.

MR. McGLYNN: Thank you.

MR. EPPLEY: You didn't flail your arms enough for me to notice you before that. Nevertheless, the vote stands.

We're on to Item No. 45.

MR. McGLYNN: Item No. 45 is Roosevelt Stadium, Block 134, Part of Lot 1, in Union City, Hudson County. The Department of Environmental Protection, on behalf of the City of Union City, requests approval to allow the disposal of approximately 0.734 acre of Roosevelt Stadium as the site of a new high school, as part of a \$366 million demonstration project to be undertaken in cooperation with the New Jersey Schools Corporation.

MR. EPPLEY: So moved.

MR. McGLYNN: Bear with me, if I may?

MR. EPPLEY: Do you want to do a bunch?

MR. McGLYNN: No.

MR. EPPLEY: Okay.

MR. McGLYNN: What I want to just mention is that, as a part of the record, will be a letter from Preservation New Jersey indicating their

opposition to this. I have spoken to them on three or four different occasions this week. I just want the members of the board to be aware of it.

SENATOR KENNY: May I--

MR. EPPLEY: Please.

SENATOR KENNY: With respect to that letter, which is in the record -- Senator Kenny -- I represent Union City in this Legislature. The letter makes a few, I think, inaccurate statements. It seems to imply that the stadium was refurbished by Green Acres money. That's not true. That stadium has not been refurbished. It's in a state of tremendous disarray, disrepair. It's really not safe. One of my sons played football -- as a youth -- football, and the locker rooms, the bathrooms -- forget about it. I mean, the stadium is a WPA project, and it's 70 years old. The facade is in great disrepair.

The letter from the Preservation New Jersey indicated that the stadium was renovated using Green Acres funding -- that's absolutely false. There is a small field house, in the outfield of the athletic field, which was built with Green Acres money some years ago. And it's not a huge field house. It's for storage of equipment. That's what the Green Acres money is there -- and that's all the Green Acres money there, number one.

Point number two, they seem to imply that we're removing this field from public use and putting it on top of the school. That's false. What we're doing is improving -- we're building a whole new field, state-of-the-art, raising it one story from where it is currently -- handicapped access, and HVAC mechanicals, locker rooms, weight training underneath. So it's going to be an improved facility. We work very closely with Green Acres on this. The field will be as accessible to the public as the field has been historically. We're not removing it from the public use. We're really enhancing it.

So I just wanted to make those points clear. Because the letter is really -- creates a false impression.

MR. EPPLEY: Thank you, Senator.

Anybody here from the public wishing to comment? (no response)

If not, we have a motion on the table.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

I would ask you to stay just for five more minutes, when we now sit in our capacity as the trustees of the Judicial Retirement System.

And I need a motion to approve the minutes of the meeting held on March 22, 2004.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

I need a motion just to confirm the death claims, retirements, survivor benefits, and terminations.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

MR. McGLYNN: I need a motion to approve the financial statements as of March 31, 2004.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

I need approval of the Judicial Retirement Systems' Optional Contributory Group Life Insurance Program, which is the same as it was last year.

MR. EPPLEY: So moved.

MS. HOLZBAUR: Second.

MR. McGLYNN: All in favor? (affirmative response)

Aye.

I'm not voting -- excuse me. I'm sorry.

All in favor? (affirmative response)

Opposed? (no response)

And just acknowledgment of receipt of the Annual Actuarial Report as of July 1, 2003, which is attached and made a part of your agenda.

MR. EPPLEY: So moved.

SENATOR SMITH: Second.

MR. McGLYNN: All in favor? (affirmative response)

Opposed? (no response)

MR. EPPLEY: Any other business before the Commission at this time? (no response)

We are adjourned.

Thank you all for coming.

MR. McGLYNN: Thank you all.

MR. EPPLEY: Thank you for hanging in there.

(MEETING CONCLUDED)